

## 1.1 NHS TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES (CONTRACT VERSION)

<b>The Authority</b>	The National Health Service Commissioning Board, operating as NHS England, Quarry House, Quarry Hill, Leeds LS2 7UA
<b>The Supplier</b>	<b>Pinnacle Systems Management Ltd</b> [REDACTED] [REDACTED] [REDACTED]
<b>Date</b>	<b>[Insert date when signed by both parties]</b>
<b>Type of Services</b>	Development and maintenance of a Point of Care solution and service for the national Vaccinations Programme as described in Schedule 5

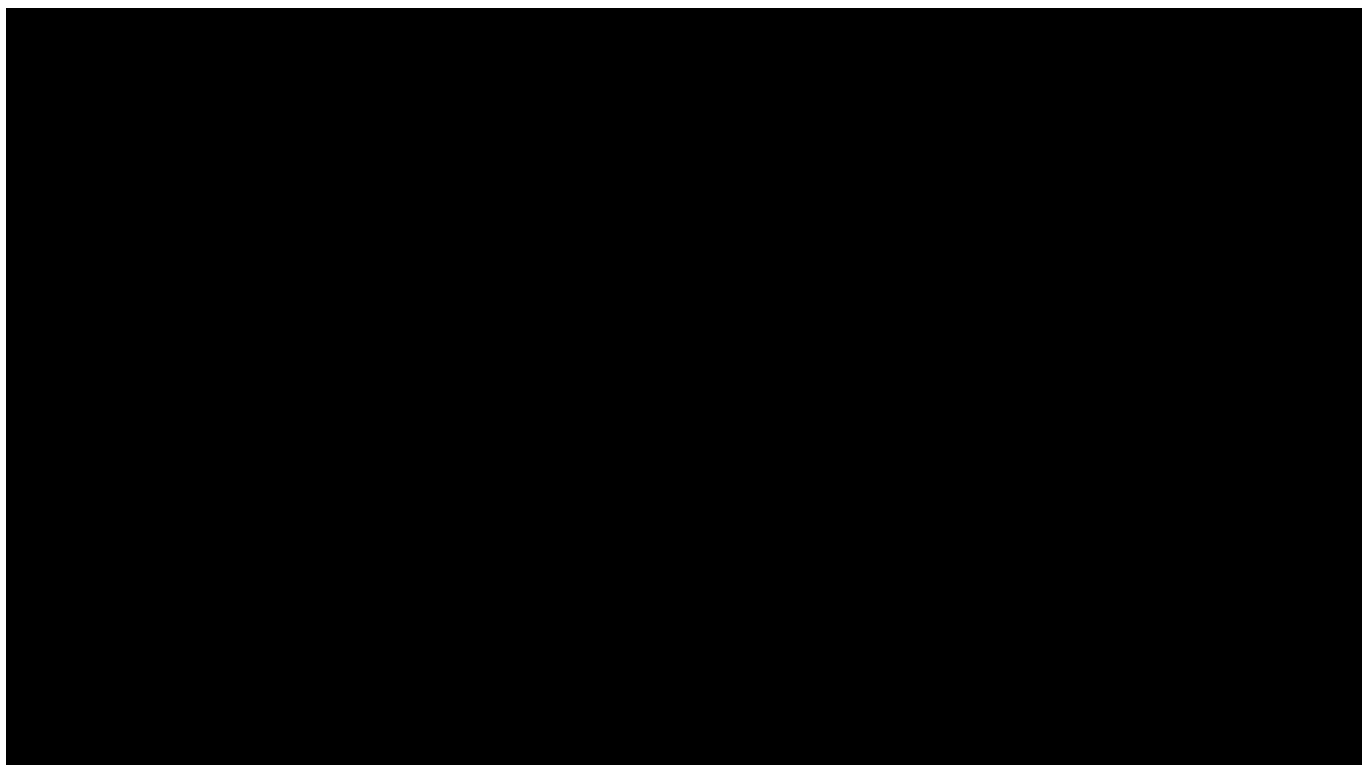
This Contract is made on the date set out above subject to the terms set out in the schedules listed below ("**Schedules**"). The Authority and the Supplier undertake to comply with the provisions of the Schedules in the performance of this Contract.

The Supplier shall supply to the Authority, and the Authority shall receive and pay for, the Services on the terms of this Contract.

The Definitions in Schedule 4 apply to the use of all capitalised terms in this Contract.

### Schedules

<b>Schedule 1</b>	Key Provisions
<b>Schedule 2</b>	General Terms and Conditions
<b>Schedule 3</b>	Information and Data Provisions
<b>Schedule 4</b>	Definitions and Interpretations
<b>Schedule 5</b>	Specification and Tender Response Document
<b>Schedule 6</b>	Commercial Schedule
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## **Schedule 1**

### **Key Provisions**

#### **Standard Key Provisions**

##### **1 Application of the Key Provisions**

- 1.1 The standard Key Provisions at Clauses 1 to 7 of this Schedule 1 shall apply to this Contract.
- 1.2 The optional Key Provisions at Clauses 8 to 24 of this Schedule 1 shall only apply to this Contract where they have been checked and information completed as applicable.
- 1.3 Extra Key Provisions shall only apply to this Contract where such provisions are set out at the end of this Schedule 1.


##### **2 Term**

- 2.1 This Contract shall commence on the Commencement Date (**1<sup>st</sup> April 2022**) and the Term of this Contract shall expire at the end of the day on 30 September 2022. The Term may be extended in accordance with Clause 15.2 of Schedule 2 provided that the duration of this Contract shall be no longer than **nine (9)** months in total.


##### **3 Contract Managers**

- 3.1 The Contract Managers at the commencement of this Contract are:

- 3.1.1 for the Authority:

 Contract & Commercial Manager, NHSEI


- 3.1.2 for the Supplier:

 Chief Commercial Officer and Chief Product Officer  
(Health)

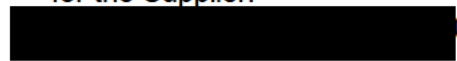
##### **4 Names and addresses for notices**

- 4.1 Notices served under this Contract are to be delivered to:

- 4.1.1 for the Authority:

 Flu and COVID-19 Vaccination Programme Technology  
and Data Programme Lead

- 4.1.2 for the Supplier:

 (marked for the attention of Legal Counsel)

## 5 Management levels for escalation and dispute resolution

- 5.1 The management levels at which a Dispute may be dealt with as referred to as part of the Dispute Resolution Procedure are as follows:

Level	Authority representative	Supplier representative
1	<div>██████████</div> Contract & Commercial Manager	<div>██████████</div> , Director of Professional Services, Pinnacle <a href="mailto:Kevin.Noble@emishealth.com">Kevin.Noble@emishealth.com</a>
2	<div>██████████</div> Flu and COVID-19 Vaccination Programme Technology and Data Programme Lead	<div>██████████</div> Sales Director CP & PPL, Commercial <div>██████████</div>
3	<div>██████████</div> NHS England Commercial Director	<div>██████████</div> Chief Commercial Officer and Chief Product Officer (Health) <a href="mailto:Edward.Bellamy@emisgroupplc.com">Edward.Bellamy@emisgroupplc.com</a> +44 (0) 7780 796795

## 6 Order of precedence

- 6.1 Subject always to Clause 1.10 of Schedule 4, should there be a conflict between any other parts of this Contract the order of priority for construction purposes shall be:
- 6.1.1 the provisions on the front page of this NHS Contract for the Provision of Services (Contract Version);
  - 6.1.2 Schedule 1: Key Provisions;
  - 6.1.3 Schedule 5: Specification and Tender Response Document (but only in respect of the Authority's requirements);
  - 6.1.4 Schedule 2: General Terms and Conditions;
  - 6.1.5 Schedule 6: Commercial Schedule;
  - 6.1.6 Schedule 3: Information Governance Provisions;
  - 6.1.7 Schedule 4: Definitions and Interpretations;
  - 6.1.8 the order in which all subsequent schedules, if any, appear; and
  - 6.1.9 any other documentation forming part of the Contract in the date order in which such documentation was created with the more recent documentation taking precedence over older documentation to the extent only of any conflict.
- 6.2 For the avoidance of doubt, the Specification and Tender Response Document shall include, without limitation, the Authority's requirements in the form of its specification

and other statements and requirements, the Supplier's responses, proposals and/or method statements to meet those requirements, and any clarifications to the Supplier's responses, proposals and/or method statements as included as part of Schedule 5. Should there be a conflict between these parts of the Specification and Tender Response Document, the order of priority for construction purposes shall be (1) the Authority's requirements; (2) any clarification to the Supplier's responses, proposals and/or method statements, and (3) the Supplier's responses, proposals and/or method statements.

**7 Not Used**

**Optional Key Provisions**

**8 Implementation phase ☐ (only applicable to the Contract if this box is checked and the Schedule inserted)**

- 8.1 Prior to commencement of delivery of the Services, there is an implementation phase and therefore all references in Schedule 2 to the Implementation Plan shall apply and the Implementation Plan is set out in Schedule **[insert schedule number]**.

**9 Services Commencement Date (where the Services are to start at a date after the Commencement Date) ☐ (only applicable to the Contract if this box is checked and the dates are inserted in Clause 9.1 of this Schedule 1)**

- 9.1 The Services Commencement Date shall be **[insert date]** and the Long Stop Date referred to in Clause 15.5.1 of Schedule 2 shall be **[insert date]**.

**10 Induction training ☐ (only applicable to the Contract if this box is checked)**

- 10.1 The Supplier shall ensure that all Staff complete the Authority's induction training. All Staff shall complete the training prior to the Actual Services Commencement Date (or immediately following the Services Commencement Date where this date is the date of this Contract) and all new Staff appointed throughout the Term shall also complete the training. The Supplier shall further ensure that all Staff complete any extra training that the Authority makes available to its own staff and notifies the Supplier in writing that it is appropriate for the Staff.

**11 Quality assurance standards ☐ (only applicable to the Contract if this box is checked and the standards are listed)**

- 11.1 The following quality assurance standards shall apply, as appropriate, to the provision of the Services: **[insert standards]**.

**12 Different levels and/or types of insurance ☐ (only applicable to the Contract if this box is checked and the table sets out the requirements)**

- 12.1 The Supplier shall put in place and maintain in force the following insurances with the following minimum cover per claim:

Type of insurance required	Minimum cover
<b>[Employer's Liability]</b>	<b>[ ]</b>

<b>[Public Liability]</b>	<b>[                      ]</b>
<b>[Professional Indemnity]</b>	<b>[                      ]</b>
<b>[Insert other types of insurance as appropriate]</b>	<b>[                      ]</b>

- 13 Further Authority obligations ☐ (only applicable to the Contract if this box is checked and the Schedule inserted)**
- 13.1 The Authority's Obligations are set out in Schedule **[insert schedule number]**.
- 14 Assignment of Intellectual Property Rights in deliverables, materials and outputs ☐ (only applicable to the Contract if this box is checked)**
- 14.1 The Supplier confirms and agrees that all Intellectual Property Rights in and to the deliverables, material and any other output developed by the Supplier as part of the Services in accordance with the Specification and Tender Response Document, shall be owned by the Authority. The Supplier hereby assigns with full title guarantee by way of present and future assignment all Intellectual Property Rights in and to such deliverables, material and other outputs. The Supplier shall ensure that all Staff assign any Intellectual Property Rights they may have in and to such deliverables, material and other outputs to the Supplier to give effect to Clause 14 of this Schedule 1 and that such Staff absolutely and irrevocably waive their moral rights in relation to such deliverables, material and other outputs. Clause 14 of this Schedule 1 shall continue notwithstanding the expiry or earlier termination of this Contract.
- 15 Inclusion of a Change Control Process ☐ (only applicable to the Contract if this box is checked and the Schedule inserted)**
- 15.1 Any changes to this Contract, including to the Services, may only be agreed in accordance with the Change Control Process set out in Schedule **[insert schedule number]**.
- 16 Authority step-in rights ☐ (only applicable to the Contract if this box is checked and the Schedule inserted)**
- 16.1 If the Supplier is unable to provide the Services then the Authority shall be entitled to exercise Step In Rights set out in Schedule **[insert schedule number]**.
- 17 Grant of lease or licence ☐ (only applicable to the Contract if this box is checked)**
- 17.1 Promptly following execution of this Contract, the Supplier shall enter into the **[lease/licence]**. Failure to comply with this Key Provision shall be an irremediable breach of this Contract.
- 18 Guarantee ☐ (only applicable to the Contract if this box is checked)**
- 18.1 Promptly following the execution of this Contract, the Supplier shall, if it has not already delivered an executed deed of guarantee to the Authority, deliver the executed deed of guarantee to the Authority as required by the procurement process followed by the

Authority. Failure to comply with this Key Provision shall be an irremediable breach of this Contract.

**19 Supplier as Data Processor ☒ (only applicable to the Contract if this box is checked)**

19.1 The Parties acknowledge that the Authority is the Controller and the Supplier is the Processor in respect of Personal Data Processed under this Contract and that paragraph 2.2 of Schedule 3 and the provisions of the Data Protection Protocol must be complied with by the Parties as a term of this Contract.

**20 Purchase Orders ☒ (only applicable to the Contract if this box is checked)**

20.1 The Authority shall issue a Purchase Order to the Supplier in respect of any Services to be supplied to the Authority under this Contract. The Supplier shall comply with the terms of such Purchase Order as a term of this Contract (providing it doesn't substantively change the nature and effect of the Services being delivered by the Supplier to the Authority under this Contract). For the avoidance of doubt, any actions or work undertaken by the Supplier under this Contract prior to the receipt of a Purchase Order covering the relevant Services shall be undertaken at the Supplier's risk and expense and the Supplier shall only be entitled to invoice for Services covered by a valid Purchase Order.

**21 Monthly payment profile ☒ (only applicable to the Contract if this box is checked)**

21.1 The payment profile for this Contract shall be monthly in arrears (as detailed more fully in Schedule 6).

**22 Termination for convenience ☒ (only applicable to the Contract if this box is checked and Clause 22.1 of this Schedule 1 is completed)**

22.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier at any time on one (1) month's written notice

**23 Right to terminate following a specified number of material breaches ☒ (only applicable to the Contract if this box is checked and Clause 23.1 of this Schedule 1 is completed)**

23.1 Either Party may terminate this Contract by issuing a Termination Notice to the other Party if such other Party commits a material breach of this Contract in circumstances where it is served with a valid Breach Notice having already been served with at least two (2) previous valid Breach Notices within the last twelve (12) calendar month rolling period as a result of any previous material breaches of this Contract which are capable of remedy (whether or not the Party in breach has remedied the breach in accordance with a Remedial Proposal). The twelve (12) month rolling period is the twelve (12) months immediately preceding the date of the third Breach Notice.

**24 Expert Determination ☐ (only applicable to the Contract if this box is checked)**

24.1 Any Dispute between the Authority and the Supplier shall be dealt in accordance with the expert determination process as specified at **Error! Reference source not found..**

- 24.2 For the avoidance of doubt, where this Clause 24 of this Schedule 1 is checked, all Disputes shall be dealt in accordance with Clause 24.1 of this Schedule 1 above and the entirety of Clause 22 of Schedule 2 shall be deemed not to apply and deleted in its entirety from this Contract.

**Extra Key Provisions**

The Parties shall comply with the obligations set out in the Tender Response Document.



## **Schedule 2**

### **General Terms and Conditions**

#### **Contents**

1. Provision of Services
2. Premises, locations and access
3. Cooperation with third parties
4. Use of Authority equipment
5. Staff and Lifescience Industry Accredited Credentialing Register
6. Business continuity
7. The Authority's obligations
8. Contract management
9. Price and payment
10. Warranties
11. Intellectual property
12. Indemnity
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18. Complaints
19. Sustainable development
20. Electronic services information
21. Change management
22. Dispute resolution
23. Force majeure
24. Records retention and right of audit
25. Conflicts of interest and the prevention of fraud
26. Equality and human rights
27. Notice
28. Assignment, novation and Sub-contracting
29. Prohibited Acts
30. General

## **1 Provision of Services**

1.1 The Authority appoints the Supplier and the Supplier agrees to provide the Services:

- 1.1.1 promptly and in any event within any time limits as may be set out in this Contract;
- 1.1.2 in accordance with all other provisions of this Contract;
- 1.1.3 with reasonable skill and care and in accordance with any quality assurance standards as set out in the Key Provisions and/or the Specification and Tender Response Document;
- 1.1.4 in accordance with the Law and with Guidance;
- 1.1.5 in accordance with Good Industry Practice;
- 1.1.6 in accordance with the Policies; and
- 1.1.7 in a professional and courteous manner.

In complying with its obligations under this Contract, the Supplier shall, and shall procure that all Staff shall, act in accordance with the NHS values as set out in the NHS Constitution from time to time.

- 1.2 The Supplier shall comply with the Implementation Requirements (if any) in accordance with any timescales as may be set out in the Specification and Tender Response Document., Without limitation to the foregoing provisions of this Clause 1.2 of this Schedule 2, the Supplier shall, if specified in the Key Provisions, implement the Services fully in accordance with the Implementation Plan. If the Implementation Plan is an outline plan, the Supplier shall, as part of implementation, develop the outline plan into a full plan and agree this with the Authority. Once this is agreed, the Supplier shall comply with the full Implementation Plan.
- 1.3 The Supplier shall commence delivery of the Services on the Services Commencement Date.
- 1.4 The Supplier shall comply fully with its obligations set out in the Specification and Tender Response Document, including without limitation the KPIs.
- 1.5 The Supplier shall ensure that all relevant consents, authorisations, licences and accreditations required to provide the Services are in place at the Actual Services Commencement Date and are maintained throughout the Term.
- 1.6 If the Services, or any part of them, are regulated by any regulatory body, the Supplier shall ensure that at the Actual Services Commencement Date it has in place all relevant registrations and shall maintain such registrations during the Term. The Supplier shall notify the Authority forthwith in writing of any changes to such registration or any other matter relating to its registration that would affect the delivery or the quality of Services.

- 1.7 The Supplier shall notify the Authority forthwith in writing:
- 1.7.1 of any pending inspection of the Services, or any part of them, by a regulatory body immediately upon the Supplier becoming aware of such inspection; and
  - 1.7.2 of any failure of the Services, or any part of them, to meet the quality standards required by a regulatory body, promptly and in any event within two (2) Business Days of the Supplier becoming aware of any such failure. This shall include without limitation any informal feedback received during or following an inspection raising concerns of any nature regarding the provision of the Services.
- 1.8 Following any inspection of the Services, or any part of them, by a regulatory body, the Supplier shall provide the Authority with a copy of any report or other communication published or provided by the relevant regulatory body in relation to the provision of the Services.
- 1.9 Upon receipt of notice pursuant to Clause 1.7 of this Schedule 2 or any report or communication pursuant to Clause 1.8 of this Schedule 2, the Authority shall be entitled to request further information from the Supplier and/or a meeting with the Supplier, and the Supplier shall cooperate fully with any such request.
- 1.10 Where applicable, the Supplier shall implement and comply with the Policies on reporting and responding to all incidents and accidents, including serious incidents requiring investigation, shall complete the Authority's incident and accident forms in accordance with the Policies and provide reasonable support and information as requested by the Authority to help the Authority deal with any incident or accident relevant to the Services. The Supplier shall ensure that its Contract Manager informs the Authority's Contract Manager in writing forthwith upon (a) becoming aware that any serious incidents requiring investigation and/or notifiable accidents have occurred; or (b) the Supplier's Contract Manager having reasonable cause to believe any serious incidents and/or notifiable accidents requiring investigation have occurred. The Supplier shall ensure that its Contract Manager informs the Authority's Contract Manager in writing within forty eight (48) hours of all other incidents and/or accidents that have or may have an impact on the Services.
- 1.11 Should the Authority be of the view, acting reasonably, that the Supplier can no longer provide the Services, then without prejudice to the Authority's rights and remedies under this Contract, the Authority shall be entitled to exercise its Step In Rights if the Key Provisions refer to the Authority having such rights under this Contract.
- 1.12 The Supplier shall be relieved from its obligations under this Contract to the extent that it is prevented from complying with any such obligations due to any acts, omissions or defaults of the Authority. To qualify for such relief, the Supplier must notify the Authority promptly (and in any event within five (5) Business Days) in writing of the occurrence of such act, omission, or default of the Authority together with the potential impact on the Supplier's obligations.
- 2 Premises, locations and access**
- 2.1 The Services shall be provided at such Authority premises and at such locations within those premises, as may be set out in the Specification and Tender Response Document or as otherwise agreed by the Parties in writing ("**Premises and Locations**").

- 2.2 Subject to the Supplier and its Staff complying with all relevant Policies applicable to such Premises and Locations, the Authority shall grant reasonable access to the Supplier and its Staff to such Premises and Locations to enable the Supplier to provide the Services.
- 2.3 Subject to Clause 2.4 of this Schedule 2, any access granted to the Supplier and its Staff under Clause 2.2 of this Schedule 2 shall be non-exclusive and revocable. Such access shall not be deemed to create any greater rights or interest than so granted (to include, without limitation, any relationship of landlord and tenant) in the Premises and Locations. The Supplier warrants that it shall carry out all such reasonable further acts to give effect to this Clause 2.3 of this Schedule 2.
- 2.4 Where, in order to provide the Services, the Supplier requires any greater rights to use or occupy any specific Premises and Locations over and above such reasonable access rights granted in accordance with Clause 2.2 and Clause 2.3 of this Schedule 2, such further rights shall be limited to any rights granted to the Supplier by the Authority in accordance with any licence and/or lease entered into by the Supplier in accordance with the Key Provisions.
- 2.5 Where it is provided for by a specific mechanism set out in the Specification and Tender Response Document, the Authority may increase, reduce or otherwise vary the Premises and Locations in accordance with such mechanism subject to the provisions of any licence or lease entered into by the Parties as referred to at Clause 2.4 of this Schedule 2. Where there is no such specific mechanism set out in the Specification and Tender Response Document, any variations to the Premises and Locations where the Services are to be provided shall be agreed by the Parties in accordance with Clause 21 of this Schedule 2. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the Dispute Resolution Procedure.

### **3 Cooperation with third parties**

- 3.1 The Supplier shall, as reasonably required by the Authority, cooperate with any other service providers to the Authority and/or any other third parties as may be relevant in the provision of the Services.

### **4 Use of Authority equipment**

- 4.1 Unless otherwise set out in the Specification and Tender Response Document or otherwise agreed by the Parties in writing, any equipment or other items provided by the Authority for use by the Supplier:
- 4.1.1 shall be provided at the Authority's sole discretion;
  - 4.1.2 shall be inspected by the Supplier in order that the Supplier can confirm to its reasonable satisfaction that such equipment and/or item is fit for its intended use and shall not be used by the Supplier until it has satisfied itself of this;
  - 4.1.3 must be returned to the Authority within any agreed timescales for such return or otherwise upon the request of the Authority; and
  - 4.1.4 shall be used by the Supplier at the Supplier's risk and the Supplier shall upon written request by the Authority reimburse the Authority for any loss or

damage relating to such equipment or other items caused by the Supplier (fair wear and tear exempted).

## **5 Staff and Lifescience Industry Accredited Credentialing Register**

- 5.1 Subject to the requirements of this Contract and any Law, the Supplier shall be entirely responsible for the employment and conditions of service of Staff. The Supplier shall ensure that such conditions of employment are consistent with its obligations under this Contract.
- 5.2 The Supplier will employ sufficient Staff to ensure that it complies with its obligations under this Contract. This will include, but not be limited to, the Supplier providing a sufficient reserve of trained and competent Staff to provide the Services during Staff holidays or absence.
- 5.3 The Supplier shall use reasonable endeavours to ensure the continuity of all Staff in the provision of the Services and, where any member of Staff is designated as key to the provision of the Services as set out in the Specification and Tender Response Document or as otherwise agreed between the Parties in writing, any redeployment and/or replacement of such member of Staff by the Supplier shall be subject to the prior written approval of the Authority, such approval not to be unreasonably withheld or delayed.
- 5.4 The Supplier shall ensure that all Staff are aware of, and at all times comply with, the Policies.
- 5.5 The Supplier shall:
  - 5.5.1 employ only those Staff who are careful, skilled and experienced in the duties required of them;
  - 5.5.2 ensure that every member of Staff is properly and sufficiently trained and instructed;
  - 5.5.3 ensure all Staff have the qualifications to carry out their duties;
  - 5.5.4 maintain throughout the Term all appropriate licences and registrations with any relevant bodies (at the Supplier's expense) in respect of the Staff; and
  - 5.5.5 ensure all Staff comply with such registration, continuing professional development and training requirements or recommendations appropriate to their role including those from time to time issued by the Department of Health or any relevant regulatory body or any industry body in relation to such Staff.
- 5.6 The Supplier shall not deploy in the provision of the Services any person who has suffered from, has signs of, is under treatment for, or who is suffering from any medical condition which is known to, or does potentially, place the health and safety of the Authority's staff, patients, service users or visitors at risk unless otherwise agreed in writing with the Authority.
- 5.7 The Supplier shall ensure that all potential Staff or persons performing any of the Services during the Term who may reasonably be expected in the course of performing any of the Services under this Contract to have access to or come into contact with

children or other vulnerable persons and/or have access to or come into contact with persons receiving health care services:

- 5.7.1 are questioned concerning their Convictions; and
  - 5.7.2 obtain appropriate disclosures from the Disclosure and Barring Service (or other appropriate body) as required by Law and/or the Policies before the Supplier engages the potential staff or persons in the provision of the Services.
- 5.8 The Supplier shall take all necessary steps to ensure that such potential staff or persons obtain standard and enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) and shall ensure all such disclosures are kept up to date. The obtaining of such disclosures shall be at the Supplier's cost and expense.
- 5.9 The Supplier shall ensure that no person is employed or otherwise engaged in the provision of the Services without the Authority's prior written consent if:
- 5.9.1 the person has disclosed any Convictions upon being questioned about their Convictions in accordance with Clause 5.7.1 of this Schedule 2;
  - 5.9.2 the person is found to have any Convictions following receipt of standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) in accordance with Clause 5.7.2 of this Schedule 2; or
  - 5.9.3 the person fails to obtain standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) upon request by the Supplier in accordance with Clause 5.7.2 of this Schedule 2.
- 5.10 In addition to the requirements of Clause 5.7 to Clause 5.9 of this Schedule 2, where the Services are or include regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 the Supplier:
- 5.10.1 warrants that it shall comply with all requirements placed on it by the Safeguarding Vulnerable Groups Act 2006;
  - 5.10.2 warrants that at all times it has and will have no reason to believe that any member of Staff is barred in accordance with the Safeguarding Vulnerable Groups Act 2006; and
  - 5.10.3 shall ensure that no person is employed or otherwise engaged in the provision of the Services if that person is barred from carrying out, or whose previous conduct or records indicate that they would not be suitable to carry out, any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person.
- 5.11 The Supplier shall ensure that the Authority is kept advised at all times of any member of Staff who, subsequent to their commencement of employment as a member of Staff receives a Conviction or whose previous Convictions become known to the Supplier or whose conduct or records indicate that they are not suitable to carry out any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person. The Supplier shall



only be entitled to continue to engage or employ such member of Staff with the Authority's written consent and with such safeguards being put in place as the Authority may reasonably request. Should the Authority withhold consent the Supplier shall remove such member of Staff from the provision of the Services forthwith.

- 5.12 The Supplier shall immediately provide to the Authority any information that the Authority reasonably requests to enable the Authority to satisfy itself that the obligations set out in Clause 5.7 to Clause 5.11 of this Schedule 2 have been met.
- 5.13 The Authority may at any time request that the Supplier remove and replace any member of Staff from the provision of the Services, provided always that the Authority will act reasonably in making such a request. Prior to making any such request the Authority shall raise with the Supplier the Authority's concerns regarding the member of Staff in question with the aim of seeking a mutually agreeable resolution. The Authority shall be under no obligation to have such prior discussion should the Authority have concerns regarding patient or service user safety.
- 5.14 Unless otherwise confirmed by the Authority in writing, the Supplier shall ensure full compliance (to include with any implementation timelines) with any Guidance issued by the Department of Health and Social Care and/or any requirements and/or Policies issued by the Authority (to include as may be set out as part of any procurement documents leading to the award of this Contract) in relation to the adoption of, and compliance with, any scheme or schemes to verify the credentials of Supplier representatives that visit NHS premises (to include use of the Lifescience Industry Accredited Credentialing Register). Once compliance with any notified implementation timelines has been achieved by the Supplier, the Supplier shall, during the Term, maintain the required level of compliance in accordance with any such Guidance, requirements and Policies.

## **6 Business continuity**

- 6.1 The Supplier shall use reasonable endeavours to ensure its Business Continuity Plan operates effectively alongside the Authority's business continuity plan where relevant to the provision of the Services. The Supplier shall also ensure that its Business Continuity Plan complies on an ongoing basis with any specific business continuity requirements, as may be set out in the Specification and Tender Response Document.
- 6.2 Throughout the Term, the Supplier will ensure its Business Continuity Plan provides for continuity during a Business Continuity Event. The Supplier confirms and agrees such Business Continuity Plan details and will continue to detail robust arrangements that are reasonable and proportionate to:
  - 6.2.1 the criticality of this Contract to the Authority; and
  - 6.2.2 the size and scope of the Supplier's business operations,
 regarding continuity of the provision of the Services during and following a Business Continuity Event.
- 6.3 The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Contract to the Authority and the size and scope of the Supplier's business operations. The Supplier

shall promptly provide to the Authority, at the Authority's written request, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that the Supplier tests its Business Continuity Plan in accordance with the requirements of this Clause 6.3 of this Schedule 2 and reasonable and proportionate information regarding the outcome of such tests. The Supplier shall provide to the Authority a copy of any updated or revised Business Continuity Plan within fourteen (14) Business Days of any material update or revision to the Business Continuity Plan.

- 6.4 The Authority may suggest reasonable and proportionate amendments to the Supplier regarding the Business Continuity Plan at any time. Where the Supplier, acting reasonably, deems such suggestions made by the Authority to be relevant and appropriate, the Supplier will incorporate into the Business Continuity Plan all such suggestions made by the Authority in respect of such Business Continuity Plan. Should the Supplier not incorporate any suggestion made by the Authority into such Business Continuity Plan it will explain the reasons for not doing so to the Authority.
- 6.5 Should a Business Continuity Event occur at any time, the Supplier shall implement and comply with its Business Continuity Plan and provide regular written reports to the Authority on such implementation.
- 6.6 During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to provide the Services in accordance with this Contract.

## **7 The Authority's obligations**

- 7.1 Subject to the Supplier providing the Services in accordance with this Contract, the Authority will pay the Supplier for the Services in accordance with Clause 9 of this Schedule 2.
- 7.2 The Authority shall, as appropriate, provide copies of or give the Supplier access to such of the Policies that are relevant to the provision of the Services.
- 7.3 The Authority shall comply with the Authority's Obligations, as may be referred to in the Key Provisions.
- 7.4 The Authority shall provide the Supplier with any reasonable and proportionate cooperation necessary to enable the Supplier to comply with its obligations under this Contract. The Supplier shall at all times provide reasonable advance written notification to the Authority of any such cooperation necessary in circumstances where such cooperation will require the Authority to plan for and/or allocate specific resources in order to provide such cooperation.

## **8 Contract management**

- 8.1 Each Party shall appoint and retain a Contract Manager who shall be the primary point of contact for the other Party in relation to matters arising from this Contract. Should the Contract Manager be replaced, the Party replacing the Contract Manager shall promptly inform the other Party in writing of the name and contact details for the new Contract Manager. Any Contract Manager appointed shall be of sufficient seniority and experience to be able to make decisions on the day to day operation of the Contract. The Supplier confirms and agrees that it will be expected to work closely and cooperate fully with the Authority's Contract Manager.



- 8.2 Each Party shall ensure that its representatives (to include, without limitation, its Contract Manager) shall attend review meetings on a regular basis to review the performance of the Supplier under this Contract and to discuss matters arising generally under this Contract. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day to day operation of the Contract. Review meetings shall take place at the frequency specified in the Specification and Tender Response Document. Should the Specification and Tender Response Document not state the frequency, then the first such meeting shall take place on a date to be agreed on or around the end of the first month after the Commencement Date. Subsequent meetings shall take place at monthly intervals or as may otherwise be agreed in writing between the Parties.
- 8.3 Two weeks prior to each review meeting (or at such time and frequency as may be specified in the Specification and Tender Response Document) the Supplier shall provide a written contract management report to the Authority regarding the provision of the Services and the operation of this Contract. Unless otherwise agreed by the Parties in writing, such contract management report shall contain:
- 8.3.1 details of the performance of the Supplier when assessed in accordance with the KPIs since the last such performance report;
  - 8.3.2 details of any complaints from or on behalf of patients or other service users, their nature and the way in which the Supplier has responded to such complaints since the last review meeting written report;
  - 8.3.3 the information specified in the Specification and Tender Response Document;
  - 8.3.4 a status report in relation to the implementation of any current Remedial Proposals by either Party; and
  - 8.3.5 such other information as reasonably required by the Authority.
- 8.4 Unless specified otherwise in the Specification and Tender Response Document, the Authority shall take minutes of each review meeting and shall circulate draft minutes to the Supplier within a reasonable time following such review meeting. The Supplier shall inform the Authority in writing of any suggested amendments to the minutes within five (5) Business Days of receipt of the draft minutes. If the Supplier does not respond to the Authority within such five (5) Business Days the minutes will be deemed to be approved. Where there are any differences in interpretation of the minutes, the Parties will use their reasonable endeavours to reach agreement. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the Dispute Resolution Procedure.
- 8.5 The Supplier shall provide such management information as the Authority may request from time to time within seven (7) Business Days of the date of the request. The Supplier shall supply the management information to the Authority in such form as may be specified by the Authority and, where requested to do so, the Supplier shall also provide such management information to another Contracting Authority, whose role it is to analyse such management information in accordance with UK government policy (to include, without limitation, for the purposes of analysing public sector expenditure and planning future procurement activities) ("**Third Party Body**"). The Supplier confirms and agrees that the Authority may itself provide the Third Party Body with management information relating to the Services purchased, any payments made

under this Contract, and any other information relevant to the operation of this Contract.

- 8.6 Upon receipt of management information supplied by the Supplier to the Authority and/or the Third Party Body, or by the Authority to the Third Party Body, the Parties hereby consent to the Third Party Body and the Authority:
- 8.6.1 storing and analysing the management information and producing statistics; and
  - 8.6.2 sharing the management information or any statistics produced using the management information with any other Contracting Authority.
- 8.7 If the Third Party Body and/or the Authority shares the management information or any other information provided under Clause 8.6 of this Schedule 2, any Contracting Authority receiving the management information shall, where such management information is subject to obligations of confidence under this Contract and such management information is provided direct by the Authority to such Contracting Authority, be informed of the confidential nature of that information by the Authority and shall be requested by the Authority not to disclose it to any body that is not a Contracting Authority (unless required to do so by Law).
- 8.8 The Authority may make changes to the type of management information which the Supplier is required to supply and shall give the Supplier at least one (1) month's written notice of any changes.

## **9 Price and payment**

- 9.1 The Contract Price shall be calculated as set out in the Commercial Schedule.
- 9.2 Unless otherwise stated in the Commercial Schedule the Contract Price:
- 9.2.1 shall be payable from the Actual Services Commencement Date;
  - 9.2.2 shall remain fixed during the Term; and
  - 9.2.3 is the entire price payable by the Authority to the Supplier in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses, the cost of Staff and all appropriate taxes (excluding VAT), duties and tariffs and any expenses arising from import and export administration.
- 9.3 Unless stated otherwise in the Commercial Schedule:
- 9.3.1 where the Key Provisions confirm that the payment profile for this Contract is monthly in arrears, the Supplier shall invoice the Authority, within fourteen (14) days of the end of each calendar month, the Contract Price in respect of the Services provided in compliance with this Contract in the preceding calendar month; or
  - 9.3.2 where Clause 9.3.1 of this Schedule 2 does not apply, the Supplier shall invoice the Authority for Services at any time following completion of the provision of the Services in compliance with this Contract.

Each invoice shall contain such information and be addressed to such individual as the Authority may inform the Supplier from time to time.

- 9.4 The Contract Price is exclusive of VAT, which, if properly chargeable, the Authority shall pay at the prevailing rate subject to receipt from the Supplier of a valid and accurate VAT invoice. Such VAT invoices shall show the VAT calculations as a separate line item.
- 9.5 The Authority shall verify and pay each valid and undisputed invoice received in accordance with Clause 9.3 of this Schedule 2 within thirty (30) days of receipt of such invoice at the latest. However, the Authority shall use its reasonable endeavours to pay such undisputed invoices sooner in accordance with any applicable government prompt payment targets. If there is undue delay in verifying the invoice in accordance with this Clause 9.5 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purposes this Clause 9.5 after a reasonable time has passed.
- 9.6 Where the Authority raises a query with respect to an invoice the Parties shall liaise with each other and agree a resolution to such query within thirty (30) days of the query being raised. If the Parties are unable to agree a resolution within thirty (30) days the query shall be referred to dispute resolution in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, the Authority shall not be in breach of any of any of its payment obligations under this Contract in relation to any queried or disputed invoice sums unless the process referred to in this Clause 9.6 of this Schedule 2 has been followed and it has been determined that the queried or disputed invoice amount is properly due to the Supplier and the Authority has then failed to pay such sum within a reasonable period following such determination.
- 9.7 The Supplier shall pay to the Authority any service credits and/or other sums and/or deductions (to include, without limitation, deductions relating to a reduction in the Contract Price) that may become due in accordance with the provisions of the Specification and Tender Response Document. For the avoidance of doubt, the Authority may invoice the Supplier for such sums or deductions at any time in the event that they have not automatically been credited to the Authority in accordance with the provisions of the Specification and Tender Response Document. Such invoice shall be paid by the Supplier within 30 days of the date of such invoice.
- 9.8 The Authority reserves the right to set-off:
  - 9.8.1 any monies due to the Supplier from the Authority as against any monies due to the Authority from the Supplier under this Contract; and
  - 9.8.2 any monies due to the Authority from the Supplier as against any monies due to the Supplier from the Authority under this Contract.
- 9.9 Where the Authority is entitled to receive any sums (including, without limitation, any costs, charges or expenses) from the Supplier under this Contract, the Authority may invoice the Supplier for such sums. Such invoices shall be paid by the Supplier within 30 days of the date of such invoice.
- 9.10 If a Party fails to pay any undisputed sum properly due to the other Party under this Contract, the Party due such sum shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

## 10 **Warranties**

### 10.1 The Supplier warrants and undertakes that:

- 10.1.1 it has, and shall ensure its Staff shall have, and shall maintain throughout the Term, all appropriate licences and registrations with the relevant bodies to fulfil its obligations under this Contract;
- 10.1.2 it has all rights, consents, authorisations, licences and accreditations required to provide the Services and shall maintain such consents, authorisations, licences and accreditations throughout the Term;
- 10.1.3 it has and shall maintain a properly documented system of quality controls and processes covering all aspects of its obligations under this Contract and/or under Law and/or Guidance and shall at all times comply with such quality controls and processes;
- 10.1.4 it shall not make any significant changes to its system of quality controls and processes in relation to the Services without notifying the Authority in writing at least twenty one (21) days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);
- 10.1.5 where any act of the Supplier requires the notification to and/or approval by any regulatory or other competent body in accordance with any Law and Guidance, the Supplier shall comply fully with such notification and/or approval requirements;
- 10.1.6 receipt of the Services by or on behalf of the Authority and use of the deliverables or of any other item or information supplied or made available to the Authority as part of the Services will not infringe any third party rights, to include without limitation any Intellectual Property Rights;
- 10.1.7 it will comply with all Law, Guidance, Policies and the Supplier Code of Conduct in so far as is relevant to the provision of the Services;
- 10.1.8 it will provide the Services using reasonable skill and care and in accordance with Good Industry Practice and shall fulfil all requirements of this Contract using appropriately skilled, trained and experienced staff;
- 10.1.9 unless otherwise set out in the Specification and Tender Response Document and/or as otherwise agreed in writing by the Parties, it has and/or shall procure all resources, equipment, consumables and other items and facilities required to provide the Services;
- 10.1.10 without limitation to the generality of Clause 10.1.7 of this Schedule 2, it shall comply with all health and safety processes, requirements safeguards, controls, and training obligations in accordance with its own operational procedures, Law, Guidance, Policies, Good Industry Practice, the requirements of the Specification and Tender Response Document and any notices or instructions given to the Supplier by the Authority and/or any competent body, as relevant to the provision of the Services and the Supplier's access to the Premises and Locations in accordance with this Contract;

- 10.1.11 without prejudice to any specific notification requirements set out in this Contract, it will promptly notify the Authority of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the performance of the Services and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;
- 10.1.12 any equipment it uses in the provision of the Services shall comply with all relevant Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification and shall remain the Supplier's risk and responsibility at all times;
- 10.1.13 unless otherwise confirmed by the Authority in writing (to include, without limitation, as part of the Specification and Tender Response Document), it will ensure that any products purchased by the Supplier partially or wholly for the purposes of providing the Services will comply with requirements five (5) to eight (8), as set out in Annex 1 of the Cabinet Office Procurement Policy Note - Implementing Article 6 of the Energy Efficiency Directive (Action Note 07/14 3rd June 2014), to the extent such requirements apply to the relevant products being purchased;
- 10.1.14 it shall use Good Industry Practice to ensure that any information and communications technology systems and/or related hardware and/or software it uses are free from corrupt data, viruses, worms and any other computer programs or code which might cause harm or disruption to the Authority's information and communications technology systems;
- 10.1.15 it shall: (i) comply with all relevant Law and Guidance and shall use Good Industry Practice to ensure that there is no slavery or human trafficking in its supply chains; and (ii) notify the Authority immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains;
- 10.1.16 it shall at all times conduct its business in a manner that is consistent with any anti-slavery Policy of the Authority and shall provide to the Authority any reports or other information that the Authority may request as evidence of the Supplier's compliance with this Clause 10.1.16 and/or as may be requested or otherwise required by the Authority in accordance with its anti-slavery Policy;
- 10.1.17 it will fully and promptly respond to all requests for information and/or requests for answers to questions regarding this Contract, the provision of the Services, any complaints and any Disputes at the frequency, in the timeframes and in the format as requested by the Authority from time to time (acting reasonably);
- 10.1.18 all information included within the Supplier's responses to any documents issued by the Authority as part of the procurement relating to the award of this Contract (to include, without limitation, as referred to in the Specification and Tender Response Document and Commercial Schedule) and all accompanying materials is accurate;
- 10.1.19 it has the right and authority to enter into this Contract and that it has the capability and capacity to fulfil its obligations under this Contract;

- 10.1.20 it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Contract and the documents referred to in this Contract;
- 10.1.21 all necessary actions to authorise the execution of and performance of its obligations under this Contract have been taken before such execution;
- 10.1.22 there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Supplier;
- 10.1.23 there are no material agreements existing to which the Supplier is a party which prevent the Supplier from entering into or complying with this Contract;
- 10.1.24 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Contract; and
- 10.1.25 it has satisfied itself as to the nature and extent of the risks assumed by it under this Contract and has gathered all information necessary to perform its obligations under this Contract and all other obligations assumed by it.
- 10.2 The Supplier warrants that all information, data and other records and documents required by the Authority as set out in the Specification and Tender Response Document shall be submitted to the Authority in the format and in accordance with any timescales set out in the Specification and Tender Response Document.
- 10.3 Without prejudice to the generality of Clause 10.2 of this Schedule 2, the Supplier acknowledges that a failure by the Supplier following the Actual Services Commencement Date to submit accurate invoices and other information on time to the Authority may result in the commissioner of health services, or other entity responsible for reimbursing costs to the Authority, delaying or failing to make relevant payments to the Authority. Accordingly, the Supplier warrants that, from the Actual Services Commencement Date, it shall submit accurate invoices and other information on time to the Authority.
- 10.4 The Supplier warrants and undertakes to the Authority that it shall comply with any eProcurement Guidance as it may apply to the Supplier and shall carry out all reasonable acts required of the Supplier to enable the Authority to comply with such eProcurement Guidance.
- 10.5 The Supplier warrants and undertakes to the Authority that, as at the Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance. If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
  - 10.5.1 notify the Authority in writing of such fact within five (5) Business Days of its occurrence; and
  - 10.5.2 promptly provide to the Authority:
    - (i) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from



recurring, together with any mitigating factors that it considers relevant; and

- (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

10.6 The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that any of the warranties set out in Clause 10 of this Schedule 2 have been breached or there is a risk that any warranties may be breached.

10.7 Any warranties provided under this Contract are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.

## **11 Intellectual property**

11.1 The Supplier warrants and undertakes to the Authority that either it owns or is entitled to use and will continue to own or be entitled to use all Intellectual Property Rights used in the development and provision of the Services and/or necessary to give effect to the Services and/or to use any deliverables, matter or any other output supplied to the Authority as part of the Services.

11.2 Unless specified otherwise in the Key Provisions and/or in the Specification and Tender Response Document, the Supplier hereby grants to the Authority, for the life of the use by the Authority of any deliverables, material or any other output supplied to the Authority in any format as part of the Services, an irrevocable, royalty-free, non-exclusive licence to use, modify, adapt or enhance such items in the course of the Authority's normal business operations. For the avoidance of doubt, unless specified otherwise in the Key Provisions and/or in the Specification and Tender Response Document, the Authority shall have no rights to commercially exploit (e.g. by selling to third parties) any deliverables, matter or any other output supplied to the Authority in any format as part of the Services.

## **12 Indemnity**

12.1 The Supplier shall be liable to the Authority for, and shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings in respect of:

- 12.1.1 any injury or allegation of injury to any person, including injury resulting in death;
- 12.1.2 any loss of or damage to property (whether real or personal);
- 12.1.3 any breach of Clause 10.1.6 and/or Clause 11 of this Schedule 2; and/or
- 12.1.4 any failure by the Supplier to commence the delivery of the Services by the Services Commencement Date;

that arise or result from the Supplier's negligent acts or omissions or breach of contract in connection with the performance of this Contract including the provision of the Services, except to the extent that such loss, damages, costs, expenses (including

without limitation legal costs and expenses), claims or proceedings have been caused by any act or omission by, or on behalf of, or in accordance with the instructions of, the Authority.

- 12.2 Liability under Clauses 12.1.1 and 12.1.3 of this Schedule 2 and Clause 2.6 of Schedule 3 shall be unlimited. Liability under Clauses 12.1.2 and 12.1.4 of this Schedule 2 shall be subject to the limitation of liability set out in Clause 13 of this Schedule 2.
- 12.3 In relation to all third party claims against the Authority, which are the subject of any indemnity given by the Supplier under this Contract, the Authority shall promptly notify the Supplier of any such claims and use its reasonable endeavours, upon a written request from the Supplier, to transfer the conduct of such claims to the Supplier unless restricted from doing so. Such restrictions may include, without limitation, any restrictions:
- 12.3.1 relating to any legal, regulatory, governance, information governance, or confidentiality obligations on the Authority; and/or
- 12.3.2 relating to the Authority's membership of any indemnity and/or risk pooling arrangements.

Such transfer shall be subject to the Parties agreeing appropriate terms for such conduct of the third party claim by the Supplier (to include, without limitation, the right of the Authority to be informed and consulted on the ongoing conduct of the claim following such transfer and any reasonable cooperation required by the Supplier from the Authority).

### **13 Limitation of liability**

- 13.1 Nothing in this Contract shall exclude or restrict the liability of either Party:
- 13.1.1 for death or personal injury resulting from its negligence;
- 13.1.2 for fraud or fraudulent misrepresentation; or
- 13.1.3 in any other circumstances where liability may not be limited or excluded under any applicable law.
- 13.2 Subject to Clauses 12.2, 13.1, 13.3 and 13.5 of this Schedule 2, the total liability of each Party to the other under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to one hundred and twenty five percent (125%) of the total Contract Price paid or payable by the Authority to the Supplier for the Services.
- 13.3 There shall be no right to claim losses, damages and/or other costs and expenses under or in connection with this Contract whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged. For the avoidance of doubt, without limitation, the Parties agree that for the purposes of this Contract the following costs, expenses and/or loss of income shall be direct recoverable losses (to include



under any relevant indemnity) provided such costs, expenses and/or loss of income are properly evidenced by the claiming Party:

- 13.3.1 extra costs incurred purchasing replacement or alternative services;
- 13.3.2 costs associated with advising, screening, testing, treating, retreating or otherwise providing healthcare to patients;
- 13.3.3 the costs of extra management time; and/or
- 13.3.4 loss of income due to an inability to provide health care services,

in each case to the extent to which such costs, expenses and/or loss of income arise or result from the other Party's breach of contract, negligent act or omission, breach of statutory duty, and/or other liability under or in connection with this Contract.

- 13.4 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which that Party is entitled to bring a claim against the other pursuant to this Contract.
- 13.5 Not Used.
- 13.6 Clause 13 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.

#### **14 Insurance**

- 14.1 Subject to Clauses 14.2 and 14.3 of this Schedule 2 and unless otherwise confirmed in writing by the Authority, as a minimum level of protection, the Supplier shall put in place and/or maintain in force at its own cost with a reputable commercial insurer, insurance arrangements in respect of employer's liability, public liability and professional indemnity in accordance with Good Industry Practice with the minimum cover per claim of the greater of five million pounds (£5,000,000) or any sum as required by Law unless otherwise agreed with the Authority in writing. These requirements shall not apply to the extent that the Supplier is a member and maintains membership of each of the indemnity schemes run by the NHS Litigation Authority.
- 14.2 Without limitation to any insurance arrangements as required by Law, the Supplier shall put in place and/or maintain the different types and/or levels of indemnity arrangements explicitly required by the Authority, if specified in the Key Provisions.
- 14.3 Provided that the Supplier maintains all indemnity arrangements required by Law, the Supplier may self insure in order to meet other relevant requirements referred to at Clauses 14.1 and 14.2 of this Schedule 2 on condition that such self insurance arrangements offer the appropriate levels of protection and are approved by the Authority in writing prior to the Commencement Date.
- 14.4 The amount of any indemnity cover and/or self insurance arrangements shall not relieve the Supplier of any liabilities under this Contract. It shall be the responsibility of the Supplier to determine the amount of indemnity and/or self insurance cover that will be adequate to enable it to satisfy its potential liabilities under this Contract. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover and/or self insurance arrangement is insufficient to cover the settlement of any claim.

- 14.5 The Supplier warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which its insurance cover may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances repayable in whole or in part.
- 14.6 The Supplier shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to the Authority that insurance arrangements taken out by the Supplier pursuant to Clause 14 of this Schedule 2 and the Key Provisions are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
- 14.7 Upon the expiry or earlier termination of this Contract, the Supplier shall ensure that any ongoing liability it has or may have arising out of this Contract shall continue to be the subject of appropriate indemnity arrangements for the period of twenty one (21) years from termination or expiry of this Contract or until such earlier date as that liability may reasonably be considered to have ceased to exist.

## **15 Term and termination**

- 15.1 This Contract shall commence on the Commencement Date and, unless terminated earlier in accordance with the terms of this Contract or the general law, shall continue until the end of the Term.
- 15.2 The Authority shall be entitled to extend the Term on one or more occasions by giving the Supplier written notice no less than three (3) months prior to the date on which this Contract would otherwise have expired, provided that the duration of this Contract shall be no longer than the total term specified in the Key Provisions.
- 15.3 In the case of a breach of any of the terms of this Contract by either Party that is capable of remedy (including, without limitation any breach of any KPI and, subject to Clause 9.6 of this Schedule 2, any breach of any payment obligations under this Contract), the non-breaching Party may, without prejudice to its other rights and remedies under this Contract, issue a Breach Notice and shall allow the Party in breach the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Party in breach ("**Remedial Proposal**") before exercising any right to terminate this Contract in accordance with Clause 15.4(ii) of this Schedule 2. Such Remedial Proposal must be agreed with the non-breaching Party (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Party in breach in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Party in breach to:
- 15.3.1 put forward and agree a Remedial Proposal with the non-breaching Party in relation to the relevant default or breach within a period of ten (10) Business Days (or such other period as the non-breaching Party may agree in writing) from written notification of the relevant default or breach from the non-breaching Party;
  - 15.3.2 comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be thirty (30) days unless otherwise agreed between the Parties); and/or

- 15.3.3 remedy the default or breach notwithstanding the implementation of such Remedial Proposal in accordance with the agreed timescales for implementation,

shall be deemed, for the purposes of Clause 15.4(ii) of this Schedule 2, a material breach of this Contract by the Party in breach not remedied in accordance with an agreed Remedial Proposal.

- 15.4 Either Party may terminate this Contract by issuing a Termination Notice to the other Party if such other Party commits a material breach of any of the terms of this Contract which is:

- (i) not capable of remedy; or
- (ii) in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal.

- 15.5 The Authority may terminate this Contract forthwith by issuing a Termination Notice to the Supplier if:

- 15.5.1 the Supplier does not commence delivery of the Services by any Long Stop Date;

- 15.5.2 the Supplier, or any third party guaranteeing the obligations of the Supplier under this Contract, ceases or threatens to cease carrying on its business; suspends making payments on any of its debts or announces an intention to do so; is, or is deemed for the purposes of any Law to be, unable to pay its debts as they fall due or insolvent; enters into or proposes any composition, assignment or arrangement with its creditors generally; takes any step or suffers any step to be taken in relation to its winding-up, dissolution, administration (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) otherwise than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation; has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed (in each case, whether out of court or otherwise) in respect of it or any of its assets; has any security over any of its assets enforced; or any analogous procedure or step is taken in any jurisdiction;

- 15.5.3 the Supplier undergoes a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 (other than for an intra-group change of control) without the prior written consent of the Authority and the Authority shall be entitled to withhold such consent if, in the reasonable opinion of the Authority, the proposed change of control will have a material impact on the performance of this Contract or the reputation of the Authority;

- 15.5.4 the Supplier purports to assign, Sub-contract, novate, create a trust in or otherwise transfer or dispose of this Contract in breach of Clause 28.1 of this Schedule 2;

- 15.5.5 Not Used;

- 15.5.6 pursuant to and in accordance with the Key Provisions and Clauses 15.6, 23.8; 25.2; 25.4 and 29.2 of this Schedule 2; or

- 15.5.7 the warranty given by the Supplier pursuant to Clause 10.5 of this Schedule 2 is materially untrue, the Supplier commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause 10.5 of this Schedule 2, or the Supplier fails to provide details of proposed mitigating factors as required by Clause 10.5 of this Schedule 2 that in the reasonable opinion of the Authority are acceptable.
- 15.6 If the Authority, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Supplier and/or any third party guaranteeing the obligations of the Supplier under this Contract and/or any material Sub-contractor of the Supplier when compared to any information provided to and/or assessed by the Authority as part of any procurement process or other due diligence leading to the award of this Contract to the Supplier or the entering into a Sub-contract by the Supplier, the following process shall apply:
- 15.6.1 the Authority may (but shall not be obliged to) give notice to the Supplier requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Contract on such reasonable and proportionate terms as the Authority may require within a reasonable time period as specified in such notice;
- 15.6.2 a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 15.6 of this Schedule 2 in accordance with any reasonable timescales specified in any such notice issued by the Authority shall be deemed a breach of this Contract by the Supplier and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and
- 15.6.3 a failure to resolve such breach in accordance with such Dispute Resolution Procedure by the end of the escalation stage of such process shall entitle, but shall not compel, the Authority to terminate this Contract in accordance with Clause 15.4(i) of this Schedule 2.
- In order that the Authority may act reasonably in exercising its discretion in accordance with Clause 15.6 of this Schedule 2, the Supplier shall provide the Authority with such reasonable and proportionate up-to-date financial or other information relating to the Supplier or any relevant third party entity upon request.
- 15.7 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier where:
- 15.7.1 the Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure;
- 15.7.2 the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract;
- 15.7.3 the Contract should not have been awarded to the Supplier in view of a serious infringement of obligations under European law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU; or

- 15.7.4 there has been a failure by the Supplier and/or one its Sub-contractors to comply with legal obligations in the fields of environmental, social or labour Law. Where the failure to comply with legal obligations in the fields of environmental, social or labour Law is a failure by one of the Supplier's Sub-contractors, the Authority may request the replacement of such Sub-contractor and the Supplier shall comply with such request as an alternative to the Authority terminating this Contract under this Clause 15.7.4.
- 15.8 If the Authority novates this Contract to any body that is not a Contracting Authority, from the effective date of such novation, the rights of the Authority to terminate this Contract in accordance with Clause 15.5.2 to Clause 15.5.4 of this Schedule 2 shall be deemed mutual termination rights and the Supplier may terminate this Contract by issuing a Termination Notice to the entity assuming the position of the Authority if any of the circumstances referred to in such Clauses apply to the entity assuming the position of the Authority.
- 15.9 Within three (3) months of the Commencement Date the Supplier shall develop and agree an exit plan with the Authority consistent with the Exit Requirements, which shall ensure continuity of the Services on expiry or earlier termination of this Contract. The Supplier shall provide the Authority with the first draft of an exit plan within one (1) month of the Commencement Date. The Parties shall review and, as appropriate, update the exit plan on each anniversary of the Commencement Date of this Contract. If the Parties cannot agree an exit plan in accordance with the timescales set out in this Clause 15.9 of this Schedule 2 (such agreement not to be unreasonably withheld or delayed), such failure to agree shall be deemed a Dispute, which shall be referred to and resolved in accordance with the Dispute Resolution Procedure.
- 16 Consequences of expiry or early termination of this Contract**
- 16.1 Upon expiry or earlier termination of this Contract, the Authority agrees to pay the Supplier for the Services which have been completed by the Supplier in accordance with this Contract prior to expiry or earlier termination of this Contract.
- 16.2 Immediately following expiry or earlier termination of this Contract and/or in accordance with any timescales as set out in the agreed exit plan:
- 16.2.1 the Supplier shall comply with its obligations under any agreed exit plan;
- 16.2.2 all data, excluding Personal Data, documents and records (whether stored electronically or otherwise) relating in whole or in part to the Services, including without limitation relating to patients or other service users, and all other items provided on loan or otherwise to the Supplier by the Authority shall be delivered by the Supplier to the Authority provided that the Supplier shall be entitled to keep copies to the extent that: (a) the content does not relate solely to the Services; (b) the Supplier is required by Law and/or Guidance to keep copies; or (c) the Supplier was in possession of such data, documents and records prior to the Commencement Date; and
- 16.2.3 any Personal Data Processed by the Supplier on behalf of the Authority shall be returned to the Authority or destroyed in accordance with the relevant provisions of the Data Protection Protocol.

- 16.3 The Supplier shall retain all data relating to the provision of the Services that are not transferred or destroyed pursuant to Clause 16.2 of this Schedule 2 for the period set out in Clause 24.1 of this Schedule 2.
- 16.4 The Supplier shall cooperate fully with the Authority or, as the case may be, any replacement supplier during any re-procurement and handover period prior to and following the expiry or earlier termination of this Contract. This cooperation shall extend to providing access to all information relevant to the operation of this Contract, as reasonably required by the Authority to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements.
- 16.5 Immediately upon expiry or earlier termination of this Contract any licence or lease entered into in accordance with the Key Provisions shall automatically terminate.
- 16.6 The expiry or earlier termination of this Contract for whatever reason shall not affect any rights or obligations of either Party which accrued prior to such expiry or earlier termination.
- 16.7 The expiry or earlier termination of this Contract shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.

**17 Not Used**

**18 Complaints**

- 18.1 To the extent relevant to the Services, the Supplier shall have in place and operate a complaints procedure which complies with the requirements of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.
- 18.2 Each Party shall inform the other of all complaints from or on behalf of patients or other service users arising out of or in connection with the provision of the Services within twenty four (24) hours of receipt of each complaint and shall keep the other Party updated on the manner of resolution of any such complaints.

**19 Sustainable development**

- 19.1 The Supplier shall comply in all material respects with applicable environmental and social and labour Law requirements in force from time to time in relation to the Services. Where the provisions of any such Law are implemented by the use of voluntary agreements, the Supplier shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Specification and Tender Response Document. Without prejudice to the generality of the foregoing, the Supplier shall:
- 19.1.1 comply with all Policies and/or procedures and requirements set out in the Specification and Tender Response Document in relation to any stated environmental and social and labour requirements, characteristics and impacts of the Services and the Supplier's supply chain;
- 19.1.2 maintain relevant policy statements documenting the Supplier's significant labour, social and environmental aspects as relevant to the Services being



provided and as proportionate to the nature and scale of the Supplier's business operations; and

- 19.1.3 maintain plans and procedures that support the commitments made as part of the Supplier's significant labour, social and environmental policies, as referred to at Clause 19.1.2 of this Schedule 2.

- 19.2 The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier's compliance with the provisions of Clause 19 of this Schedule 2.

## **20 Electronic services information**

- 20.1 Where requested by the Authority, the Supplier shall provide the Authority the Services Information in such manner and upon such media as agreed between the Supplier and the Authority from time to time for the sole use by the Authority.

- 20.2 The Supplier warrants that the Services Information is complete and accurate as at the date upon which it is delivered to the Authority and that the Services Information shall not contain any data or statement which gives rise to any liability on the part of the Authority following publication of the same in accordance with Clause 20 of this Schedule 2.

- 20.3 If the Services Information ceases to be complete and accurate, the Supplier shall promptly notify the Authority in writing of any modification or addition to or any inaccuracy or omission in the Services Information.

- 20.4 The Supplier grants the Authority a perpetual, non-exclusive, royalty free licence to use and exploit the Services Information and any Intellectual Property Rights in the Services Information for the purpose of illustrating the range of goods and services (including, without limitation, the Services) available pursuant to the Authority's contracts from time to time. Subject to Clause 20.5 of this Schedule 2, no obligation to illustrate or advertise the Services Information is imposed on the Authority, as a consequence of the licence conferred by this Clause 20.4 of this Schedule 2.

- 20.5 The Authority may reproduce for its sole use the Services Information provided by the Supplier in the Authority's services catalogue from time to time which may be made available on any NHS communications networks in electronic format and/or made available on the Authority's external website and/or made available on other digital media from time to time.

- 20.6 Before any publication of the Services Information (electronic or otherwise) is made by the Authority, the Authority will submit a copy of the relevant sections of the Authority's services catalogue to the Supplier for approval, such approval not to be unreasonably withheld or delayed. For the avoidance of doubt the Supplier shall have no right to compel the Authority to exhibit the Services Information in any services catalogue as a result of the approval given by it pursuant to this Clause 20.6 of this Schedule 2 or otherwise under the terms of this Contract.

- 20.7 If requested in writing by the Authority, and to the extent not already agreed as part of the Specification and Tender Response Document, the Supplier and the Authority shall discuss and seek to agree in good faith arrangements to use any Electronic Trading System.

## **21 Change management**

- 21.1 The Supplier acknowledges to the Authority that the Authority's requirements for the Services may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification and Tender Response Document, as may be requested by the Authority from time to time.
- 21.2 Subject to Clause 21.3 of this Schedule 2, any change to the Services or other variation to this Contract shall only be binding once it has been agreed either: (a) in accordance with the Change Control Process if the Key Provisions specify that changes are subject to a formal change control process; or (b) if the Key Provisions make no such reference, in writing and signed by an authorised representative of both Parties.
- 21.3 Any change to the Data Protection Protocol shall be made in accordance with the relevant provisions of that protocol.

## **22 Dispute resolution**

- 22.1 During any Dispute, including a Dispute as to the validity of this Contract, it is agreed that the Supplier shall continue its performance of the provisions of the Contract (unless the Authority requests in writing that the Supplier does not do so).
- 22.2 In the case of a Dispute arising out of or in connection with this Contract the Supplier and the Authority shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the Dispute and follow the procedure set out in Clause 22.3 of this Schedule 2 as the first stage in the Dispute Resolution Procedure.
- 22.3 If any Dispute arises out of the Contract either Party may serve a notice on the other Party to commence formal resolution of the Dispute. The Parties shall first seek to resolve the Dispute by escalation in accordance with the management levels as set out in Clause 5 of the Key Provisions. Respective representatives at each level, as set out in Clause 5 of the Key Provisions, shall have five (5) Business Days at each level during which they will use their reasonable endeavours to resolve the Dispute before escalating the matter to the next levels until all level have been exhausted. Level 1 will commence on the date of service of the Dispute Notice. The final level of the escalation process shall be deemed exhausted on the expiry of five (5) Business Days following escalation to that level unless otherwise agreed by the Parties in writing.
- 22.4 If the procedure set out in Clause 22.3 of this Schedule 2 above has been exhausted and fails to resolve such Dispute, as part of the Dispute Resolution Procedure, the Parties will attempt to settle it by mediation. The Parties, shall acting reasonably, attempt to agree upon a mediator. In the event that the Parties fail to agree a mediator within five (5) Business Days following the exhaustion of all levels of the escalation procedure at Clause 22.3 of this Schedule 2, the mediator shall be nominated and confirmed by the Centre for Effective Dispute Resolution, London.
- 22.5 The mediation shall commence within twenty eight (28) days of the confirmation of the mediator in accordance with Clause 22.4 of this Schedule 2 or at such other time as may be agreed by the Parties in writing. Neither Party will terminate such mediation process until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour or one Party has failed to participate in the mediation process. After this time, either Party may terminate the mediation process by notification to the other Party (such notification may be verbal provided that it is



followed up by written confirmation). The Authority and the Supplier will cooperate with any person appointed as mediator providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine or in the absence of such determination such costs will be shared equally.

22.6 Nothing in this Contract shall prevent:

22.6.1 the Authority taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the provision of the Services; or

22.6.2 either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party or that relates to the safety of patients and other service users or the security of Confidential Information, pending resolution of the relevant Dispute in accordance with the Dispute Resolution Procedure.

22.7 Clause 22 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.

## **23 Force majeure**

23.1 Subject to Clause 23.2 of this Schedule 2 neither Party shall be liable to the other for any failure to perform all or any of its obligations under this Contract nor liable to the other Party for any loss or damage arising out of the failure to perform its obligations to the extent only that such performance is rendered impossible by a Force Majeure Event.

23.2 The Supplier shall only be entitled to rely on a Force Majeure Event and the relief set out in Clause 23 of this Schedule 2 and will not be considered to be in default or liable for breach of any obligations under this Contract if:

23.2.1 the Supplier has fulfilled its obligations pursuant to Clause 6 of this Schedule 2;

23.2.2 the Force Majeure Event does not arise directly or indirectly as a result of any wilful or negligent act or default of the Supplier; and

23.2.3 the Supplier has complied with the procedural requirements set out in Clause 23 of this Schedule 2.

23.3 Where a Party is (or claims to be) affected by a Force Majeure Event it shall use reasonable endeavours to mitigate the consequences of such a Force Majeure Event upon the performance of its obligations under this Contract, and to resume the performance of its obligations affected by the Force Majeure Event as soon as practicable.

23.4 Where the Force Majeure Event affects the Supplier's ability to perform part of its obligations under the Contract the Supplier shall fulfil all such contractual obligations that are not so affected and shall not be relieved from its liability to do so.

23.5 If either Party is prevented or delayed in the performance of its obligations under this Contract by a Force Majeure Event, that Party shall as soon as reasonably practicable serve notice in writing on the other Party specifying the nature and extent of the

circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.

- 23.6 Subject to service of such notice, the Party affected by such circumstances shall have no liability for its failure to perform or for any delay in performance of its obligations affected by the Force Majeure Event only for so long as such circumstances continue and for such time after they cease as is necessary for that Party, using its best endeavours, to recommence its affected operations in order for it to perform its obligations.
- 23.7 The Party claiming relief shall notify the other in writing as soon as the consequences of the Force Majeure Event have ceased and of when performance of its affected obligations can be resumed.
- 23.8 If the Supplier is prevented from performance of its obligations as a result of a Force Majeure Event, the Authority may at any time, if the Force Majeure Event subsists for thirty (30) days or more, terminate this Contract by issuing a Termination Notice to the Supplier.
- 23.9 Following such termination in accordance with Clause 23.8 of this Schedule 2 and subject to Clause 23.10 of this Schedule 2, neither Party shall have any liability to the other.
- 23.10 Any rights and liabilities of either Party which have accrued prior to such termination in accordance with Clause 23.8 of this Schedule 2 shall continue in full force and effect unless otherwise specified in this Contract.

## **24 Records retention and right of audit**

- 24.1 Subject to any statutory requirement and Clause 24.2 of this Schedule 2, the Supplier shall keep secure and maintain for the Term and six (6) years afterwards, or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to this Contract.
- 24.2 Where any records could be relevant to a claim for personal injury such records shall be kept secure and maintained for a period of twenty one (21) years from the date of expiry or earlier termination of this Contract.
- 24.3 The Authority shall have the right to audit the Supplier's compliance with this Contract. The Supplier shall permit or procure permission for the Authority or its authorised representative during normal business hours having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records reasonably required to audit the Supplier's compliance with its obligations under this Contract.
- 24.4 Should the Supplier Sub-contract any of its obligations under this Contract, the Authority shall have the right to audit and inspect such third party. The Supplier shall procure permission for the Authority or its authorised representative during normal business hours no more than once in any twelve (12) months, having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records used in the performance of the Supplier's obligations under this Contract that are Sub-contracted to such third party. The Supplier shall cooperate with such audit and inspection and accompany the Authority or its authorised representative if requested.

24.5 The Supplier shall grant to the Authority or its authorised representative, such access to those records as they may reasonably require in order to check the Supplier's compliance with this Contract for the purposes of:

24.5.1 the examination and certification of the Authority's accounts; or

24.5.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economic efficiency and effectiveness with which the Authority has used its resources.

24.6 The Comptroller and Auditor General may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to provide such oral and/or written explanations as they consider necessary. Clause 24 of this Schedule 2 does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Supplier under sections 6(3)(d) and 6(5) of the National Audit Act 1983.

24.7 The Supplier shall provide reasonable cooperation to the Authority, its representatives and any regulatory body in relation to any audit, review, investigation or enquiry carried out in relation to the subject matter of this Contract.

24.8 The Supplier shall provide all reasonable information as may be reasonably requested by the Authority to evidence the Supplier's compliance with the requirements of this Contract.

## **25 Conflicts of interest and the prevention of fraud**

25.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Contract. The Supplier will disclose to the Authority full particulars of any such conflict of interest which may arise.

25.2 The Authority reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Contract. The actions of the Authority pursuant to this Clause 25.2 of this Schedule 2 shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the Authority.

25.3 The Supplier shall take all reasonable steps to prevent Fraud by Staff and the Supplier (including its owners, members and directors). The Supplier shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

25.4 If the Supplier or its Staff commits Fraud the Authority may terminate this Contract and recover from the Supplier the amount of any direct loss suffered by the Authority resulting from the termination.

## **26 Equality and human rights**

26.1 The Supplier shall:

- 26.1.1 ensure that (a) it does not, whether as employer or as provider of the Services, engage in any act or omission that would contravene the Equality Legislation, and (b) it complies with all its obligations as an employer or provider of the Services as set out in the Equality Legislation and take reasonable endeavours to ensure its Staff do not unlawfully discriminate within the meaning of the Equality Legislation;
- 26.1.2 in the management of its affairs and the development of its equality and diversity policies, cooperate with the Authority in light of the Authority's obligations to comply with its statutory equality duties whether under the Equality Act 2010 or otherwise. The Supplier shall take such reasonable and proportionate steps as the Authority considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age; and
- 26.1.3 the Supplier shall impose on all its Sub-contractors and suppliers, obligations substantially similar to those imposed on the Supplier by Clause 26 of this Schedule 2.
- 26.2 The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier's compliance with the provisions of Clause 26 of this Schedule 2.

## **27 Notice**

- 27.1 Subject to Clause 22.5 of Schedule 2, any notice required to be given by either Party under this Contract shall be in writing quoting the date of the Contract and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the Key Provisions or such other person as one Party may inform the other Party in writing from time to time.
- 27.2 A notice shall be treated as having been received:
  - 27.2.1 if delivered by hand within normal business hours when so delivered or, if delivered by hand outside normal business hours, at the next start of normal business hours; or
  - 27.2.2 if sent by first class recorded delivery mail on a normal Business Day, at 9.00 am on the second Business Day subsequent to the day of posting, or, if the notice was not posted on a Business Day, at 9.00 am on the third Business Day subsequent to the day of posting; or
  - 27.2.3 if sent by email, if sent within normal business hours when so sent or, if sent outside normal business hours, at the next start of normal business hours provided the sender has either received an electronic confirmation of delivery or has telephoned the recipient to inform the recipient that the email has been sent.

## **28 Assignment, novation and Sub-contracting**

- 28.1 The Supplier shall not, except where Clause 28.2 of this Schedule 2 applies, assign, Sub-contract, novate, create a trust in, or in any other way dispose of the whole or any part of this Contract without the prior consent in writing of the Authority such consent

not to be unreasonably withheld or delayed. If the Supplier Sub-contracts any of its obligations under this Contract, every act or omission of the Sub-contractor shall for the purposes of this Contract be deemed to be the act or omission of the Supplier and the Supplier shall be liable to the Authority as if such act or omission had been committed or omitted by the Supplier itself.

28.2 Notwithstanding Clause 28.1 of this Schedule 2, the Supplier may assign to a third party (“**Assignee**”) the right to receive payment of any sums due and owing to the Supplier under this Contract for which an invoice has been issued. Any assignment under this Clause 28.2 of this Schedule 2 shall be subject to:

- 28.2.1 the deduction of any sums in respect of which the Authority exercises its right of recovery under Clause 9.8 of this Schedule 2;
- 28.2.2 all related rights of the Authority in relation to the recovery of sums due but unpaid;
- 28.2.3 the Authority receiving notification of the assignment and the date upon which the assignment becomes effective together with the Assignee’s contact information and bank account details to which the Authority shall make payment;
- 28.2.4 the provisions of Clause 9 of this Schedule 2 continuing to apply in all other respects after the assignment which shall not be amended without the prior written approval of the Authority; and
- 28.2.5 payment to the Assignee being full and complete satisfaction of the Authority’s obligation to pay the relevant sums in accordance with this Contract.

28.3 Any authority given by the Authority for the Supplier to Sub-contract any of its obligations under this Contract shall not impose any duty on the Authority to enquire as to the competency of any authorised Sub-contractor. The Supplier shall ensure that any authorised Sub-contractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such Sub-contractor are fully in accordance with this Contract.

28.4 Where the Supplier enters into a Sub-contract in respect of any of its obligations under this Contract relating to the provision of the Services, the Supplier shall include provisions in each such Sub-contract, unless otherwise agreed with the Authority in writing, which:

- 28.4.1 contain at least equivalent obligations as set out in this Contract in relation to the performance of the Services to the extent relevant to such Sub-contracting;
- 28.4.2 contain at least equivalent obligations as set out in this Contract in respect of confidentiality, information security, data protection, Intellectual Property Rights, compliance with Law and Guidance and record keeping;
- 28.4.3 contain a prohibition on the Sub-contractor Sub-contracting, assigning or novating any of its rights or obligations under such Sub-contract without the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed);

- 28.4.4 contain a right for the Authority to take an assignment or novation of the Sub-contract (or part of it) upon expiry or earlier termination of this Contract;
  - 28.4.5 requires the Supplier or other party receiving services under the contract to consider and verify invoices under that contract in a timely fashion;
  - 28.4.6 provides that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 28.4.5 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purpose of Clause 28.4.7 after a reasonable time has passed;
  - 28.4.7 requires the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
  - 28.4.8 permitting the Supplier to terminate, or procure the termination of, the relevant Sub-contract in the event the Sub-contractor fails to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour Law where the Supplier is required to replace such Sub-contractor in accordance with Clause 15.7.4 of this Schedule 2;
  - 28.4.9 permitting the Supplier to terminate, or to procure the termination of, the relevant Sub-contract where the Supplier is required to replace such Sub-contractor in accordance with Clause 28.5 of this Schedule 2; and
  - 28.4.10 requires the Sub-contractor to include a clause to the same effect as this Clause 28.4 of this Schedule 2 in any Sub-contract which it awards.
- 28.5 Where the Authority considers that the grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015 apply to any Sub-contractor, then:
- 28.5.1 if the Authority finds there are compulsory grounds for exclusion, the Supplier shall ensure, or shall procure, that such Sub-contractor is replaced or not appointed; or
  - 28.5.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to ensure, or to procure, that such Sub-contractor is replaced or not appointed and the Supplier shall comply with such a requirement.
- 28.6 The Supplier shall pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed. Where the Authority pays the Supplier's valid and undisputed invoices earlier than thirty (30) days from verification in accordance with any applicable government prompt payment targets, the Supplier shall use its reasonable endeavours to pay its relevant Sub-contractors within a comparable timeframe from verifying that an invoice is valid and undisputed.
- 28.7 The Authority shall upon written request have the right to review any Sub-contract entered into by the Supplier in respect of the provision of the Services and the Supplier shall provide a certified copy of any Sub-contract within five (5) Business Days of the date of a written request from the Authority. For the avoidance of doubt, the Supplier shall have the right to redact any confidential pricing information in relation to such copies of Sub-contracts.



28.8 The Authority may at any time transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract and the Supplier warrants that it will carry out all such reasonable further acts required to effect such transfer, assignment, novation, sub-contracting or disposal. If the Authority novates this Contract to any body that is not a Contracting Authority, from the effective date of such novation, the party assuming the position of the Authority shall not further transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed by the Supplier.

## 29 **Prohibited Acts**

29.1 The Supplier warrants and represents that:

29.1.1 it has not committed any offence under the Bribery Act 2010 or done any of the following ("**Prohibited Acts**"):

- (i) offered, given or agreed to give any officer or employee of the Authority any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with the Authority or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the Authority; or
- (ii) in connection with this Contract paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Authority; and

29.1.2 it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.

29.2 If the Supplier or its Staff (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Supplier in relation to this or any other agreement with the Authority:

29.2.1 the Authority shall be entitled:

- (i) to terminate this Contract and recover from the Supplier the amount of any loss resulting from the termination;
- (ii) to recover from the Supplier the amount or value of any gift, consideration or commission concerned; and
- (iii) to recover from the Supplier any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;

29.2.2 any termination under Clause 29.2.1 of this Schedule 2 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Authority; and

29.2.3 notwithstanding the Dispute Resolution Procedure, any Dispute relating to:

- (i) the interpretation of Clause 29 of this Schedule 2; or
- (i) the amount or value of any gift, consideration or commission,

shall be determined by the Authority, acting reasonably, and the decision shall be final and conclusive.

### **30 General**

- 30.2 Each of the Parties is independent of the other and nothing contained in this Contract shall be construed to imply that there is any relationship between the Parties of partnership or of principal/agent or of employer/employee nor are the Parties hereby engaging in a joint venture and accordingly neither of the Parties shall have any right or authority to act on behalf of the other nor to bind the other by agreement or otherwise, unless expressly permitted by the terms of this Contract.
- 30.3 Failure or delay by either Party to exercise an option or right conferred by this Contract shall not of itself constitute a waiver of such option or right.
- 30.4 The delay or failure by either Party to insist upon the strict performance of any provision, term or condition of this Contract or to exercise any right or remedy consequent upon such breach shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.
- 30.5 Any provision of this Contract which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Contract and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.
- 30.6 Each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this Contract and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in this Contract or unless such representation, undertaking or warranty was made fraudulently.
- 30.7 Each Party shall bear its own expenses in relation to the preparation and execution of this Contract including all costs, legal fees and other expenses so incurred.
- 30.8 The rights and remedies provided in this Contract are independent, cumulative and not exclusive of any rights or remedies provided by general law, any rights or remedies provided elsewhere under this Contract or by any other contract or document. In this Clause 30.7 of this Schedule 2, right includes any power, privilege, remedy, or proprietary or security interest.
- 30.9 Unless otherwise expressly stated in this Contract, a person who is not a party to this Contract shall have no right to enforce any terms of it which confer a benefit on such person except that a Successor (being a body to whom the Authority has assigned the whole of its rights and obligations under Clause 28.8 of this Schedule 2) may directly enforce any indemnities or other rights provided to it under this Contract. No such



person shall be entitled to object to or be required to consent to any amendment to the provisions of this Contract.

- 30.10 This Contract, any variation in writing signed by an authorised representative of each Party and any document referred to (explicitly or by implication) in this Contract or any variation to this Contract, contain the entire understanding between the Supplier and the Authority relating to the Services to the exclusion of all previous agreements, confirmations and understandings and there are no promises, terms, conditions or obligations whether oral or written, express or implied other than those contained or referred to in this Contract. Nothing in this Contract seeks to exclude either Party's liability for Fraud. Any tender conditions and/or disclaimers set out in the Authority's procurement documentation leading to the award of this Contract shall form part of this Contract.
- 30.11 This Contract, and any Dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.
- 30.12 Subject to Clause 22 of this Schedule 2, the Parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any Dispute or claim that arises out of or in connection with this Contract or its subject matter.
- 30.13 All written and oral communications and all written material referred to under this Contract shall be in English.

### Schedule 3

#### Information and Data Provisions

#### 1 Confidentiality

- 1.1 In respect of any Confidential Information it may receive directly or indirectly from the other Party ("**Discloser**") and subject always to the remainder of Clause 1 of this Schedule 3, each Party ("**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser's prior written consent provided that:
- 1.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date;
- 1.1.2 the provisions of Clause 1 of this Schedule 3 shall not apply to any Confidential Information:
- (i) which is in or enters the public domain other than by breach of this Contract or other act or omissions of the Recipient;
  - (ii) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
  - (iii) which is authorised for disclosure by the prior written consent of the Discloser;
  - (iv) which the Recipient can demonstrate was in its possession without any obligation of confidentiality prior to receipt of the Confidential Information from the Discloser; or
  - (v) which the Recipient is required to disclose purely to the extent to comply with the requirements of any relevant stock exchange.
- 1.2 Nothing in Clause 1 of this Schedule 3 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Freedom of Information Act 2000 ("**FOIA**"), Codes of Practice on Access to Government Information, on the Discharge of Public Authorities' Functions or on the Management of Records ("**Codes of Practice**") or the Environmental Information Regulations 2004 ("**Environmental Regulations**").
- 1.3 The Authority may disclose the Supplier's Confidential Information:
- 1.3.1 on a confidential basis, to any Contracting Authority (the Parties agree that all Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority);

- 1.3.2 on a confidential basis, to any consultant, contractor or other person engaged by the Authority and/or the Contracting Authority receiving such information;
- 1.3.3 to any relevant party for the purpose of the examination and certification of the Authority's accounts;
- 1.3.4 to any relevant party for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- 1.3.5 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirements; or
- 1.3.6 on a confidential basis to a proposed successor body in connection with any proposed or actual, assignment, novation or other disposal of rights, obligations, liabilities or property in connection with this Contract;

and for the purposes of this Contract, references to disclosure "on a confidential basis" shall mean the Authority making clear the confidential nature of such information and that it must not be further disclosed except in accordance with Law or this Clause 1.3 of this Schedule 3.

- 1.4 The Supplier may only disclose the Authority's Confidential Information, and any other information provided to the Supplier by the Authority in relation this Contract, to the Supplier's Staff or professional advisors who are directly involved in the performance of or advising on the Supplier's obligations under this Contract. The Supplier shall ensure that such Staff or professional advisors are aware of and shall comply with the obligations in Clause 1 of this Schedule 3 as to confidentiality and that all information, including Confidential Information, is held securely, protected against unauthorised use or loss and, at the Authority's written discretion, destroyed securely or returned to the Authority when it is no longer required. The Supplier shall not, and shall ensure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of performing the Supplier's obligations in this Contract.
- 1.5 For the avoidance of doubt, save as required by Law or as otherwise set out in this Schedule 3, the Supplier shall not, without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed), announce that it has entered into this Contract and/or that it has been appointed as a Supplier to the Authority and/or make any other announcements about this Contract.
- 1.6 Clause 1 of this Schedule 3 shall remain in force:
  - 1.6.1 without limit in time in respect of Confidential Information which comprises Personal Data or which relates to national security; and
  - 1.6.2 for all other Confidential Information for a period of three (3) years after the expiry or earlier termination of this Contract unless otherwise agreed in writing by the Parties.

## **2 Data protection**

- 2.1 The Parties acknowledge their respective duties under Data Protection Legislation and shall give each other all reasonable assistance as appropriate or necessary to enable

each other to comply with those duties. For the avoidance of doubt, the Supplier shall take reasonable steps to ensure it is familiar with the Data Protection Legislation and any obligations it may have under such Data Protection Legislation and shall comply with such obligations.

- 2.2 Where the Supplier is Processing Personal Data under or in connection with this Contract, the Parties shall comply with the Data Protection Protocol.
- 2.3 The Supplier and the Authority shall ensure that Personal Data is safeguarded at all times in accordance with the Law, and this obligation will include (if transferred electronically) only transferring Personal Data (a) if essential, having regard to the purpose for which the transfer is conducted; and (b) that is encrypted in accordance with any international data encryption standards for healthcare, and as otherwise required by those standards applicable to the Authority under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).
- 2.4 Where, as a requirement of this Contract, the Supplier is Processing Personal Data relating to patients and/or service users as part of the Services, the Supplier shall:
  - 2.4.1 complete and publish an annual information governance assessment using the NHS information governance toolkit;
  - 2.4.2 achieve a minimum level 2 performance against all requirements in the relevant NHS information governance toolkit;
  - 2.4.3 nominate an information governance lead able to communicate with the Supplier's board of directors or equivalent governance body, who will be responsible for information governance and from whom the Supplier's board of directors or equivalent governance body will receive regular reports on information governance matters including, but not limited to, details of all incidents of data loss and breach of confidence;
  - 2.4.4 report all incidents of data loss and breach of confidence in accordance with Department of Health and/or the NHS England and/or Health and Social Care Information Centre guidelines;
  - 2.4.5 put in place and maintain policies that describe individual personal responsibilities for handling Personal Data and apply those policies vigorously;
  - 2.4.6 put in place and maintain a policy that supports its obligations under the NHS Care Records Guarantee (being the rules which govern information held in the NHS Care Records Service, which is the electronic patient/service user record management service providing authorised healthcare professionals access to a patient's integrated electronic care record);
  - 2.4.7 put in place and maintain agreed protocols for the lawful sharing of Personal Data with other NHS organisations and (as appropriate) with non-NHS organisations in circumstances in which sharing of that data is required under this Contract;

- 2.4.8 where appropriate, have a system in place and a policy for the recording of any telephone calls in relation to the Services, including the retention and disposal of those recordings;
  - 2.4.9 at all times comply with any information governance requirements and/or processes as may be set out in the Specification and Tender Response Document; and
  - 2.4.10 comply with any new and/or updated requirements, Guidance and/or Policies notified to the Supplier by the Authority from time to time (acting reasonably) relating to the Processing and/or protection of Personal Data.
- 2.5 Where any Personal Data is Processed by any Sub-contractor of the Supplier in connection with this Contract, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 2 of this Schedule 3, as if such Sub-contractor were the Supplier.
- 2.6 The Supplier shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation fines, legal costs and expenses), claims or proceedings whatsoever or howsoever arising from the Supplier's unlawful or unauthorised Processing, destruction and/or damage to Personal Data in connection with this Contract.
- 3 Freedom of Information and Transparency**
- 3.1 The Parties acknowledge the duties of Contracting Authorities under the FOIA, Codes of Practice and Environmental Regulations and shall give each other all reasonable assistance as appropriate or necessary to enable compliance with those duties.
- 3.2 The Supplier shall assist and cooperate with the Authority to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Supplier agrees:
- 3.2.1 that this Contract and any recorded information held by the Supplier on the Authority's behalf for the purposes of this Contract are subject to the obligations and commitments of the Authority under the FOIA, Codes of Practice and Environmental Regulations;
  - 3.2.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA, Codes of Practice and Environmental Regulations is a decision solely for the Authority;
  - 3.2.3 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier itself is subject to the FOIA, Codes of Practice and Environmental Regulations it will liaise with the Authority as to the contents of any response before a response to a request is issued and will promptly (and in any event within two (2) Business Days) provide a copy of the request and any response to the Authority;
  - 3.2.4 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier is not itself subject to the FOIA, Codes of Practice and Environmental Regulations,

it will not respond to that request (unless directed to do so by the Authority) and will promptly (and in any event within two (2) Business Days) transfer the request to the Authority;

- 3.2.5 that the Authority, acting in accordance with the Codes of Practice issued and revised from time to time under both section 45 of FOIA, and regulation 16 of the Environmental Regulations, may disclose information concerning the Supplier and this Contract; and
- 3.2.6 to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA and the Environmental Regulations) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of FOIA, and providing copies of all information requested by the Authority within five (5) Business Days of that request and without charge.
- 3.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations, the content of this Contract is not Confidential Information.
- 3.4 Notwithstanding any other term of this Contract, the Supplier consents to the publication of this Contract in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations.
- 3.5 In preparing a copy of this Contract for publication under Clause 3.4 of this Schedule 3, the Authority may consult with the Supplier to inform decision making regarding any redactions but the final decision in relation to the redaction of information will be at the Authority's absolute discretion.
- 3.6 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Contract.
- 3.7 Where any information is held by any Sub-contractor of the Supplier in connection with this Contract, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 3 of this Schedule 3, as if such Sub-contractor were the Supplier.

#### **4 Information Security**

- 4.1 Without limitation to any other information governance requirements set out in this Schedule 3, the Supplier shall:
  - 4.1.1 notify the Authority forthwith of any information security breaches or near misses (including without limitation any potential or actual breaches of confidentiality or actual information security breaches) in line with the Authority's information governance Policies; and
  - 4.1.2 fully cooperate with any audits or investigations relating to information security and any privacy impact assessments undertaken by the Authority and shall provide full information as may be reasonably requested by the Authority in relation to such audits, investigations and assessments.



- 4.2 Where required in accordance with the Specification and Tender Response Document, the Supplier will ensure that it puts in place and maintains an information security management plan appropriate to this Contract, the type of Services being provided and the obligations placed on the Supplier. The Supplier shall ensure that such plan is consistent with any relevant Policies, Guidance, Good Industry Practice and with any relevant quality standards as may be set out in the Key Provisions and/or the Specification and Tender Response Document.
- 4.3 Where required in accordance with the Specification and Tender Response Document, the Supplier shall obtain and maintain certification under the HM Government Cyber Essentials Scheme at the level set out in the Specification and Tender Response Document.

## **Schedule 4**

### **Definitions and Interpretations**

#### **1 Definitions**

1.1 In this Contract the following words shall have the following meanings unless the context requires otherwise:

<b>“Actual Services Commencement Date”</b>	means the date the Supplier actually commences delivery of the Services;
<b>“Actuary”</b>	means a Fellow of the Institute and Faculty of Actuaries;
<b>“Authority”</b>	means the authority named on the form of Contract on the first page;
<b>“Authority’s Actuary”</b>	means the Government Actuaries Department;
<b>“Authority’s Obligations”</b>	means the Authority’s further obligations, if any, referred to in the Key Provisions;
<b>“Breach Notice”</b>	means a written notice of breach given by one Party to the other, notifying the Party receiving the notice of its breach of this Contract;
<b>“Business Continuity Event”</b>	means any event or issue that could impact on the operations of the Supplier and its ability to provide the Services including an influenza pandemic and any Force Majeure Event;
<b>“Business Continuity Plan”</b>	means the Supplier’s business continuity plan which includes its plans for continuity of the Services during a Business Continuity Event;
<b>“Business Day”</b>	means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales;
<b>“Cabinet Office Statement”</b>	the Cabinet Office Statement of Practice – Staff Transfers in the Public Sector 2000 (as revised 2013) as may be amended or replaced;
<b>“Change Control Process”</b>	means the change control process, if any, referred to in the Key Provisions;
<b>“Codes of Practice”</b>	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
<b>“Commencement Date”</b>	means the date of this Contract;

<b>“Commercial Schedule”</b>	means the document set out at Schedule 6;
<b>“Confidential Information”</b>	<p>means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the Contract including any procurement process which is:</p> <ul style="list-style-type: none"> <li>(a) Personal Data including without limitation which relates to any patient or other service user or his or her treatment or clinical or care history;</li> <li>(b) designated as confidential by either party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored); and/or</li> <li>(c) Policies and such other documents which the Supplier may obtain or have access to through the Authority’s intranet;</li> </ul>
<b>“Contract”</b>	means the form of contract at the front of this document and all schedules attached to the form of contract;
<b>“Contracting Authority”</b>	means any contracting authority as defined in regulation 3 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than the Authority;
<b>“Contract Manager”</b>	means for the Authority and for the Supplier the individuals specified in the Key Provisions; or such other person notified by a Party to the other Party from time to time in accordance with Clause 8.1 of Schedule 2;
<b>“Contract Price”</b>	means the price exclusive of VAT that is payable to the Supplier by the Authority under the Contract for the full and proper performance by the Supplier of its obligations under the Contract;
<b>“Controller”</b>	shall have the same meaning as set out in the GDPR;
<b>“Convictions”</b>	means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 or any replacement or amendment to that Act);
<b>“Data Protection Legislation”</b>	means (i) the Data Protection Act 1998 or, from the date it comes into force, the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Law as amended from time to time; and (iii) all applicable Law about the processing of personal data and privacy;

<b>“Data Protection Protocol”</b>	means any document of that name as provided to the Supplier by the Authority (as amended from time to time in accordance with its terms), which shall include, without limitation, any such document appended to Schedule 3 (Information and Data Provisions) of this Contract;
<b>“Direction Letter”</b>	means an NHS Pensions Direction letter issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 and issued to the Supplier or a Sub-contractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Sub-contractor in the NHS Pension Scheme in respect of the Eligible Employees;
<b>“Dispute(s)”</b>	means any dispute, difference or question of interpretation or construction arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, any matters of contractual construction and interpretation relating to the Contract, or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
<b>“Dispute Notice”</b>	means a written notice served by one Party to the other stating that the Party serving the notice believes there is a Dispute;
<b>“Dispute Resolution Procedure”</b>	means the process for resolving Disputes as set out in Clause 22 of Schedule 2 or, where Clause 24 of Schedule 1 of the Contract applies, the process for resolving Disputes as set out in <b>Error! Reference source not found.</b> For the avoidance of doubt, the Dispute Resolution Procedure is subject to Clause 29.2.3 of Schedule 2;
<b>“DOTAS”</b>	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
<b>“Electronic Trading System(s)”</b>	means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as the Authority may specify from time to time;
<b>“Eligible Employees”</b>	means each of the Transferred Staff who immediately before the Employee Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to become a member of,

	<p>either the NHS Pension Scheme or a Broadly Comparable scheme as a result of their employment or former employment with an NHS Body (or other employer which participates automatically in the NHS Pension Scheme) and being continuously engaged for more than 50% of their employed time with the Authority (in the case of Transferring Employees) or a Third Party (in the case of Third Party Employees) in the delivery of services the same as or similar to the Services.</p> <p>For the avoidance of doubt a member of Staff who is or is entitled to become a member of the NHS Pension Scheme as a result of being engaged in the Services and being covered by an “open” Direction Letter or other NHS Pension Scheme “access” facility but who has never been employed directly by an NHS Body (or other body which participates automatically in the NHS Pension Scheme) is not an Eligible Employee entitled to Fair Deal for Staff Pensions protection under Part D of <b>Error! Reference source not found.</b>;</p>
<b>“Employee Transfer Date”</b>	means the Transferred Staff’s first day of employment with the Supplier (or its Sub-contractor);
<b>“Employment Liabilities”</b>	means all claims, demands, actions, proceedings, damages, compensation, tribunal awards, fines, costs (including but not limited to reasonable legal costs), expenses and all other liabilities whatsoever;
<b>“Environmental Regulations”</b>	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
<b>“eProcurement Guidance”</b>	<p>means the NHS eProcurement Strategy available via:</p> <p><a href="http://www.gov.uk/government/collections/nhs-procurement">http://www.gov.uk/government/collections/nhs-procurement</a></p> <p>together with any further Guidance issued by the Department of Health in connection with it;</p>
<b>“Equality Legislation”</b>	means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998;
<b>“Exit Requirements”</b>	means the Authority’s exit requirements, as set out in the Specification and Tender Response Document and/or otherwise as part of this Contract, which the Supplier must comply with during the Term and/or in relation to any expiry or early termination of this Contract;
<b>“FOIA”</b>	shall have the meaning given to the term in Clause 1.2 of Schedule 3;

<b>“Force Majeure Event”</b>	<p>means any event beyond the reasonable control of the Party in question to include, without limitation:</p> <ul style="list-style-type: none"> <li>(a) war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict materially affecting either Party’s ability to perform its obligations under this Contract;</li> <li>(b) acts of terrorism;</li> <li>(c) flood, storm or other natural disasters;</li> <li>(d) fire;</li> <li>(e) unavailability of public utilities and/or access to transport networks to the extent no diligent supplier could reasonably have planned for such unavailability as part of its business continuity planning;</li> <li>(f) government requisition or impoundment to the extent such requisition or impoundment does not result from any failure by the Supplier to comply with any relevant regulations, laws or procedures (including such laws or regulations relating to the payment of any duties or taxes) and subject to the Supplier having used all reasonable legal means to resist such requisition or impoundment;</li> <li>(g) compliance with any local law or governmental order, rule, regulation or direction applicable outside of England and Wales that could not have been reasonably foreseen;</li> <li>(h) industrial action which affects the ability of the Supplier to provide the Services, but which is not confined to the workforce of the Supplier or the workforce of any Sub-contractor of the Supplier; and</li> <li>(i) a failure in the Supplier’s and/or Authority’s supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties;</li> </ul> <p>but excluding, for the avoidance of doubt, the withdrawal of the United Kingdom from the European Union and any related circumstances, events, changes or requirements;</p>
<b>“Fraud”</b>	<p>means any offence under any law in respect of fraud in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the government, parliament or any Contracting Authority;</p>
<b>GDPR</b>	<p>means the General Data Protection Regulation (Regulation (EU) 2016/679);</p>
<b>“General Anti-Abuse Rule”</b>	<p>means</p>



	<p>(a) the legislation in Part 5 of the Finance Act 2013; and</p> <p>(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;</p>
<b>“Good Industry Practice”</b>	means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider engaged in the provision of services similar to the Services under the same or similar circumstances as those applicable to this Contract, including in accordance with any codes of practice published by relevant trade associations;
<b>“Guidance”</b>	means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Authority and/or have been published and/or notified to the Supplier by the Department of Health, Monitor, NHS England, the Medicines and Healthcare Products Regulatory Agency, the European Medicine Agency, the European Commission, the Care Quality Commission and/or any other regulator or competent body;
<b>“Halifax Abuse Principle”</b>	means the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>"HM Government Cyber Essentials Scheme"</b>	means the HM Government Cyber Essentials Scheme as further defined in the documents relating to this scheme published at: <a href="https://www.gov.uk/government/publications/cyber-essentials-scheme-overview">https://www.gov.uk/government/publications/cyber-essentials-scheme-overview</a> ;
<b>“Implementation Plan”</b>	means the implementation plan, if any, referred to in the Key Provisions;
<b>“Implementation Requirements”</b>	means the Authority’s implementation and mobilisation requirements (if any), as may be set out in the Specification and Tender Response Document and/or otherwise as part of this Contract, which the Supplier must comply with as part of implementing the Services;
<b>“Intellectual Property Rights”</b>	means all patents, copyright, design rights, registered designs, trade marks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trade marks and registered designs;
<b>“Interested Party”</b>	means any organisation which has a legitimate interest in providing services of the same or similar nature to the Services in immediate or proximate succession to the Supplier or any

	Sub-contractor and who had confirmed such interest in writing to the Authority;
<b>“Key Provisions”</b>	means the key provisions set out in Schedule 1;
<b>“KPI”</b>	means the key performance indicators as set out in Schedule 5;
<b>“Law”</b>	<p>means any applicable legal requirements including, without limitation,;</p> <ul style="list-style-type: none"> <li>(a) any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument as applicable in England and Wales;</li> <li>(b) any applicable European Union obligation, directive, regulation, decision, law or right (including any such obligations, directives, regulations, decisions, laws or rights that are incorporated into the law of England and Wales or given effect in England and Wales by any applicable statute, proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument);</li> <li>(c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;</li> <li>(d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;</li> <li>(e) requirements set by any regulatory body as applicable in England and Wales;</li> <li>(f) any relevant code of practice as applicable in England and Wales; and</li> <li>(g) any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above);</li> </ul>
<b>“Long Stop Date”</b>	means the date, if any, specified in the Key Provisions;
<b>“Losses”</b>	all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law;
<b>“NHS”</b>	means the National Health Service;
<b>“NHS Body”</b>	has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012;
<b>“Occasion of Tax Non-Compliance”</b>	means:

	<p>(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:</p> <p>(i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</p> <p>(ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or</p> <p>(b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;</p>
<b>“Party”</b>	means the Authority or the Supplier as appropriate and Parties means both the Authority and the Supplier;
<b>“Personal Data”</b>	shall have the same meaning as set out in the GDPR;
<b>“Policies”</b>	means the policies, rules and procedures of the Authority as notified to the Supplier from time to time;
<b>“Premises and Locations”</b>	has the meaning given under Clause 2.1 of Schedule 2;
<b>“Process”</b>	shall have the same meaning as set out in the GDPR. Processing and Processed shall be construed accordingly;
<b>“Processor”</b>	shall have the same meaning as set out in the GDPR;
<b>“Purchase Order”</b>	means the purchase order required by the Authority’s financial systems, if a purchase order is referred to in the Key Provisions;
<b>“Relevant Tax Authority”</b>	means HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
<b>“Remedial Proposal”</b>	has the meaning given under Clause 15.3 of Schedule 2;
<b>“Services”</b>	means the services set out in this Contract (including, without limitation, Schedule 5 which sets out the requirements of the Authority as issued to tenderers as part of the procurement process and the Supplier’s response to these requirements);
<b>“Services Commencement Date”</b>	means the date delivery of the Services shall commence as specified in the Key Provisions. If no date is specified in the Key Provisions this date shall be the Commencement Date;

<b>“Services Information”</b>	means information concerning the Services as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 20 of Schedule 2 for inclusion in the Authority's services catalogue from time to time;
<b>“Specification and Tender Response Document”</b>	means the document set out in Schedule 5 as amended and/or updated in accordance with this Contract;
<b>“Staff”</b>	means all persons employed or engaged by the Supplier to perform its obligations under this Contract including any Sub-contractors and person employed or engaged by such Sub-contractors;
<b>“Step In Rights”</b>	means the step in rights, if any, referred to in the Key Provisions;
<b>“Sub-contract”</b>	means a contract between two or more suppliers, at any stage of remoteness from the Supplier in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract;
<b>Sub-contractor</b>	means a party to a Sub-contract other than the Supplier;
<b>“Supplier”</b>	means the supplier named on the form of Contract on the first page;
<b>“Supplier Code of Conduct”</b>	means the code of that name published by the Government Commercial Function originally dated September 2017, as may be amended, restated, updated, re-issued or re-named from time to time;
<b>“Supplier Personnel”</b>	means any employee, agent, consultant and/or contractor of the Supplier or Sub-contractor who is either partially or fully engaged in the performance of the Services;
<b>“Term”</b>	means the term as set out in the Key Provisions;
<b>“Termination Notice”</b>	means a written notice of termination given by one Party to the other notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;
<b>“Third Party Body”</b>	has the meaning given under Clause 8.5 of Schedule 2;

<b>"TUPE"</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006/246) and/or any other regulations or other legislation enacted for the purpose of implementing or transposing the Acquired Rights Directive (77/187/EEC, as amended by Directive 98/50 EC and consolidated in 2001/23/EC) into English law; and
<b>"VAT"</b>	means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax.

- 1.2 References to any Law shall be deemed to include a reference to that Law as amended, extended, consolidated, re-enacted, restated, implemented or transposed from time to time.
- 1.3 References to any legal entity shall include any body that takes over responsibility for the functions of such entity.
- 1.4 References in this Contract to a "Schedule", "Appendix", "Paragraph" or to a "Clause" are to schedules, appendices, paragraphs and clauses of this Contract.
- 1.5 References in this Contract to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.
- 1.6 Unless set out in the Commercial Schedule as a chargeable item and subject to Clause 30.6 of Schedule 2, the Supplier shall bear the cost of complying with its obligations under this Contract.
- 1.7 The headings are for convenience only and shall not affect the interpretation of this Contract.
- 1.8 Words denoting the singular shall include the plural and vice versa.
- 1.9 Where a term of this Contract provides for a list of one or more items following the word "including" or "includes" then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.
- 1.10 Where there is a conflict between the Supplier's responses to the Authority's requirements (the Supplier's responses being set out in Schedule 5) and any other part of this Contract, such other part of this Contract shall prevail.
- 1.11 Where a document is required under this Contract, the Parties may agree in writing that this shall be in electronic format only.
- 1.12 Where there is an obligation on the Authority to procure any course of action from any third party, this shall mean that the Authority shall use its reasonable endeavours to procure such course of action from that third party.
- 1.13 Any guidance notes in grey text do not form part of this Contract.

- 1.14 Any Breach Notice issued by a Party in connection with this Contract shall not be invalid due to it containing insufficient information. A Party receiving a Breach Notice ("**Receiving Party**") may ask the Party that issued the Breach Notice ("**Issuing Party**") to provide any further information in relation to the subject matter of the Breach Notice that it may reasonably require to enable it to understand the Breach Notice and/or to remedy the breach. The Issuing Party shall not unreasonably withhold or delay the provision of such further information as referred to above as may be requested by the Receiving Party but no such withholding or delay shall invalidate the Breach Notice.
- 1.15 Any terms defined as part of a Schedule or other document forming part of this Contract shall have the meaning as defined in such Schedule or document.

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## Schedule 5

### Specification and Tender Response Document

#### 1. Definitions

The following definitions shall apply to this Tender Response Document. If any defined terms appear in this Tender Response Document that are not defined below, they shall have the meaning set out elsewhere within this Contract.

<b>“Additional Services”</b>	means any additional training, management, support, hosting or development services (or any other services as agreed by the parties) delivered by the Supplier to the Authority in accordance with paragraph 8 of this Tender Response Document.
<b>“Additional Services Budget”</b>	has the meaning set out at paragraph 8.9 of this Tender Response Document.
<b>“Additional Services Request”</b>	has the meaning set out at paragraph 8.3.3 of this Tender Response Document.
<b>“Amendment Event”</b>	means the amendment by the Authority to a pre-existing Vaccination Event recorded within the System in accordance with the terms of this Contract.
<b>“Assessment”</b>	has the meaning set out at paragraph 8.3.2 of this Tender Response Document.
<b>“Available”</b>	means, in the context of the System, or a particular Region, all System Users (with sufficient access privileges) at each System Site are able to use to record Vaccination Events and access the System excluding service degradation and/or during any Planned Maintenance. <b>“Availability”</b> shall be construed accordingly.
<b>“Availability Breach”</b>	means a breach of Supplier Obligation number 2.
<b>“Availability Licence Fees”</b>	means the total Licence Fees (as defined in Schedule 6) chargeable by the Supplier for the System Sites affected by the relevant Availability Breach in the relevant calendar month.
<b>“Change Management Process”</b>	means the Authority’s Technology and Data Product Management Process to be agreed by the parties in accordance with the terms of this Tender Response Document.
<b>“Core Hours”</b>	Means 8:00 – 20:00 seven days per week (excluding Christmas Day, Boxing Day, Good Friday, Easter Sunday and Easter Monday).
<b>“Data Flow Specifications”</b>	means the specifications provided by the Authority to the Supplier (from time to time) in relation to the Authority’s data flow/communication requirements to and from the System to various different organisations and databases

utilising interfaces provided by the Supplier and third party providers (but excluding the interfaces themselves which are either owned by the Supplier or such third parties).

**“Data Specification”** means the data specification in Annex 2 (which has been delivered as part of the Project Specification).

**“Day”** means any day of the year between the hours of 8am and 8pm (excluding Christmas Day, Boxing Day, Good Friday, Easter Sunday and Easter Monday).

**“Dormancy Rules”** means the following rules that apply once a System Site is designated as a Dormant System Site by the Authority in accordance with paragraph 4 of this Tender Response Document:

- authorised System Users at the relevant Dormant System Site shall be entitled to access the System in ‘view only’ with no other permissions (save in respect of System Admin Users);
- authorised System Admin Users at the relevant Dormant System Site shall also be entitled to access the System to process Amendment Events;
- no new Vaccination Events shall be processed at the Dormant System Site by any System Users; and
- the Supplier shall continue to support Dormant System Sites in accordance with the terms of this Contract however, no Service Credits will be payable in respect of any Dormant System Site.

**“Dormant System Sites”** means a System Site that has been designated as dormant by the Authority in accordance with paragraph 4 of this Tender Response Document and to which the parties hereby agree are therefore subject to the Dormancy Rules.

**“DPS”** means NHSD’s Data Processing Service.

**“Hour”** means each 60 minute period starting on each hour and finishing immediately before the following hour of each Day e.g. 08:00:00 am – 08:59:59 am, 09:00:00 am – 09:59:59 (hour:minute:second) am etc.

**“Incident”** has the meaning set out in the ITIL.

**“Incident Resolution Breach”** means a breach of either Supplier Obligation number 4 and/or 5.

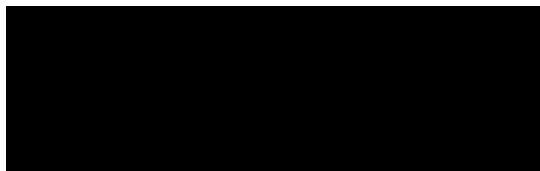
**“Fails”** means where any Upload or part of an Upload is rejected by the System for reasons outside of the Supplier’s control (i.e. incorrect or duplicate information) and therefore, the relevant System Site and/or user has not been set up within the System. **“Failed”** shall be construed accordingly.

**“Flu Only Service”** means a Template, and associated services delivered by the Supplier in accordance with this Tender Response Document, made available to a qualifying System Site (as per paragraph 4.11.1 below), to enable such site

to administer flu vaccination only Vaccination Events (i.e. not as part of co-administration with a COVID-19 vaccination).

<b>“GP Practice”</b>	means a general practitioner practice including any GPs from such practices acting as part of mobile vaccination team(s).
<b>“Hour”</b>	means each 60 minute period starting on each hour and finishing immediately before the following hour of each Day e.g. 08:00:00am – 08:59:59 am, 09:00:00 am – 09:59:59 (hour:minute:second) am etc.
<b>“Incident Form”</b>	means a template form as provided by the Supplier to the Authority from time to time that captures relevant information in relation to any Incident.
<b>“Incident Resolution Breach”</b>	means a breach of either Supplier Obligation number 4 and/or 5.
<b>“ITIL”</b>	means the Information Technology Infrastructure Library v4.
<b>“Low Volume System Site”</b>	means a System Site with 40 or fewer System Users and that processes 500 or less Vaccination Events in each Week.
<b>“Mass Vaccination Site”</b>	means a site specifically created by the Authority to deliver mass vaccinations.
<b>“Materials”</b>	<p>means the Templates, Data Flow Specifications, Data Specification, Project Specifications and Test Data (including the specifications provided in Annexes 1 and 2 to this Schedule 5) along with any other materials explicitly designated as a Material in any Additional Services Request (agreed in accordance with paragraph 8 of this Tender Response Document). For the avoidance of doubt, such Additional Services Request must include the following wording for any materials that the parties agree will fall under this definition:</p> <p><i>“The [insert description of the Material] is hereby designated as a Material for the purposes of a service contract (more particularly known as ‘NHS Terms and Conditions for the provision of services (contract version)’) dated 8 December 2020 made between (1) the Authority and (2) EMIS.”</i></p>
<b>“Mitigate”</b>	means a mitigation as defined by the ITIL.
<b>“MV Spreadsheet”</b>	means the information spreadsheet to be used when setting up mass vaccination System Site(s) in the form set out in Annex 3 Part A.
<b>“NHSD”</b>	means the Health and Social Care Information Centre trading as NHS Digital and any of its appointed agents, subcontractors or advisors.
<b>“NIMS”</b>	means the National Immunisation Management Service.

<b>“Normal System Sites”</b>	means Normal Volume System Sites and Normal Volume Flu System Sites.
<b>“Normal Volume System Site”</b>	means any System Site that processes more than 500 Vaccination Events in each Week.
<b>“Normal Volume Flu System Site”</b>	means any qualifying System Site (as per paragraph 4.11.1 below) where the Authority has requested the Supplier to enable, and the Supplier has enabled, the Flu Only Service.
<b>“On-Call Hours”</b>	means 6:30 – 8:00 and 20:00 to 22:00 seven days per week (excluding Christmas Day, Boxing Day, Good Friday, Easter Sunday and Easter Monday).
<b>“On-Hold”</b>	means any period where an Incident or Service Request: <ul style="list-style-type: none"> <li>• can't be progressed by the Supplier for reasons outside of its reasonable control e.g. a System Site fails to respond to queries or take appropriate actions as advised by the Supplier within a reasonable timeframe; and/or</li> <li>• is assigned to, or has been appropriately re-assigned to, another supplier.</li> </ul>
<b>“Out of Hours”</b>	means any time not included within the Service Hours.
<b>“PCN Spreadsheets”</b>	means together a System Site spreadsheet and System User spreadsheets to be used when setting up any System Sites that are not mass vaccination centres in the forms set out in Annex 3 Part B.
<b>“Planned Maintenance”</b>	means any planned downtime to the System to allow for maintenance, updates etc. as agreed by the parties.
<b>“Problem”</b>	means a problem as defined by the ITIL.
<b>“Project”</b>	means the Authority's COVID-19 and flu vaccination project to deliver either a COVID-19 vaccination on its own, a COVID-19 Vaccination alongside a flu vaccination (co-administration) or, at Normal Volume Flu System Sites only, a flu vaccination on its own, each to the specification in Parts A and B of Annex 1 (and as may be amended from time to time by the parties in accordance with paragraph 8 of this Tender Response Document) and in accordance with this Contract.
<b>“Project Specifications”</b>	means the specifications detailing the Authority's requirements (including functional and non-functional requirements) of the Supplier's Services in order to deliver the Project as provided by the Authority to the Supplier from time to time. See Annex 1 for specifications
<b>“Region”</b>	means each cluster of data hosting services currently made up of: <div style="background-color: black; width: 150px; height: 15px; margin: 2px 0;"></div> <div style="background-color: black; width: 100px; height: 15px; margin: 2px 0;"></div> <div style="background-color: black; width: 120px; height: 15px; margin: 2px 0;"></div>



The Supplier may, at its own cost and discretion, amend or update the technical requirements of a Region providing at all times that this does not effect a Region's ability to process the number of Vaccination Events set out in paragraph 2.6 or otherwise adversely impact on the Services.

In the event that such amendments or updates result in a material reduction in the on-going hosting costs for each Region to the Supplier (the "**Saving**"), the Supplier shall notify the Authority, confirming the costs incurred by it in making the amendments (the "**Amendment Costs**") and the amount of the Saving, and the Authority may elect to either:

- (a) pay the Supplier a fee equal to the Amendment Costs and, subject to payment of the same, receive the benefit of the Saving by way of an appropriate reduction of the Hosting Infrastructure Fees; or
- (b) not pay the Supplier a fee equal to the Amendment Costs and continue to pay the existing Hosting Infrastructure Fees at the existing rate.

If changes are required to the technical requirements of a Region because of an Additional Services Request then costs may apply in accordance with such agreed request.

**"Resolve"**

means where a work around, temporary fix or mitigation has been put in place to ensure that the Authority (or its relevant System Sites) can use the System materially as intended. "**Resolved**" and "**Resolution**" shall be interpreted accordingly.

**"RPO"**

means the Recovery Point Objective being the maximum data loss acceptable.

**"RTO"**

means the Recovery Time Objective being the time that it could take for the Supplier to get its systems back up and running after a failure.

**"Secondary System Users"**

means the employees, sub-contractors or employees/partners/locums of a GP Practice, or pharmacists or employees of the Ministry of Defence authorised by the Authority to use the System at the System Sites and provided with log in details by the System Admin Users in accordance with this Tender Response Document for the purposes of the Project.

**"Service Credit"**

means the service credits set out in paragraph 5.17 of this Tender Response Document.



<b>“Service Hours”</b>	means the Core Hours and On-Call Hours (as relevant).
<b>“Service Requests”</b>	means a support query or issue with the System or Service that is not an Incident.
<b>“Severity 1”</b>	means the System is Unavailable and cannot be used to record any vaccination events by multiple System Users at multiple active System Sites. Data captured by the System has been lost or corrupted. System security has been breached or is under attack. The operational impact is severe.
<b>“Severity 2”</b>	means the System is Available, but cannot be used to record significant numbers of vaccination events by multiple System Users at multiple active System Sites. Data is at risk of being lost or corrupted. Data flows are missing, broken or contain incomplete data. The operational impact is significant.
<b>“Severity 3”</b>	means the System is Available and can be used to record vaccination events, but is not behaving as expected for one or more System Users at one or more active System Sites. The operational impact is manageable.
<b>“Severity 4”</b>	means the System is Available and can be used to record vaccination events, but is not behaving as expected for one or more System Users at one or more active System Sites. The operational impact is minor.
<b>“Spreadsheet”</b>	means the MV Spreadsheet or the PCN Spreadsheets (as relevant).
<b>“Stability Risk Zone”</b>	<p>means where Vaccination Events and Amendment Events are being processed by the Authority in any one Region in excess of the following levels but below the limits set out in paragraph 2.6.3 of this Tender Response Document:</p> <ul style="list-style-type: none"> <li>• [REDACTED] Vaccination Events and [REDACTED] Amendment Events per Region in any one Hour; and/or</li> <li>• [REDACTED] Vaccination Events and [REDACTED] Amendment Events per Region in any one Day; and/or</li> <li>• [REDACTED] Vaccination Events and [REDACTED] Amendment Events per Region in any one Week.</li> </ul>
<b>“Supplier Obligation”</b>	means a supplier obligation as set out in paragraph 5.17 of this Tender Response Document.
<b>“System”</b>	means the Supplier’s primary service system (otherwise known as PharmOutcomes and Outcomes4Health) which is a secure, web-based clinical and service management data collection and communications platform that allows patient facing entry of service information and special category Personal Data. Encryption levels and system design make the System suitable for recording and storing special category patient data and



meets the requirements of the Data Protection Legislation, and other security and data requirements set out in this Contract.

The System also allows the secure transfer of Patient Data to other healthcare providers using HSCN connections and secure NHS mail (e.g. [nhs.net](https://nhs.net)).

<b>“System Admin User”</b>	means the employees, sub-contractors or employees/partners/locums of a GP Practice, or pharmacists or employees of the Ministry of Defence authorised by the Authority to use the System at the System Sites and administer System Users provided with log in details by the Supplier in accordance with this Tender Response Document for the purposes of the Project.
<b>“System Site(s)”</b>	means a site set up in the System to deliver the Project that correlates with an unique organisation code supplied by the Customer and is either a Mass Vaccination Site, a GP Practice or pharmacy.
<b>“System Site Designations”</b>	means the designations of Systems Sites as either a Normal Volume System Site, a Normal Volume Flu System Site, a Low Volume System Site, or a Dormant System Site in accordance with paragraph 4 of this Tender Response Document.
<b>“System Users”</b>	means collectively and separately all System Admin Users and Secondary System Users.
<b>“Templates”</b>	<p>means the following templates and specifications used in delivering the Services (to the extent that they are created for the Authority by the Supplier under this Contract rather than an existing template owned by the Supplier or a third party and provided to the Authority):</p> <ul style="list-style-type: none"> <li>• templates for use within the System in order to facilitate information and data (including Personal Data) gathering for the purposes of the Project (including the underlying question set);</li> <li>• business rules and validations developed and agreed from time to time in delivering the Services; and</li> <li>• specifications provided by the Authority detailing it's requirements for reporting (from time to time) as part of the Services along with any templates created by the Supplier for the Authority in order to meet such specifications.</li> </ul>
<b>“Test Data”</b>	means any test data specifically created by the Supplier for the Authority after the Commencement Date in delivery of the Services under this Contract (but excluding any pre-existing test data or other test materials which shall remain the property of the Supplier (or its third party licensors)).
<b>“Third Party Materials”</b>	means any software or materials proprietary to third parties that have been incorporated into any Materials as notified by the Supplier to the Authority in writing.

<b>“Total Licence Fees”</b>	means the total Normal Volume Licence Fees, Normal Volume Flu Licence Fees and Low Volume Licence Fees (as defined in Schedule 6) chargeable by the Supplier for all System Sites in the relevant calendar month.
<b>“Unavailable”</b>	has the meaning of not Available.
<b>“Upload”</b>	means the upload of either one MV Spreadsheet or one set of PCN Spreadsheets into the System in order to set up the relevant Systems Sites and users within the System. <b>“Uploaded”</b> shall be construed accordingly.
<b>“User Group”</b>	has the meaning set out at paragraph 2.5 of this Tender Response Document.
<b>“Vaccination Event”</b>	means the full data capture in the System of an individual patient’s COVID-19 vaccination (whether first, second or booster) and, where relevant, co-administration of a COVID-19 vaccination with a flu vaccination, or at Normal Volume Flu System Sites only, a flu only vaccination. Where a patient receives both a COVID-19 vaccination and a flu vaccination this shall be counted as two Vaccination Events for the purposes of this Contract.
<b>“Week”</b>	means 7 Days starting on a Monday and finishing on a Sunday (inclusive).

## 2. Licence

- 2.1. Subject to the Authority’s obligations under this Tender Response Document, and in consideration of the Authority paying the Contract Price, the Supplier hereby grants to the Authority a non-exclusive, non-transferable licence for it and its System Admin Users and System Users to use the System at the System Sites for data entry purposes and to take the Services set out in this Contract during the Term and only in accordance with the terms and conditions of this Contract.
- 2.2. Subject to the Authority’s rights in respect of the Materials in accordance with paragraph 2.4 of this Tender Response Document, the Authority shall not and shall ensure that the System Users shall not:
  - 2.2.1. copy the System or merge or incorporate the System (or any part thereof) with or into any other software nor (subject to any rights under any applicable law that cannot be excluded) attempt to disassemble, decompile, modify, adapt or reverse engineer the System;
  - 2.2.2. translate, modify, lease, rent, assign, transfer, disclose, loan, redistribute, sub-lease, sub-license or create derivative works from any Solution;
  - 2.2.3. use the System in a manner which (in the Supplier’s reasonable opinion, acting in good faith) is excessive and/or puts any undue strain on the System. For the avoidance of doubt, the Authority’s use of the System in accordance with paragraph 2.6 of this Tender Response Document shall not be excessive or be deemed to put undue strain on the System; or
  - 2.2.4. use any Solution or any portion thereof as a component of or a base for products or services prepared for commercial sale, sublicense, lease, access or distribution.
- 2.3. Save in respect of the Materials (governed by paragraph 2.4 of this Tender Response Document), the Supplier shall retain all Intellectual Property Rights in the System, the Services

and any outputs which may be created in the provision of the Services (including through any Additional Services) as provided by the Supplier under this Contract. Specifically, the parties hereby agree and acknowledge that, the Materials shall always exclude, and the Authority shall not be entitled to, any Intellectual Property Rights in:

2.3.1. the System itself; and/or

2.3.2. any code/software created by the Supplier in delivering the Services under this Contract (including under any Additional Services Request),

which shall at all times remain the property of the Supplier (and/or its third party licensors).

2.4. The parties agree that the Authority shall retain all Intellectual Property Rights in the Materials. Subject to paragraph 2.3 of this Tender Response Document:

2.4.1. to the extent that any Intellectual Property Rights in the Materials vest in the Supplier then, the Supplier, subject to any third party rights in the Third Party Materials the Authority's obligations under this Tender Response Document, and upon payment of the Contract Price by the Authority (if any), hereby:

2.4.1.1. with full title guarantee, by way of present and future assignment, assigns such Intellectual Property Rights in the Materials it has (if any) to the Authority (subject to any third party rights in the Third Party Materials, if any);

2.4.1.2. to the extent that the same exist, waives all moral rights in respect of the use to be made of the Materials under this Contract to which the Supplier may now or at any future time be entitled under the Copyright, Designs and Patents Act 1988; and

2.4.1.3. agrees that clauses 10.1.6, 11.1 and 12 of Schedule 2 of this Contract applies in relation to the Materials (insofar as the same have been created by the Supplier under this Contract); and

2.4.2. the Authority hereby grants the Supplier a non-exclusive, sub-licensable, licence for it and its Affiliates to use the Materials as necessary in order to properly provide the Services and otherwise fulfil its obligations under this Contract and/or to other NHS organisations or primary care providers (providing that the Supplier shall not be entitled to charge such parties for a licence to use the Materials).

2.5. Not Used

2.6. The parties agree and acknowledge that the System has a limited capacity and overloading it may cause Incidents (including reduced functionality or outages). As such, the Authority agrees that it shall comply with the restrictions set out below. The Authority shall not:

2.6.1. have more than 500 active (i.e. that are recording new, or editing existing, Vaccination Events) System Sites operating / hosted in any single Region at any time save that, at the Authority's written request, this may be increased for any particular Region to up to 1000 System Sites with the agreement of the Supplier (not to be unreasonably withheld or delayed);

2.6.2. have more than 50,000 System Users operating / hosted in any single Region at any time; and

2.6.3. subject to paragraph 2.6A below, process Vaccination Events and/or Amendment Events through the System across all System Sites above the following maximum usage restrictions:

2.6.3.1. no more than [REDACTED] Vaccination Events and [REDACTED] Amendment Events per Region in any one Hour;

2.6.3.2. no more than [REDACTED] Vaccination Events and [REDACTED] Amendment Events per Region in any one Day; and

2.6.3.3. no more than [REDACTED] Vaccination Events and [REDACTED] Amendment Events per Region in any one Week.

For the avoidance of doubt, the parties agree that the limitations on Vaccination Events and/or Amendment Events contained within this paragraph 2.6.3 apply individually to each Region and the Authority will not be able to aggregate Vaccination Events and/or Amendment Events across all active Regions (for example putting [REDACTED] Vaccination Events through Region 2 but only [REDACTED] through Region 3 and [REDACTED] through Region 4 in any one hour. Region 2 would breach the limits set out above in this instance).

2.6A. The parties agree and acknowledge that in the event that Vaccination Events and Amendment Events are being processed within the Stability Risk Zone the Supplier cannot guarantee that the System or relevant Region will work as intended and therefore shall not be held to be in breach of this Contract and any associated impact on Availability and/or any Incidents that occur as a consequence shall not give rise to any Service Credits.

2.7. The parties agree and acknowledge that the Supplier shall not be liable to the Authority under this Contract in the event that the Authority's breach of paragraph 2.6 of this Tender Response Document causes any Incident(s) (including System outages) or otherwise prevents the Supplier from fulfilling its obligations under this Contract. For Incidents caused by the Authority's breach of paragraph 2.6 of this Tender Response Document, the Supplier shall:

2.7.1. in respect of Priority 1 and Priority 2 Incidents, respond and resolve such Incidents in accordance with paragraph 5 of this Tender Response Document and shall be entitled to charge for time spent resolving such Incidents in accordance with the Supplier's day rates set out in paragraph 1.3 of Schedule 6; or

2.7.2. in respect of Priority 3 and 4 Incidents, notify the Incidents to the Authority and agree with the Authority a plan to resolve any such Incidents along with any associated charges (in accordance with the Supplier's day rates set out in paragraph 1.3 of Schedule 6) before undertaking any work to resolve such Incidents; and

2.7.3. in each case, subject always to the Supplier using its reasonable endeavours to mitigate and minimize the cost insofar as reasonably practicable.

2.8. The Supplier acknowledges that the Authority may need to increase the permitted number of Vaccination Events. If the Supplier is able to increase the number of permitted Vaccination Events without incurring additional cost or risk to the System or Services, it will provide this to the Authority without any increase to the Contract Price. However, if the increase in permitted Vaccination Events requires a change to the specification (i.e. additional infrastructure or support), then the parties agree to deal with this in accordance with paragraph 8 of this Tender Response Document.

2.9. The Authority will test the System, and Services to demonstrate that it meets the Project specification (described in Annex 1) and any variations agreed in writing between the parties during development. The Authority agrees and acknowledges that as at the date of this acceptance, the System and Services conforms with the specification of the Project. In the event that any issues of non-conformity arise within the first 20 Business Days of acceptance of the System, Services and variations, the Authority shall be entitled to raise these issues to the Supplier and the Supplier shall resolve such issues without any changes to the Contract Price.



### 3. System Users

3.1. The Supplier shall provide each System Admin User with a username, password, and six-lettered security code allowing access to the System via their own internet or HSCN connection.

3.2. The Authority shall:

- 3.2.1. ensure that System User log-in details are kept confidential and secure and prevent any unauthorised access to the System;
- 3.2.2. be responsible (via its System Admin Users and/or help desk) for issuing log-in details to Secondary System Users and providing password re-sets / new details where a Secondary System User loses / forgets its log-in details;
- 3.2.3. be responsible for the actions and omissions of the System Users;
- 3.2.4. unless specifically provided by the Supplier, make all arrangements necessary for the Authority and the System Users to access the System (including, having access to an internet connection and an appropriate browser);
- 3.2.5. ensure that no viruses, Trojan horses, worms, logic bombs or other material which is malicious or technologically harmful are knowingly introduced by the Authority or the System Users; and
- 3.2.6. ensure the accuracy of the information inputted into the System by the System Users.

### 4. Services

#### Provisioning

4.1. The Supplier shall:

- 4.1.1. build the Authority's requirements and Templates within the System to the specification of the Project;
- 4.1.2. provide set up, installation and decommissioning services for the System Sites specified by the Customer (including the provision of System Admin User log-in details and System User documentation) at times and dates to be agreed between the Authority and the Supplier (acting reasonably);
- 4.1.3. provide the Authority with relevant troubleshooting and support materials to assist with triage of issues and incidents;
- 4.1.4. provide Additional Services in accordance with paragraph 8 of this Tender Response Document ; and
- 4.1.5. in the event that the Authority or any of its System Users encounter any problems or issues during provisioning, the Authority will deal with these in accordance with paragraph 5 of this Tender Response Document.

#### The System as a Service, Service Audit and Entry Reporting

4.2. Service data, Personal Data, and special category Personal Data will be collected by the System based on the information inputted by the System Users using the Templates. Relevant information to record the vaccinations that have been delivered by the Project shall, as agreed with the Authority for the Project, be sent by the System automatically to:

- 4.2.1. DPS; and
- 4.2.2. the relevant patient's GP or the DPS if that is requested by the Authority for periods which may be amended from time to time.

#### Data Extract

- 4.3. A file extract will be generated in accordance with the Data Specification and sent to the Authority (or approved nominee) in line with the frequency detailed in Annex 2. The file will contain adverse reaction information relating to coronavirus vaccinations administered by the Authority at the System Sites. The Supplier shall ensure that it uses and continues to use the APIs listed here: <https://digital.nhs.uk/developer/api-catalogue/vaccination> (active as at the date of this Contract, specified on the website as the version 'Last edited: 7 January 2022 2:00pm') to provide relevant reports and data extracts under this Contract.

#### System Sites

- 4.4. The Authority shall be entitled to add or remove System Sites by providing the Supplier with relevant Spreadsheets providing always that the Authority complies with the restrictions set out in paragraph 2.6 of this Tender Response Document. In the event that the Authority wishes to have additional active System Sites beyond such restrictions, additional Regions may be required and the parties agree to follow the process set out in paragraph 8 of this Tender Response Document.
- 4.5. In accordance with paragraphs 4.6 to 4.9, the Supplier will set up and activate each new System Site. The Supplier shall then deliver the corresponding set up and installation services.
- 4.6. Subject to the relevant Spreadsheet being correct, having the required and appropriate information and being in the relevant form as set out at Annex 3:
  - 4.6.1. the Authority shall be entitled to provide the Supplier with up to 4 Spreadsheets for Upload on each Business Day in accordance with paragraph 4.7 of this Tender Response Document; and
  - 4.6.2. the Supplier shall ensure that each Spreadsheet is Uploaded by the end of Service Hours on the next Business Days following receipt.
- 4.7. The parties agree that:
  - 4.7.1. an MV Spreadsheet must be used for any mass vaccination System Sites, PCN Spreadsheets must be used for any other System Sites;
  - 4.7.2. each MV Spreadsheet can include a maximum of 12 System Sites with no cap on System Users (other than as set out in paragraph 2.3 of this Tender Response Document);
  - 4.7.3. each set of PCN Spreadsheets can include a maximum of 25 System Sites with no cap on System Users (other than as set out in paragraph 2.5 of this Tender Response Document); the Authority can, if it would prefer, reduce the number of Spreadsheets sent to the Supplier on a Business Day providing that any amalgamated Spreadsheets comply with the rules and caps set out in this paragraph 4.7 of this Tender Response Document (i.e. the Authority could provide one MV Spreadsheet with 14 System Sites and one set of PCN Spreadsheets with 50 System Sites); and
  - 4.7.4. the Authority must provide at least one Admin System User for each new System Site.



4.8. Without prejudice to the above:

- 4.8.1. upon reasonable request from the Authority, the Supplier will use its reasonable endeavours, and subject to it having capacity to do so, to Upload additional Spreadsheets and/or Spreadsheets with more than the aforementioned cap on System Site numbers; however
- 4.8.2. without prejudice to the Suppliers other rights under this Contract, in the event that the Authority repeatedly breaches the terms of paragraphs 4.6 and/or 4.7 of this Tender Response Document (including the submission of excessive numbers of spreadsheets and/or incorrect spreadsheets):
  - 4.8.2.1. the Supplier shall notify the Authority and the parties shall work together to agree how the Authority can resolve the breaches and agree any associated additional costs;
  - 4.8.2.2. the Supplier shall not be obliged to Upload any Spreadsheets beyond those limits set out above (unless agreed otherwise by the Supplier); and
  - 4.8.2.3. in the event that the Authority continues to repeatedly breach paragraphs 4.6 and/or 4.7 after notification and/or agreement for resolution in accordance with paragraph 4.8.2.1, this shall be deemed as being unreasonable and the Supplier shall be entitled to charge the Authority for any associated costs in excess of the agreed System Site Setup costs incurred in dealing with these issues based upon its standard day rates as set out in paragraph 1.3 of Schedule 6.
- 4.9. In the event that any Upload Fails, the Supplier shall provide the Authority with a spreadsheet detailing the System Sites and/or users that have not uploaded to the System. Once any issue has been corrected, the Authority can re-submit any Failed Uploads in future Spreadsheets as set out above.
- 4.10. Subject to paragraphs 4.11 to 4.15 (inclusive) below, the Authority shall be responsible for deciding upon the System Site Designations. In this respect, the Authority shall:
  - 4.10.1. for any existing System Sites, confirm in writing to the Supplier the relevant System Site Designation for each System Site;
  - 4.10.2. for any new System Sites, confirm in the relevant Spreadsheet(s) whether a System Site is a Normal Volume System Site, Normal Volume Flu System Site, a Low Volume System Site or a Dormant System Site; and
  - 4.10.3. be entitled to amend any System Site Designation by giving the Supplier not less than 5 Business Days' written notice (including the provision of appropriate data evidence to support the change) before the end of the relevant calendar month, such change to come into effect in the following calendar month. In the event that the Supplier disputes any such designation or change, the parties agree to deal with such dispute in accordance with clause 22 of Schedule 2 of this Contract.
- 4.11. The parties agree that:
  - 4.11.1. the Authority can request the Supplier to enable the Flu Only Service within the System at a System Site(s) (therefore designating such site(s) as Normal Volume Flu System Site(s)) providing such System Site meets the following criteria:
    - 4.11.1.1. the System Site must be part of a primary care network (including associated GP practices). For the avoidance of doubt, pharmacies, Mass Vaccination Sites and any other System Sites that are not within a primary care network are prohibited

from providing the Flu Only Service under this Contract (and therefore prohibited from becoming a Normal Volume Flu System Site); and

- 4.11.1.2. the relevant System Site must take Services to deliver all types of Vaccination Events (whether it chooses to actually deliver COVID-19 vaccinations and/or co-administration COVID -19 and flu vaccinations or not);
  - 4.11.2. in the event that the Authority instructs the Supplier to enable the Flu Only Service at a qualifying System Site (as per paragraph 4.11.1 above), such System Site shall automatically be designated as a Normal Volume Flu System Site from the date such services are made available by the Supplier at that System Site; and
  - 4.11.3. the Authority shall not be entitled to amend the System Site Designation (in accordance with paragraph 4.10.3 or otherwise) for the Normal Volume Flu System Sites until such time that the Authority instructs the Supplier to remove the Flu Only Service from the relevant Normal Volume Flu System Site. Such re-designation cannot take place until the Flu Only Service has been disabled by the Supplier.
- 4.12. In the event that the Authority does not confirm the relevant System Site Designation for any System Site and paragraph 4.11 does not apply, the parties agree that the System Site shall remain, or be designated as, a Normal Volume System Site until such time that the Authority notifies the Supplier otherwise in accordance with paragraph 4.10.3.
- 4.13. The Supplier shall be entitled, but not obliged, to review the System Site Designations at the end of each Quarter. If, after such review:
- 4.13.1. any Low Volume System Sites or Normal Volume System Sites are providing Flu Only Services and have not, for whatever reason, been designated as a Normal Volume Flu System Site, the Supplier shall propose that the relevant System Site be re-designated as a Normal Volume Flu System Site;
  - 4.13.2. any Low Volume System Site has either got more than [REDACTED] registered System Users and/or has processed more than [REDACTED] Vaccination Events in the previous Quarter, then the Supplier shall propose that the relevant Low Volume System Site be re-designated as a Normal Volume System Site; or
  - 4.13.3. any Normal Volume System Site has processed less than [REDACTED] Vaccination Events in the previous Quarter, then the Supplier shall propose that the relevant Normal Volume System Site shall be re-designated as a Low Volume System Site (as instructed by the Authority and, in the case of a Low Volume System Site, providing it has less than [REDACTED] registered System Users); or
  - 4.13.4. the Authority and or any relevant System User has not complied with the Dormancy Rules at any Dormant System Site, then the Supplier shall propose that the relevant Dormant System Site shall be re-designated as either a Normal Volume System Site, Normal Volume Flu System Site, or Low Volume System Site (depending on the number of System Users and/or number or type of Vaccination Events being processed (if any)).
- 4.14. If the Supplier undertakes a review of the System Site Designations in accordance with paragraph 4.13 above:
- 4.14.1. the Supplier shall provide the Authority with a report of the review confirming any proposed changes to the System Site Designations and the reasons why;
  - 4.14.2. the Authority will review the report and confirm to the Supplier within 10 Business Days of receipt whether it approves the proposed changes and, if not, the reasons why;

- 4.14.3. the Authority agrees and acknowledges that any System Site delivering [REDACTED]
  - 4.14.4. the agreed re-designations shall be effective as at the end of the relevant Quarter reviewed; and
  - 4.14.5. in the event that the parties are unable to agree any changes to the System Site Designations, the parties agree to deal with such dispute in accordance with clause 22 of Schedule 2 of this Contract (for the avoidance of doubt any agreed re-designations shall be applied in accordance with paragraph 4.14.4 above while the disputed re-designations are progressed).
- 4.15. The parties agree that Normal Volume Licence Fees and Normal Volume Flu Licence Fees (as defined in Schedule 6) shall be payable for each block of [REDACTED] System Users (or part thereof) at each Normal Volume System Site or Normal Volume Flu System Site (each a "User Group"). i.e. if a Mass Vaccination Site (not delivering Flu Only Services) has [REDACTED] System Users that would equal [REDACTED] User Groups and therefore [REDACTED] Licence Fees would be payable for that Normal Volume System Site.

## 5. Support and Service Levels

### 5.1. Except as otherwise set out in this paragraph 5:

- 5.1.1. compliance with the timescales referred to in this paragraph 5 will be measured between the relevant Service Hours and the parties agree to 'stop the clock' outside of these Service Hours and during any period where an Incident or Service Request is On-Hold; and
- 5.1.2. any notification of an Incident sent by the Authority to the Supplier outside of the relevant Service Hours shall be deemed to have been received at the start of the next Service Hours period.

### 5.2. The Supplier shall not be liable to the Authority whatsoever in the event that it is prevented from performing all or any of its obligations under this paragraph 5 as a consequence of:

- 5.2.1. the Authority or any of its employees, agents or sub-contractor's actions or omissions or breach of this Contract; or
- 5.2.2. any failure on the Authority's part to provide the Supplier with such reasonable assistance as it may require in order to fulfil its obligations.

The parties agree to 'stop the clock' during any period that the Supplier is unable to fulfil its obligations under this paragraph 5 for the aforementioned reasons.

### 5.3. The Authority shall handle first line support for the System Users and use reasonable endeavours to investigate and resolve any Incident or other issue with the System or Templates in accordance with any training or troubleshooting materials provided by the Supplier to the Authority from time to time.

### 5.4. In the event that the Authority is unable to resolve any Incident with the System or Templates in accordance with paragraph 5.3 of this Tender Response Document, the Authority will raise any Incidents or other support queries that relate to the System and/or the Templates to the Supplier on the following basis:

- 5.4.1. during Core Hours: send the completed Incident Form via email to the following e-mail address [REDACTED] or and/or the Authority may raise a ticket via the Authority's service desk system (ServiceNow) as described in



paragraph 5.5 below (subject to agreed ways of working that may change by the agreement of the parties from time to time); or

- 5.4.2. during On-Call Hours and Out of Hours: telephone the following number [REDACTED] or such other number as designated by the Supplier to the Authority in writing from time to time with the information required in an Incident Form to hand for discussion with the Supplier's support agent; or

- 5.5. The Authority may choose to provide the Supplier with access to its service desk system (ServiceNow) and the parties may manage and exchange communications in relation to Incidents within that system. In the event that the parties do so, they agree that:

5.5.1.1. all Incidents must initially be raised to the Supplier in accordance with paragraph 5.4 and the 'clock' for the purposes of the Supplier's obligations under this paragraph 5 shall only start ticking once such notices are received by the Supplier;

5.5.1.2. any information accessed by the Supplier via the Authority's service desk and or its systems or any information inputted into the system by the Supplier shall be treated Confidential Information under this Contract; and

5.5.1.3. information contained in the system may be accessed by any person or organisation supporting the vaccination programme (as authorised by the Authority). The Authority shall ensure that it complies with its obligations under paragraph 1 of Schedule 3 of this Contract in respect of any disclosure of Confidential Information to such third parties.

- 5.6. When raising an Incident, the Authority shall designate the Severity Level it believes applies to the Incident (acting reasonably and in good faith). The Supplier shall then review the Incident and designated Severity Level and notify the Authority if it disagrees with the designation with reasons why. If there is no disagreement, the Supplier shall deal with the Incident in accordance with this paragraph 5. If the parties disagree on the Severity Level:

5.6.1. the parties shall use best endeavours to resolve the dispute as soon as possible and, where relevant, in accordance with clause 22 of this Contract; and

5.6.2. the Supplier shall deal with the Incident on the basis of the Severity Level originally designated by the Authority in accordance with this paragraph 5 until such dispute is resolved. This shall not be deemed to be acceptance of the Severity Level designated by the Authority.

- 5.7. The Supplier shall respond to any issue with the System or Templates raised by the Authority to the Supplier in accordance with the following service levels. For the avoidance of doubt, the Supplier answering a call during On-Call Hours or Out of Hours shall be deemed to be the Supplier providing the Authority with a response:

Severity Level	Target Response Time
1	Within 30 minutes during Service Hours and Out of Hours
2	Within 30 minutes during Service Hours and Out of Hours
3	Within 4 Core Hours
4	Within 16 Core Hours

5.8. The Supplier shall use its best endeavours to Resolve any Incidents in accordance with the following service levels:

Severity Level	Target Resolution Time
1	<ul style="list-style-type: none"> <li>• Within 2 Service Hours; or</li> <li>• if the Incident is raised by the Authority Out of Hours, by the start of the next Core Hour period providing always that the Supplier shall have at least 2 hours to target Resolution by.</li> </ul>
2	<ul style="list-style-type: none"> <li>• Within 4 Service Hours; or</li> <li>• if the Incident is raised by the Authority Out of Hours, by the start of the next Core Hour period providing always that the Supplier shall have at least 4 hours to target Resolution by.</li> </ul>
3	Within 20 Core Hours.
4	Within 80 Core Hours.

Where the Supplier requires further information in relation to an Incident from the Authority, the parties agree to 'stop the clock' until such time that the Supplier has received all of the required information in sufficient detail.

5.8A The parties agree that in the event Incidents are raised that effect Normal System Sites and Low Volume System Sites (or a combination thereof), the Supplier shall resolve such Incidents in the following order of precedence:

5.8A.1 Normal System Sites; and

5.8A.2 Low Volume System Sites.

5.8B The parties agree that paragraphs 5.6 and 5.7 above only apply to Incidents and not Service Requests. Where the Authority raises a Service Request in accordance with paragraph 5.4 above, the Supplier shall use its reasonable endeavours to resolve any such Service Requests as soon as reasonably practicable taking into account the subject matter and urgency of the Service Request and the number of live Incidents and Service Requests being dealt with at that time.

5.9. The Supplier shall ensure that the System is Available no less than 99.9% within Service Hours in each calendar month of the Term. The parties agree that periods of Unavailability shall be measured from the point at which the Supplier was made aware of, or should reasonably have been aware of, the Unavailability.

5.10. In the event that the System is unavailable for whatever reason, the Supplier shall treat this as a Severity 1 Incident and Resolve it in accordance with the terms of this Tender Response Document with no data loss.

5.11. The Supplier shall provide the Authority with monthly reports summarising service performance for the month. Initially these reports shall detail Incidents raised by the Authority, response and Resolution times, Problems raised in accordance with paragraph 5.13 of this Tender Response Document and any other information agreed between the parties subject to the following:

5.11.1. for as long as the parties use the Authority's service desk system (ServiceNow), the Authority shall ensure that the Supplier's employees have sufficient access and user rights to run the relevant reports within the Authority's system. The Supplier shall

have no liability to the Authority and shall not be in breach of this paragraph 5.11 in the event that such access and/or rights are not provided to the Supplier;

- 5.11.2. the Supplier shall only provide a monthly report on Problems if any Problems have actually been raised in the relevant month in accordance with paragraph 5.13 of this Tender Response Document *or if there are any Problems with open actions or mitigations that are the responsibility of the Supplier to work on and deliver; and*
  - 5.11.3. the parties shall agree an implementation plan to extend these monthly reports to include details of Incidents and their resolutions, response and Resolution times, open Problems, changes and releases delivered to live, and continual service improvement plans and activities agreed with the Authority or undertaken independently by the Supplier, plus any other information agreed between the parties. This implementation plan will include changes to ways of working including delivery of the required reports through self-service reporting where agreed between the parties.
- 5.12. Without prejudice to the Suppliers other rights under this Contract, in the event that the Authority repeatedly breaches its obligations under paragraph 5.3 of this Tender Response Document including the Supplier receiving support queries direct from System Users then:
- 5.12.1. the Supplier shall notify the Authority and the parties shall work together to agree how the Authority can resolve the breaches and agree any associated additional costs; and
  - 5.12.2. in the event that the Authority continues to repeatedly breach paragraph 5.3 after notification and/or agreement for resolution in accordance with paragraph 5.12.1, this shall be deemed as being unreasonable and the Supplier shall be entitled to charge the Authority for any associated costs, in excess of the agreed System Site support costs incurred, in dealing with these issues based upon its standard day rates as set out in paragraph 1.3 of Schedule 6 (subject always to the Supplier using its reasonable endeavours to mitigate and minimize the cost insofar as reasonably practicable).
- 5.13. In the event of a Severity Level 1 or Severity Level 2 Incident occurring then, within 2 Business Days of the Incident being Resolved, the Supplier shall create a Problem record in relation to the underlying issues that caused the relevant Incident. The Supplier shall thereafter use its best endeavours to fix or Mitigate the Problem (if a workaround is available) within:
- 5.13.1. Severity Level 1 Incidents: 30 days of the Incident being Resolved; or
  - 5.13.2. Severity Level 2 Incidents: 60 days of the Incident being Resolved.
- 5.14. Subject to paragraph 5.15 below, the Supplier shall use reasonable endeavours to ensure the response time for the end to end processing of synchronous System calls made by System Users within Service Hours and within the boundaries of the Supplier's data centre will be:
- 5.14.1. within 60 seconds 98% of the time; and
  - 5.14.2. within 120 seconds 99.5% of the time.
- 5.15. The parties agree that any failures to achieve the relevant response times set out in paragraph 5.14 shall not count towards, or be included for the purposes of, assessing whether the Supplier is in compliance with paragraph 5.14 in the event that such failure is caused by:
- 5.15.1. connectivity (including internet connections) issues at any System Site(s);



- 5.15.2. issues with any hardware or software (but excluding the System) being used by any System Site(s);
- 5.15.3. issues caused by the actions, omissions or user error of any System Users when using the System not in accordance with the terms of this Contract;
- 5.15.4. any asynchronous System calls (e.g. background processes); and/or
- 5.15.5. any Planned Maintenance.
- 5.16. The Supplier shall ensure that it puts into place and thereafter maintains an appropriate business continuity and disaster recovery plan in the event that the System were ever to stop working and provide to the Authority. Such plan shall accommodate the following objectives:
- 5.16.1. RPO: None; and
- 5.16.2. RTO: Within 4 Service Hours.
- 5.17. In the event that the Supplier fails to meet the following obligations under this Contract, without prejudice to the Authority's other rights under this Contract, the Authority shall be entitled to require that the Supplier undertakes the relevant remedial action and / or shall be entitled to claim the corresponding service credits:

Obligation No.	Supplier Obligation	Remedial Action / Service Credits
1	Availability 99.5% or above and below 99.9% in any one calendar month	Within 10 Business Days from the request by the Authority, the Supplier shall undertake a root cause analysis and provide the Authority with a mitigation plan.
2	Availability below 99.5% in any one calendar month	Within 10 Business Days from request by the Authority, the Supplier shall undertake a root cause analysis and provide the Authority with a mitigation plan; and  Service Credits equal to [REDACTED] of the Availability Licence Fees may be demanded by the Authority.
3	In any one calendar month if the Supplier fails to comply with one or more of the following requirements: <ul style="list-style-type: none"> <li>Resolution time for any Severity 1 Incident above 2 Service Hours; and</li> <li>Resolution time for any Severity 2 Incident above 4 Service Hours.</li> </ul>	The Supplier will raise and seek to fix / mitigate a Problem in accordance with paragraph 5.13 of this Tender Response Document.

4	In any one calendar month if the Supplier fails to comply with one or more of the following requirements: <ul style="list-style-type: none"> <li>Resolution time for any Severity 1 Incident above 4 Service Hours; and/or</li> <li>Resolution time for any Severity 2 Incident above 8 Service Hours.</li> </ul>	Service Credits equal to <span style="background-color: black; color: black;">[REDACTED]</span> of the Total Licence Fees may be demanded by the Authority.
5	In any one calendar month if the Supplier fails to comply with one or more of the following requirements: <ul style="list-style-type: none"> <li>Resolution time for any Severity 1 Incident above 6 Service Hours; and</li> <li>Resolution time for any Severity 2 Incident above 12 Service Hours.</li> </ul>	Service Credits equal to <span style="background-color: black; color: black;">[REDACTED]</span> of the Total Licence Fees may be demanded by the Authority.
6	Paragraph 5.14 is breached by the Supplier	Improvement plan may be requested by the Authority.

5.18. In the event that any service credits are payable by the Supplier to the Authority in accordance with paragraph 5.17 above, the Supplier shall either:

- 5.18.1. set-off such monies against charges payable by the Authority to the Supplier under this Contract by way of a deduction/credit on the next invoice the Supplier raises; or
- 5.18.2. at the Authority's written request, make payment of such amounts to the Authority within 30 days of the Authority's written request.

5.19. The parties agree that:

- 5.19.1. subject to paragraph 5.19.2 below, the Authority shall be entitled to demand Service Credits in accordance with paragraph 5.17 above for both:
  - 5.19.1.1. an Availability Breach; and/or
  - 5.19.1.2. an Incident Resolution Breach (save that in the event that the Supplier breaches both Supplier Obligations number 4 and number 5 in a given month, only the Service Credits for Supplier Obligation number 5 shall be demandable and the Services Credits won't be added together); and
- 5.19.2. the total service credits payable by the Supplier to the Authority in accordance with paragraph 5.17 above in any given calendar month shall not exceed [REDACTED] of the Total Licence Fees.

5.20. In the event that the parties dispute whether a Supplier obligation set out in paragraph 5.17 has or has not been breached and/or whether the Supplier has complied with its remedial obligations the parties shall settle such dispute in accordance with clause 22 of Schedule 2 of this Contract.

## 6. Infrastructure and Regions

6.1. In order to support the number of Vaccination Events required by the Authority, the Supplier will provide 8 Regions by way of hosting infrastructure which can be scaled up or reduced down in accordance with this paragraph 6. The Supplier confirms that each Region is able to support the volumes of Vaccination Events described in paragraph 2.6.

6.2. The parties agree and acknowledge that any Region may, at the written instruction of the Authority, no longer be used to actively process Vaccination Events but may still be required by the Authority to remain online and accessible for the purposes of retrieving historic vaccination data. In such circumstances the parties agree that no Licence Fees (as defined in Schedule 6) will be payable in relation to such Regions from the date of the last Vaccination Event to be processed in that Region (providing it is not used at any time to process new Vaccination Events in which case Licences Fees shall be payable from when the Vaccination Events re-start being processed). All other relevant fees (including the Hosting Infrastructure Fee (as defined in Schedule 6)) shall remain payable in accordance with Schedule 6.

6.3. Subject to the Authority paying the relevant decommissioning fee in accordance with Schedule 6 and the provisions of paragraph 6.4 of this Tender Response Document, the Authority may request that any or all of the Regions are decommissioned by giving the Supplier not less than 30 days' written notice. Once the notice has been received by the Supplier, the parties agree to work together to ensure that the following minimum requirements are met:

- 6.3.1. all Systems Sites hosted in the relevant Region must cease to be 'live' or 'active';
- 6.3.2. all services being provided to the relevant Systems Sites will cease at times and dates to be agreed by the parties; and
- 6.3.3. the Region will be decommissioned the data held thereafter in accordance with appropriate data retention principles. Should the Authority require an extract of the data from a Region (before or after decommissioning) or require that a Region is made dormant rather than decommissioned (i.e. is still accessible to the Authority but is not processing Vaccination Events) then such services shall be agreed in accordance with paragraph 8, or, if this Contract has expired or has been terminated, in accordance with such other contract as the parties may agree.

Thereafter, the Supplier shall undertake such further actions as are necessary to decommission the Region (if any).

6.4. The Authority agrees that:

- 6.4.1. it is responsible for managing the number of System Sites hosted in each of the Regions and ensuring that the restrictions set out in paragraph 2.6 of this Tender Response Document are adhered to in order to appropriately manage the load being put onto each Region;
- 6.4.2. any migrations of System Sites from one Region to another Region will only be undertaken by the Supplier at the direction of the Authority and subject to the Additional Services procedure set out in paragraph 8 of this Tender Response Document;
- 6.4.3. any reduction in the number of Regions will reduce the number of Vaccination Events that the Supplier will be able to process under this Contract accordingly;
- 6.4.4. the Supplier shall be entitled to reject any request to decommission a Region or migrate any Systems Sties from one Region to another Region if, acting reasonably, it believes that such decommissioning could result in:
  - 6.4.4.1. instability in the System that may result in the Supplier being unable to fulfil its obligations under this Contract or that may impact other System users; or
  - 6.4.4.2. potential data loss or corruption within the System.

6.5. Without prejudice to paragraph 6.4 of this Tender Response Document, the Supplier shall use its reasonable endeavours to:

- 6.5.1. monitor the loads being placed on each Region by the relevant hosted System Sites and provide the Authority with regular reports on the same;
  - 6.5.2. notify the Authority as soon as reasonably practicable in the event that any or all Regions are being consistently overloaded by too many Vaccination Events (providing details of the same); and
  - 6.5.3. where relevant, make recommendations to the Authority as to how the loads could be better balanced across the Regions.
- 6.6. The Authority may request additional Regions from the Supplier in accordance with the Additional Services procedure set out in paragraph 8 of this Tender Response Document.

## **7. Agent**

- 7.1. The Authority hereby confirms to the Supplier that it has appointed NHSD as its agent and has authorised NHSD to act as Contract Manager through the post-contract award lifecycle. On behalf of the Authority NHSD will be entitled and empowered to do all of the following acts:
- 7.1.1. review and manage service performance, including agreeing and overseeing any service improvement activities required;
  - 7.1.2. conduct assurance activities;
  - 7.1.3. manage service, Incidents and contract risks;
  - 7.1.4. manage financial administration and invoice payment within the agreed contract value set out at paragraph 1.4 of Schedule 6;
  - 7.1.5. conduct contract reviews; and
  - 7.1.6. manage Additional Services requirements in accordance with the change control process set out in paragraph 8 of this Tender Response Document.
- 7.2. The Supplier shall be entitled to rely on all instructions, agreements or other acts done by NHSD in relation to the delegated responsibilities set out in paragraph 7.1 as if it were the Authority.
- 7.3. The Authority shall be liable to the Supplier, and remain responsible for, all acts and omission of NHSD in relation to the delegated responsibilities set out in paragraph 7.1.
- 7.4. The Authority will retain accountability for managing variations or extensions to this Contract and all other matters not provided for in paragraph 7.1.

## **8. Additional Services**

- 8.1. The parties agree and acknowledge that:
- 8.1.1. in order to meet the changing demands of the COVID-19 vaccination programme, regular updates and changes to the Project are required by the Authority that require the delivery of Additional Services by the Supplier to the Authority; and
  - 8.1.2. the Authority can request such Additional Services in accordance with the terms of this paragraph 8.
- 8.2. The parties acknowledge that the Authority is in the process of drafting the Change Management Process, which it intends, subject to agreement of the Supplier, to implement to

govern the process for ordering Additional Services under this Contract. Once the Authority has completed its final draft of the Change Management Process, it will provide it to the Supplier for review and the parties shall, acting reasonably, seek to negotiate the terms of the Change Management Process. Once agreed and signed by the parties in writing, the parties agree that the Change Management Process will form part of this Contract and will govern the process for agreeing Additional Services in place of the process set out in paragraph 8.3 below.

8.3. Until the Change Management Process is agreed in accordance with paragraph 8.2 or, in the event that the parties are unable to agree the Change Management Process, the parties agree to use the following process in the event that the Authority requires Additional Services:

- 8.3.1. all requests for change to the System or Services being delivered under this Contract shall be managed via the Authority's technology and data portfolio management team;
- 8.3.2. all requests for Additional Services will be subject to assessment led by the Authority, including initial assessment of the estimated complexity, timescales and cost of the Additional Services required. The Supplier shall support this assessment process at times and dates to be reasonably agreed between the parties both parties acting reasonably and in good faith (each an **"Assessment"**);
- 8.3.3. following each Assessment, the Authority will provide the Supplier with confirmation in writing (including via email) of its Additional Service requirements (each an **"Additional Services Request"**) and the parties shall thereafter use their reasonable endeavours to agree Additional Services Requests within 5 Business Days of such notification by the Authority (except where alternative timescales have been agreed). Both parties shall act reasonably and in good faith (but noting, for the avoidance of doubt, that nothing in this Contract can require either party to enter into an Additional Services Request);
- 8.3.4. as part of the aforementioned process, the Supplier shall provide (including via email) the following information to the Authority in relation to each Additional Services Request:
  - 8.3.4.1. an estimate of the time needed to deliver Additional Services (based on agreed sizing, where relevant); and
  - 8.3.4.2. confirmation of any other non-time related one off or continuing fees or costs (for example if an additional Region is being created any hardware costs associated with the Additional Services); and
- 8.3.5. once agreed in writing by both parties, each Additional Services Request shall be binding on the parties and shall form part of, and be governed by the provisions of, this Contract.

8.4. The parties agree that the Supplier shall not:

- 8.4.1. undertake, nor be obliged to undertake any Additional Services until such time as an Additional Services Request has been agreed in accordance with this paragraph 8 (unless such services are requested in accordance with paragraph 8.7 of this Tender Response Document); and
- 8.4.2. be liable for any delay caused in delivering Additional Services or any impact on the Services / System due to time taken to go through this change control process.



8.5. Delivery of Additional Services shall be subject to the following acceptance process (unless otherwise agreed in any Additional Services Request):

- 8.5.1. the Supplier shall notify the Authority when each relevant part of the Additional Services is ready for review / testing;
- 8.5.2. the Supplier shall thereafter either provide the relevant part of the Additional Services to the Authority for review and/or the parties will conduct acceptance tests at times and dates to be agreed by the parties (acting reasonably);
- 8.5.3. the relevant part of the Additional Services shall then be deemed to have been "Accepted" on the earlier of: (i) confirmation in writing from the Authority of approval / acceptance in respect of the relevant Additional Services; or (ii) the expiry of 20 Business Days after the delivery of the Additional Service to the Authority or completion of all the acceptance tests (as per paragraph 8.5.2); and
- 8.5.4. if the Authority reasonably determines that any Additional Services do not materially meet the agreed specification, the Authority shall notify the Supplier giving details of such failure(s). The Supplier shall then remedy the defects and/or deficiencies and the relevant test(s) shall be repeated within a reasonable time
- 8.5.5. In the event that any issues of non-conformity arise within the first 20 Business Days of acceptance of the System, Services and variations, the Authority shall be entitled to raise these issues to the Supplier and the Supplier shall resolve such issues without any additional charges being payable by the Authority.

8.6. The parties may amend the specification, sizing, timing etc. for any Additional Services at any time by following the process set out in paragraph 8.2 or 8.3 (as appropriate) of this Tender Response Document.

8.7. In the event that the Authority requests the Supplier to undertake emergency Additional Services then, subject to the Supplier agreeing to undertake the Additional Services (such agreement not to be unreasonably withheld or delayed) the parties agree that:

- 8.7.1. the Supplier will use its reasonable endeavours to deliver such Additional Services as quickly as possible/in accordance with agreed timelines;
- 8.7.2. the Supplier shall be entitled to charge for such Additional Services on a time and materials basis in accordance with the Supplier's day rates set out at paragraph 1.3 of Schedule 6 below (regardless of whether the Additional Services Budget would be exceeded or not);
- 8.7.3. the process set out in paragraph 8.2 or 8.3 (as appropriate) shall not be required/apply; and
- 8.7.4. at the request of the Authority, the parties shall work together to put retrospective documentation of the emergency Additional Services in place (strictly on the proviso that this shall not be a prerequisite or condition for payment of the charges payable in accordance with paragraph 8.7.2).

8.8. The parties agree that all Additional Services will be provided by the Supplier to the Authority:

- 8.8.1. on a time and materials basis (in accordance with the Supplier's day rates set out at paragraph 1.3 of Schedule 6 below) or applying alternative commercial models as agreed between the parties; and /
- 8.8.2. in accordance with the per System Site set up and decommissioning costs set out in Schedule 6 below.



8.9. Without prejudice to paragraph 8.8 of this Tender Response Document, it is estimated, based upon the Authority's expected requirements between 1<sup>st</sup> April 2022 and 30<sup>th</sup> September, that the Authority will require Additional Services from the Supplier under this Contract in the value of £200,000 (the "**Additional Services Budget**"). As such the parties agree to:

- 8.9.1. keep the Authority's estimated spend (based on any sizing or time estimates provided in accordance with paragraph 8.2 or 8.3 (as appropriate) of this Tender Response Document) and actual spend (based on the fees for Additional Services calculated in accordance with Schedule 6 at the end of each month) under review against the Additional Services Budget;
- 8.9.2. hold monthly budget meetings at times and dates to be agreed by the parties (acting reasonably) to discuss the Additional Services and Additional Services Budget;
- 8.9.3. notify the other party as soon as practicable after it becomes aware that combination of estimated and actual spend during the period between 1<sup>st</sup> April 2002 and 30<sup>th</sup> September 2022 for Additional Services exceeds or is expected to exceed [REDACTED] of the Additional Services Budget; and
- 8.9.4. where necessary, agree any increase to the Additional Services Budget.

8.10. If any Additional Services Request cannot be agreed by the parties in accordance with this paragraph 8, then the parties shall:

- 8.10.1. continue to perform their respective obligations under this Contract as if Additional Services Request had not been made; and
- 8.10.2. if requested by the Authority, escalate the failure to agree in accordance with the levels set out in clause 5 of Schedule 1 of this Contract, to seek to find an agreeable way forward in respect of the relevant Additional Services Request (noting however, that nothing in this paragraph 8 shall oblige either party to enter into any Additional Services Request).

Schedule 5

Annex 1  
Project Specification



POC MVP - Flow  
and Requirements v as amended/updated by the following:

NHS Digital  
F

NHS Digital  
F

NHS Digital Exten  
A

NHS Digital

Magenta - T&

210330 Pinnacle S

D010.docx

Child\_Immunisation\_AFunctional+Spec+--+CNHS+Digital+COVID-  
ddendum\_v1.1+APPR linical+screening+que19+Vaccination+PoC+

NHS+Digital+daily+c  
inical+vaccination+ex

NHS+Digital+Daily+c  
linical+vaccination+sped+Attributes+Tech+nal+Spec+for+Additi

NHS+Digital+Extend

NHS+Digital+Functio  
nal+Specification+for

NHS+Digital+Functio

NHS+Digital+Functio

NHSDigitalFunctional technical-specificatio Vaccine+information  
SpecforCo-Admin+v1 n-for-poc-hourly-feed+for+suppliers+v2.1+

**Schedule 5****Annex 2****Data Specification**

Vaccination PoC  
Systems Data Specif

Report	Route	Frequency	Quantity	Notes
Vaccination Extraction	Backend	Once per day	1 per Region	Increasing to twice a day from w/c 26th April, potentially hourly in the future
Vaccination Adverse Events	Backend	Once per day	1 per Region	Increasing to twice a day from w/c 26th April, potentially hourly in the future
Vaccination Extended Attributes	Backend	Once per day	1 per Region	Increasing to twice a day from w/c 26th April, potentially hourly in the future
Vaccination Hourly	Backend	Once per day	1 per Region	
NotNotified Report	Backend	Once per day	1 per Region	
NotNotified Summary	Backend	Once per day	1 per Region	
Vaccination Site Readiness	AutoReport	Once per day	1 per Region	
NotNotified Summary	AutoReport	Once per day	1 per Region	Same as sent via MESH
Incomplete Vaccination Records	AutoReport	Once per day	1 per Region	
Patient Data Authorisations	AutoReport	Once per day	1 per Region	
BSA Reconciliation - Vaccinations	UserReport	On Demand	1 per Site	
BSA Reconciliation - Supplements	UserReport	On Demand	1 per Site	
BSA Reconciliation - Unified	UserReport	On Demand	1 per Site	
Activity Audit Report (NonPID)	UserReport	On Demand	1 per Site	
Activity Audit Report (PID)	UserReport	On Demand	1 per Site	Where user authorised

Vaccination History (NonPID)	UserReport	On Demand	1 per Site	
Vaccination History (PID)	UserReport	On Demand	1 per Site	Where user authorised
Regional BSA Reconciliation	Backend	On the 1 <sup>st</sup> and 9 <sup>th</sup> of each calendar month	1 per Region	Currently assembled by hand but automated once schedule allows
GP Notification: FHIR+MESH falling back to NHSMail falling back to NoNotification	Backend	Per Vaccs	Per Vaccs	
NHS BSA: Claim when Given and supplement categorisation	Backend	Per Vaccs	Per Vaccs	
Email to patient with details of their vaccination (the MHRA letter)	Backend	Per Vaccs	Per Vaccs	

### **Annex 3**

#### **Part A**



Mass Site upload  
example.xlsx

#### **Part B**



Provider Site Set Up PCN  
- PCN.xlsx



Provider - User  
Set Up.xlsx

**Schedule 6****Commercial Schedule****1. Contract Price**

- 1.1. In consideration of the Supplier providing the Services to the Authority, the Authority shall pay the Supplier the following fees:

<b>Fee Definition</b>	<b>Fee Description</b>	<b>Fee (£)</b>	<b>Frequency</b>
<b>“Low Volume Licence Fee”</b>	System (as defined in the Tender Response Document) license, maintenance, support and reporting fee for Low Volume System Sites.		Per month per Low Volume System Site payable from 1 April 2022 and subject to the provisions of paragraph 1.6 of this Schedule 6
<b>“Dormant Licence Fee”</b>	System (as defined in the Tender Response Document) license, maintenance, support and reporting fee for Dormant System Sites.		Per month per Dormant System Site payable from 1 April 2022 and subject to the provisions of paragraph 1.6 of this Schedule 6
<b>“Normal Volume Licence Fee”</b>	System (as defined in the Tender Response Document) license, maintenance, support and reporting fee for Normal Volume System Sites.		Per month per Normal Volume System Site (fee applies to each User Group) payable from the 1 April 2022 and subject to the provisions of paragraph 1.6 of this Schedule 6
<b>“Normal Volume Flu Licence Fee”</b> (and together with the Normal Volume Licence Fee, the Low Volume Licence Fee and the Dormant Licence Fee, the “Licence Fees”)	System (as defined in the Tender Response Document) license, maintenance, support and reporting fee for Normal Volume Flu System Sites.		Per month per Normal Volume Flu System Site (fee applies to each User Group) payable from 1 April 2022 and subject to the provisions of paragraph 1.6 of this Schedule 6
<b>“Training Fee”</b>	Training development fee		One off payment
<b>“Hosting Set-up Fee”</b>	Hosting set up fee		One off payment
<b>“Hosting Infrastructure Fee”</b>	Hosting infrastructure and maintenance fee payable per Region		Per Region per month from 1 April 2022 until each Region has been fully decommissioned in accordance with paragraph 6 of the Tender Response Document



<b>"Region Set-Up Fee"</b>	New Region set-up fee		One off payment (per new Region requested) subject to the assumptions set out in paragraph 1.5 of this Schedule 6
<b>"Site Fee"</b>	System Site (as defined in the Tender Response Document) set up fee		One off charge per System Site set up by the Supplier.
<b>"Site Decommission Fee"</b>	Decommissioning of the Services at any System Site		One off charge per System Site decommissioned by the Supplier.
<b>"Infrastructure Decommission Fee"</b>	Decommission of the System and Service		One off fee payable in respect of each Region decommissioned

- 1.2. The fees set out in this Schedule 6 are strictly for the provision of the Services as set out in the Tender Response Document including, for the avoidance of doubt, provision of support in accordance with paragraph 5 of Schedule 5. The parties agree and acknowledge that if the specification of the Project (as defined in the Tender Response Document) or Services required by the Authority changes this may be subject to additional fees to be agreed in accordance with the change management procedure in clause 21 of this Contract or the provisions of paragraph 8 of the Tender Response Document (as appropriate).
- 1.3. In accordance with the provisions of paragraph 8 of the Tender Response Document, the Authority shall be able to purchase Additional Services from the Supplier on a time and materials basis at the following day rates ("**Additional Services Fees**"):

Grade	Grade Description	Strategy & Architecture	Business Change	Solution Design & Implementation	Service Management	Client Interface
1						
2						
3						
4						
5						
6						
7						

- 1.3.1. For the purposes of this paragraph 1.3:

1.3.1.1. the Additional Services Fees day rates are consistent with the "EMIS IT Futures Rate Card for Public Sector" in place at the time of contract signature; and

1.3.1.2. all amounts are exclusive of VAT.

- 1.4. The parties agree and acknowledge that the total cost of the Services and Additional Services provided under this Contract from the 1 April 2022 up to the date of 30 September 2022 will not exceed a sum of [REDACTED] + VAT based on the following assumptions:

- 1.4.1. the Authority does not require or request Additional Services from the Supplier in excess of the Additional Services Budget;
- 1.4.2. the Authority does not exceed the restrictions set out in paragraph 2.6 of Schedule 5;
- 1.4.3. the number of Regions do not exceed 12;
- 1.4.4. no additional fees or charges become payable as a consequence of any breach of this Contract by the Authority; and
- 1.4.5. no System Sites are decommissioned and then replaced with new System Sites set up in their place (the parties acknowledging that it is impossible to provision for Site Fees and Site Decommissioning Fees if the Authority changes the System Sites on this basis while staying below the System Site limit).

In acknowledgement of the uncertainties surrounding the COVID-19, the parties agree to keep the cap set out in this paragraph 1.4 under review at the monthly review meetings and amend and update the amount if necessary. The Authority in any event agrees and acknowledges that the Supplier shall be entitled to be paid for Services it delivers in accordance with the terms of this Contract notwithstanding the cap

- 1.5. The fixed Region set-up fee is subject to the below assumptions. In the event that any of the assumptions are incorrect, then additional charges may apply. Any request for a new Region shall be considered a request for Additional Services and the parties shall therefore follow the process set out in paragraph 8 of the Tender Response Document:
  - 1.5.1. the Region requirements are to the technical specification set out in the definition of Region (as may have been updated from time to time);
  - 1.5.2. the Region is only be required to work within the restrictions set out in paragraph 2.6 of the Tender Response Document;
  - 1.5.3. the Supplier shall use its reasonable endeavours to set up the Region within a 2 week period from the date upon which the Additional Services Request is agreed (unless otherwise agreed by the parties); and
  - 1.5.4. the Supplier is only required to set up 1 new Region at a time.
- 1.6. The Parties will review the number of Service Requests and/or Incidents being raised by the Authority. In the event that the number of Service Requests and/or Incidents being raised by the Authority to the Supplier materially reduces or increases at any time, the parties agree, acting reasonably and in good faith, to meet (at a time and date to be agree by the parties) to review the Licence Fees and consider whether any reduction or increase should be made. Any agreed change must be documented in writing and signed by both parties.

## 2. Payment Arrangements

- 2.1. Subject to paragraph 2.2 of this Schedule 6, at the end of each calendar month of the Term or at the expiry or termination of this Contract (as relevant), the Supplier shall prepare a fee report (the "**Fee Report**") which details:
  - 2.1.1. the number of System Sites set-up during that month (if any) and the date the System Sites were set-up (which shall be the date from which the Licence Fees are payable in relation to the relevant System Site(s));
  - 2.1.2. the amount of Site Fees payable in relation to the System Site(s) set up during the month;

- 2.1.3. the amount of Licence Fees payable for that month (calculated on a pro-rated basis for any Systems Site(s) set up or decommissioned during that month);
- 2.1.4. any Region Set-Up Fees payable for that month;
- 2.1.5. the number of System Site(s) decommissioned during that month (if any);
- 2.1.6. the amount of Site Decommission Fees payable for that month (which, upon expiry or termination of this Contract, shall be for each System Sites active at the time of expiry / termination);
- 2.1.7. any Additional Services Fees payable for that month (based on the time actually incurred by the Supplier);
- 2.1.8. the Hosting Infrastructure Fees; and
- 2.1.9. any Infrastructure Decommissioning Fees (if relevant) for that month.

The Supplier shall send the Fee Report to the Authority and raise an invoice for the amount set out therein. In the event that the Authority raises a query in relation to the Fee Report and/or associated invoice, the parties shall follow the procedure set out in clause 9.5 of Schedule 2 of this Contract.

The Authority shall pay such invoices in accordance with clause 9.5 of Schedule 2

2.2. The parties agree that:

- 2.2.1. the various fees set out in paragraph 2.1 of this Schedule 6 are all payable in arrears;
- 2.2.2. the Licence Fees will be calculated based on the number of System Sites active each month; and
- 2.2.3. there is no minimum committed volume of active System Sites or minimum period that a System Site has to be active (but Site Fees, Site Decommissioning Fees and Infrastructure Decommissioning Fees are payable regardless of how long or short a period a System Site/Region is active).