

DATED 27<sup>th</sup> May 2022

(1) PUBLIC HEALTH ENGLAND - NORTH WEST (THE “AUTHORITY”)

- and –

(2) DH OPCO UK LTD (THE “SUPPLIER”)

CALL OFF CONTRACT  
relating to the provision of Healthcare  
Clinical Information System services

## Overview of Call off Contract

### Terms and Conditions of the Call off Contract

Section A: Order Form

Section B: Core Terms and Conditions

Section C: Optional Terms and conditions

Section D: Defined Terms

### Schedules to Call off Contract

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Schedule A2: Supplier Tender Response

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Schedule B2. Formal Instruction Process

Schedule B3. Implementation Plan

Schedule B4. Standards

Schedule B5. Authority Responsibilities

Schedule B6. Change Control Procedure

Schedule B7. Dispute Resolution Procedure

Schedule B8. Exit Management

Schedule B9. Security Requirements and Plan

Schedule B10. Testing Procedures

Schedule B11. Governance

Schedule B12. Staff Transfer on Service Provision Change

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Schedule B14. Business Continuity and Disaster Recovery Plan

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Schedule B16. Service Levels and Performance Monitoring

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Schedule C2. Not Used

Schedule C3. Not Used

## ORDER FORM

THIS ORDER FORM SHALL REMAIN SUBJECT TO CONTRACT UNLESS AND UNTIL DULY EXECUTED BY THE PARTIES HERETO.



Fully signed SBS  
Order Form - iLAB TP

CALL OFF CONTRACT  
relating to the provision of Healthcare  
Clinical Information System services

Section B :  
Core Terms

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## 1. DEFINITIONS AND INTERPRETATION

1.1 In this Call off Contract, the definitions set out in Section D shall apply.

1.2 In this Call off Contract, unless the context otherwise requires:

1.2.1 the singular includes the plural and vice versa;

1.2.2 reference to a gender includes the other gender and the neuter;

1.2.3 reference to a statute, enactment, order or regulation shall include reference to that statute, enactment, order or regulation as from time to time amended or to any statute, enactment, order or regulation from time to time replacing, extending, consolidating or amending the same. The impact of any such amendment, replacement, extension or consolidation on this Call off Contract shall be dealt with in accordance with clause 48 (Change in Law);

1.2.4 any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;

1.2.5 reference to a person shall, where the context so requires or admits, include individuals, firms, partnerships, trusts, corporations, governments, governmental bodies, authorities, agencies, unincorporated bodies of persons or associations and any other organisations having legal capacity;

1.2.6 references to any agreement or document may include that agreement or document as properly varied, supplemented, substituted, novated or assigned;

1.2.7 references to a public organisation shall include any successor organisation or any organisation or entity which takes over the functions and/or responsibilities of that organisation. References to other persons shall include their successors and assignees;

1.2.8 reference to "parties" means the parties to this Call off Contract and references to "a party" mean one of the parties to this Call off Contract;

1.2.9 reference to the Authority being required to act "reasonably" or not to act "unreasonably" shall be construed by reference to an objective test of reasonableness subject to the Authority being entitled to take account (and to give such weight as is appropriate in the circumstances) to:

1.2.9.1 the reliability and performance of the Services;

1.2.9.2 the Authority's overall policies in respect of the procurement of services, security and/or The Provision of Healthcare Clinical Information System Services ;

1.2.9.3 government policy and the national interest;

1.2.10 the headings in this Call off Contract are for ease of reference only and shall not affect its interpretation; and

1.2.11 references to clauses and schedules are, unless otherwise provided, references to the clauses of and schedules to this Call off Contract.

1.3 Without prejudice to clauses 11.4 and 14.2, if there is any conflict between the clauses and the schedules and/or any annexes to the schedules and/or any other documents referred to in this Call off Contract, the conflict shall be resolved in accordance with the following order of precedence:

1.3.1

- Section A - Order Form
- Schedule A2 – Supplier Tender Response
- Section A - Appendix 1 – 5
- Schedule A1 – Service Description
- Schedule C – Optional Terms and conditions
- Schedule B - Core Terms and conditions

1.4 Save in respect of the Charges (which shall be adjusted in accordance with schedule B17 (Charges)), if an amount or sum is expressed to be "subject to indexation" at a point in time, it shall be adjusted by reference to the



percentage change in the RPIx (or in the event that the RPIx ceases to exist, another appropriate and equivalent index agreed between the parties (acting reasonably)) over the most recent 12 months for which published data is available at that point in time. Indexation shall take place on the anniversary of the Effective Date.

- 1.5 Subject to the provisions of clauses 7 - 10 (inclusive), neither party to this Call off Contract shall be liable for any Default of its obligations under this Call off Contract to the extent that such Default is caused by a failure or delay by the other party in performing its obligations under this Call off Contract, provided and to the extent that the affected party notifies the other party of such failure or delay within 30 days of the affected party becoming aware of its occurrence and of its likely impact.

## 2. COMMENCEMENT AND DURATION

This Call off Contract shall commence on the Effective Date and, unless terminated in accordance with the provisions of this Call off Contract or otherwise in accordance with law or equity, shall expire on either:

- 2.1 the expiry of the Initial Term specified in the Order Form; or
- 2.2 the expiry of any Extension Period as detailed in the Order Form.

3. DUE DILIGENCE

No due diligence has been undertaken or is required as the Services relate to existing services that the Supplier is providing to the Authority albeit under a different contractual arrangement.

4. MILESTONES

Where Milestones are specified, the Supplier shall perform its obligations so as to Achieve each Milestone by the Milestone Date. Changes to the Milestones shall only be made in accordance with the Change Control Procedure provided that the Supplier shall not attempt to postpone any of the Milestones (except in accordance with clause 9 (Delays to Milestones due to Authority Cause)).

5. IMPLEMENTATION PLAN

No Implementation Plan or any Tests are required as this Call off Contract relates to the Supplier continuing with the provision of an existing service albeit under a different and previous contractual arrangement

6. TESTING

6.1 When the Supplier has completed the Services in respect of a Milestone or where the Authority requires that a Deliverable is subject to Testing, it shall submit any such Deliverable(s) for Testing in accordance with the Testing Procedures.

6.2 Each party shall bear its own costs in respect of the Testing Procedures. However, if a Deliverable does not Achieve the Test Success Criteria the Authority shall be entitled to recover from the Supplier, any reasonable additional costs it may incur as a direct result of further review or re-Testing of a Deliverable to Achieve the Test Success Criteria.

6.3 If the Supplier successfully completes the requisite Tests the Authority shall notify the Supplier accordingly (and in the case of a Milestone, the Authority shall issue a Milestone Achievement Certificate) as soon as reasonably practical following such successful completion. Notwithstanding the issuing of any such notification, the Supplier shall remain solely responsible for ensuring that the Services are implemented in accordance with this Call off Contract

and that the Operating Service Levels are achieved. No rights of estoppel or waiver shall arise as a result of the issue of such notification and/or any Milestone Achievement Certificate (or conditional Milestone Achievement Certificate pursuant to clause 8.1.1).

- 6.4 If the Supplier does not successfully complete or Achieve any Test, the provisions of clauses 7 (Implementation Delays - General Provisions), 7A (Correction Plan), 8 (Delays Due to Supplier Default), 9 (Delays to Milestones due to Authority Cause) and 10 (Delays Not Due to One Party) shall apply as appropriate.

## 7. IMPLEMENTATION DELAYS - GENERAL PROVISIONS

- 7.1 If, at any time, the Supplier becomes aware that it will not (or is unlikely to) Achieve any Milestone by the Milestone Date it shall as soon as reasonably practicable notify the Authority of the fact of the Delay and summarise:

7.1.1 the reasons for the Delay;

7.1.2 the consequences of the Delay; and

7.1.3 if the Supplier claims that the Delay is due to a Authority Cause, the reason for making that claim.

- 7.2 Whether the Delay is due to a Authority Cause or not, the Supplier shall, and shall procure that each Sub-Supplier shall, use all reasonable endeavours to eliminate or mitigate the consequences of the Delay (including but not limited to any losses and expenses).

- 7.3 Where the Supplier considers that a Delay is being caused or contributed to by a Authority Cause the Supplier may rely on the provisions of clauses 9 or 10 provided that the Supplier has fulfilled its obligations set out in, and in accordance with, clauses 7.1 and 7.2.

- 7.4 Any Disputes about or arising out of Delays shall be resolved through the Dispute Resolution Procedure. Pending the resolution of the Dispute both parties shall continue to work to resolve the causes of, and mitigate the effects of, the Delay.

## 7A CORRECTION PLAN

- 7A.1 The Supplier shall submit a draft Correction Plan where it becomes aware that it will not Achieve a Milestone by the Milestone Date; it has failed to Achieve a Milestone by its Milestone Date; or as a result of a Critical Service Failure as detailed in schedule B16.
- 7A.2 Where the Correction Plan is being produced as a result of a Delay, the draft Correction Plan shall identify the issues arising out of the Delay (if applicable) and the steps that the Supplier proposes to take to Achieve the Milestone. Where the Correction Plan is being produced as a result of a Critical Service Failure, the Correction Plan shall include the information set out in schedule B16 (Service Levels and Performance Monitoring).
- 7A.3 The draft Correction Plan shall be submitted to the Authority for its approval as soon as possible and in any event within such reasonable period as the Authority may require.
- 7A.4 The Authority shall not withhold its approval of a draft Correction Plan unreasonably. If the Authority does not approve the draft Correction Plan it shall inform the Supplier of its reasons promptly and the Supplier shall take those reasons into account in the preparation of a further draft Correction Plan, which shall be resubmitted to the Authority within such period as the Authority may permit (acting reasonably).
- 7A.5 The Supplier shall comply with the Correction Plan following its approval by the Authority.
- 7A.6 Where the Supplier's obligation to produce a Correction Plan arises as a result of Default by the Supplier and the Supplier fails to comply with a Correction Plan requirement because:
- 7A.6.1 the Supplier does not submit or resubmit a Correction Plan for approval within the timescales required or at all; and/or
- 7A.6.2 the Authority acting reasonably does not approve the proposed Correction Plan on the second occasion of seeking approval; and/or
- 7A.6.3 the Supplier fails to properly implement the terms of a Correction Plan that has been approved by the Authority,
- this shall be treated as a material Default on the part of the Supplier which is irremediable.

## 8. DELAYS DUE TO SUPPLIER DEFAULT

- 8.1 If a Deliverable does not satisfy the Test Success Criteria and/or a Milestone is not Achieved due to the Supplier's Default the Authority may at its discretion (without waiving any rights in relation to the other options) choose to:
- 8.1.1 issue a Milestone Achievement Certificate conditional on the remediation of the Test Issues, or the non-conformities of the Deliverable where no testing has taken place, in accordance with an agreed Correction Plan; and/or
  - 8.1.2 escalate the matter in accordance with the Dispute Resolution Procedure and if the matter cannot be resolved exercise any right it may have under clause 55.1 (Termination or Suspension by the Authority for Cause); and/or
  - 8.1.3 (without prejudice to any other rights or remedies that the Authority may have) require the payment of Delay Payments (if applicable), which shall be payable by the Supplier on demand. The Delay Payments will accrue on a daily basis from the relevant Milestone Date until the date when the Milestone is Achieved. For the avoidance of doubt, unless otherwise agreed in writing, where the Authority claims Delay Payments this shall not be the Authority's exclusive remedy.
- 8.2 Where the Authority issues a conditional Milestone Achievement Certificate as specified in clause 8.1.1, it can choose to (but does not have to) revise the failed Milestone Date and any subsequent Milestone Date.
- 8.3 Any Correction Plan shall be agreed before the issue of a conditional Milestone Achievement Certificate within the timescales stipulated by the Authority (acting reasonably).

9. DELAYS TO MILESTONES DUE TO AUTHORITY CAUSE

- 9.1 Without prejudice to clause 7.2 and subject to clause 7.3, if the Supplier would have been able to Achieve the Milestone by its Milestone Date but has failed to do so as a result of a Authority Cause, the Supplier shall:
  - 9.1.1 subject to clause 9.2, be allowed an extension of time equal to the Delay caused by that Authority Cause;
  - 9.1.2 not be in breach of this Call off Contract as a result of the failure to Achieve the relevant Milestone by its Milestone Date; and
  - 9.1.3 have no liability for Delay Payments in respect of the relevant Milestone to the extent that the Delay results directly from the Authority Cause.
- 9.2 The Authority Representatives, acting reasonably, shall:
  - 9.2.1 consult with the Supplier Representative in determining the effect of the Delay;
  - 9.2.2 fix a revised Milestone Date; and
  - 9.2.3 if appropriate, make any consequential revision to subsequent Milestones in the Implementation Plan.
- 9.3 If the Supplier has incurred any direct loss and/or expense as a result of a Delay due to a Authority Cause, the Supplier shall be entitled to request compensation to the extent that it cannot mitigate that loss or expense in accordance with the principles set out in paragraph 3 of schedule B17 (Charges). Any amount agreed to be paid by the Authority shall be paid by the Authority in accordance with the invoicing procedure specified in schedule B1 (Invoicing Procedure) . The Supplier shall use reasonable endeavours to mitigate all such loss and/or expense that it incurs.
- 9.4 The Supplier shall provide the Authority with such information as the Authority may reasonably require in order to assess the validity of the Supplier's claim to compensation.

- 9.5 Any Change that is required to the Implementation Plan pursuant to clause 9.2.3 shall be implemented in accordance with the Change Control Procedure. If the Supplier's analysis of the effect of the Delay in accordance with the Change Control Procedure permits a number of options, then the Authority shall have the right to select which option shall apply.

10. DELAYS NOT DUE TO ONE PARTY

Without prejudice to clause 7.2 and subject to clause 7.3, where a Delay is attributable in part to the Supplier's Default and in part to a Authority Cause the parties shall negotiate in good faith with a view to agreeing a fair and reasonable apportionment of responsibility for the Delay. The parties agree that any Delay Payments shall be recoverable subject to reductions to reflect the extent to which the Authority or the Supplier respectively has contributed to the Delay.

11. SERVICES

- 11.1 The Supplier acknowledges that it is not the exclusive supplier of services of the same type as the Services to the Authority, nor the exclusive supplier of services required to meet the Authority's requirements and the Authority may at any time provide itself, or obtain from a third party, services of the same type as the Services and/or similar services and/or other services to meet the Services Description.

- 11.2 The Supplier shall at its own cost, provide the Services from the Service Commencement Date and shall ensure that the Services:

11.2.1 comply in all respects with the Services Description;

11.2.2 are supplied in accordance with the Supplier Tender Response and the terms of this Call off Contract; and

11.2.3 are supplied in accordance with clause 12.



- 11.3 The Supplier shall perform its obligations under this Call off Contract including those in relation to the Services:
- 11.3.1 using Supplier Personnel of required skill, experience and qualifications;
  - 11.3.2 in accordance with:
    - 11.3.2.1 Good Industry Practice;
    - 11.3.2.2 the Supplier's own established procedures and practices;
    - 11.3.2.3 the Security Policy;
    - 11.3.2.4 the Quality Plans;
    - 11.3.2.5 the Authority's ICT strategy (where applicable); and
    - 11.3.2.6 the HR Policies;
  - 11.3.3 in good faith;
  - 11.3.4 in a manner that is not likely to be injurious to health or to cause damage to property;
  - 11.3.5 in a manner that shall not bring the Authority into disrepute or otherwise cause detriment to the reputation of the Authority; and
  - 11.3.6 in compliance with all applicable Laws.
- 11.4 The Supplier shall draw any conflict between any of the requirements of clause 11.2 and the requirements of clause 11.3 to the attention of the Authority and shall comply with the Authority's decision on the resolution of that conflict.
- 11.5 In the event of the Supplier's failure to provide the Services or to comply with its obligations in accordance with this Call off Contract, the Authority may, without prejudice to its other rights, require the Supplier to re-perform the Services or to comply with its obligations.

#### Additional Services

- 11.6 Where required by the Authority and where permissible by law, the Authority may, by agreement with the Supplier, purchase Additional Services from the Supplier which shall be incorporated in accordance with the Change Control Procedure. In assessing whether to purchase Additional Services the Authority may ask any or all service providers to provide indicative pricing for such services before assessing which service provider should provide them.

#### 11A PLAN APPROVAL PROCESS

- 11A.1 During the Term of this Call off Contract, the Supplier shall provide the following (each a "Plan"):

- 11A.1.2 the Test Strategy, the Test Specification and the Test Plan;
- 11A.1.3 the BCDR Plan; and
- 11A.1.8 such other plan as may be reasonably required by the Authority.

- 11A.2 Unless agreed otherwise by the Authority in writing, each Plan shall be based upon and be consistent with the Outline Implementation Plan submitted by the Authority during the Engagement Process and as set out in this Call off Contract.

- 11A.3 The Supplier shall submit the relevant Plan to the Authority for approval. Such plan shall be submitted as soon as reasonably practicable but in any event no later than the date specified in this Call off Contract or as otherwise reasonably required by the Authority. The Authority shall not unreasonably withhold or delay approval of any Plan submitted for approval in accordance with this clause. A Plan shall not be deemed to have been approved if no notice of approval is given.

- 11A.5 Unless and until a Plan is approved by the Authority the provisions of any corresponding outline plan shall apply. Once approved by the Authority, each Plan shall be adopted immediately unless the Authority otherwise requires.

- 11A.7 Where the Authority withholds approval of a Plan, it shall identify the changes it reasonably requires to be made to that Plan or issues to be addressed by the Supplier together with the reasons for such changes. The Supplier shall

amend the Plan accordingly and re-submit it as soon as reasonably practicable to the Authority for approval .

11A.8 If the Authority does not approve the revised Plan submitted in accordance with clause 11A.7 above, the Authority may at its discretion require the Supplier to repeat the process set out above until such time as the Plan is approved or at its option refer the matter to the Dispute Resolution Procedure using the Expedited Dispute Timetable.

11A.9 In developing any Plan, the Supplier shall at the Authority's request liaise with Related Service Providers in respect of those aspects of any such Plan which have or may have an impact on a Related Service.

11A.10 Without prejudice to any specific requirements contained in any schedule to this Call off Contract regarding the updating of or amendment to any Plan, the Supplier shall revise the Plan(s) as necessary to reflect any Changes that take place. The Supplier shall submit the updated Plan(s) to the Authority for approval and the procedures set out in this clause shall apply with respect to the approval of such revised Plan(s).

11A.11 Following inclusion of any Catalogue Items or implementation of any Additional Service, the Supplier shall update all relevant plans and policies for approval by the Authority pursuant to the Plan Approval Process.

## 12. SERVICE LEVELS

12.1 The provisions of schedule B16 (Service Levels and Performance Monitoring) shall apply and the parties shall comply with their respective obligations set out in schedule B16.

12.2 The Supplier shall provide the Services to meet or exceed the Operating Service Levels. The remaining provisions of this clause 12 are subject to the provisions of clause 13 (Effect of Authority Cause).

12.3 If there is a Service Failure or if the Supplier believes that there will be a Service Failure, the Supplier shall:

12.3.1 notify the Authority promptly of the Service Failure or likely Service Failure;

- 12.3.2 take all remedial action that is reasonable to rectify or to prevent the Service Failure from taking place or recurring and notify the Authority of the remedial action that it is taking; and
- 12.3.3 follow the requirements set out in schedule B16 where there is a Critical Service Failure.
- 12.4 Where the Supplier fails to provide the Services in accordance with the relevant Operating Service Levels, the Supplier shall automatically credit the Authority with Service Credits in accordance with schedule B16. Service Credits shall be shown as a deduction from the amount due from the Authority to the Supplier in the next invoice then due to be issued under this Call off Contract. If no invoice is due to be issued then the Supplier shall issue a credit note against the previous invoice and the amount for the Service Credits shall be repayable by the Supplier as a debt within 10 Working Days of issue.
- 12.5 The Authority and the Supplier shall review the Service Levels throughout the Term and make any changes in accordance with the Change Control Procedure to reflect changes in the Authority's requirements.
- 12.6 If the Supplier reasonably believes that any proposed change, which is requested by the Authority under clause 12.5, would materially and adversely increase the Charges, the Supplier shall be entitled to submit a price variation request (supported by appropriate evidence) within 10 Working Days of the date of receiving the Authority's written notice.
- 12.7 The Authority shall then review the Supplier's price variation request and shall respond to the Supplier and do one of the following:
  - 12.7.1 accept the Supplier's price variation request and make any required changes in accordance with the Change Control Procedure; or
  - 12.7.2 following discussion with the Supplier, require the Supplier to resubmit the price variation, taking into account feedback from the Authority in relation to the price variation request; or
  - 12.7.3 decide not to proceed with the change.

- 12.8 Where any Additional Services are to be provided pursuant to the Change Control Procedure both parties will meet in good faith to agree appropriate service levels in respect of such Additional Services. Where any Additional Service is equivalent to any of the Services already being provided by the Supplier pursuant to this Call off Contract, the service levels applicable to that such Additional Service will be no less stringent than the Service Levels applicable to those pre-existing Services. In any event, such service levels shall offer a level of service which is generally regarded as being reasonable having regard to the critical nature of the Additional Services and the need for overall high degrees of reliability and accuracy.

### 13. EFFECT OF AUTHORITY CAUSE

- 13.1 If the Supplier would have provided the Services in accordance with the Operating Service Levels and this Call off Contract (and the Supplier is able to provide evidence of this to the reasonable satisfaction of the Authority) but has failed to do so as a result of a Authority Cause the Supplier will have the rights and relief set out in clause 13.2.

#### 13.2 The Supplier shall:

13.2.1 (in measuring the performance of any affected Service) be treated as though the relevant Service had met the relevant Service Level to the extent that the Service Failure is due to any Authority Cause; and

13.2.2 not be treated as being in breach of this Call off Contract to the extent that non-performance or breach is due to any Authority Cause; and

13.2.3 be entitled to the Charges for the relevant Services affected by the Authority Cause as if it had not occurred.

- 13.3 If the Supplier claims that clause 13.1 applies, and in order to claim the rights and reliefs in clause 13.2, it shall provide the Authority with details of the Authority Cause as soon as reasonably practicable but in any event no later than five Working Days of becoming aware of a Authority Cause. Where the Supplier has not provided the Authority with full details of the Authority Cause at the outset, the Supplier shall do so as soon as reasonably practicable but

in any event no later than ten Working Days of first becoming aware of the Authority Cause.

- 13.4 Both parties shall continue to resolve the causes of, and mitigate the effects of the Supplier's failure to provide the Services in accordance with the Operating Service Levels and/or this Call off Contract during any Dispute.

#### 14. STANDARDS AND SAFEGUARDING

- 14.1 The Supplier shall comply with the Standards in performing its obligations under this Call off Contract.
- 14.2 The Supplier shall discuss with the Authority any conflict that the Supplier reasonably believes that there is or will be between any of the Standards or between any of the Standards and any other obligation under this Call off Contract, and shall comply with the Authority's decision on the resolution of that conflict.
- 14.3 Not Used
- 14.4 At the reasonable written request of the Authority, and by no later than 10 Working Days following the receipt of such request, the Supplier shall provide evidence to the Authority that it is addressing any safeguarding concerns raised.
- 14.5 If requested by the Authority, the Supplier shall participate in the development of any multi agency safeguarding quality indicators and/or plan.

#### 15. QUALITY ASSURANCE AND PERFORMANCE MONITORING

##### Quality Plans

- 15.1 The Supplier shall develop, in accordance with the timescales detailed in this Call off Contract, Quality Plans that:
  - 15.1.1 ensure that all aspects of the Services are the subject of quality management systems; and
  - 15.1.2 are consistent with ISO 9001:2000 or any equivalent standard which is generally recognised as having replaced it.

- 15.2 The Supplier shall obtain the Authority Representative's written approval of the Quality Plans developed pursuant to clause 15.1 before beginning to implement them, which approval shall not be unreasonably withheld or delayed. The Supplier acknowledges and accepts that the Authority's approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Call off Contract.
- 15.3 The Supplier shall procure that the Services are carried out in compliance with the Quality Plans.
- 15.4 The Authority may (without prejudice) carry out an audit of and recommend improvements to such quality management systems and/or the Quality Plans from time to time (acting reasonably). The Supplier agrees to consider such recommendations (acting reasonably) and incorporate them as applicable into revised version(s) of the Quality Plans. In each case, the Supplier shall co-operate, and shall procure that its Sub-Suppliers co-operate, with the Authority Representative, including by providing the Authority Representative with all information and documentation, and access to any relevant Supplier Personnel and/or to any relevant Site, which it reasonably requires in connection with its rights under this clause 15.4 at no additional charge to the Authority.
- 15.4A Where the recommendations put forward by the Authority pursuant to clause 15.4 will have a material and unavoidable cost impact on the Services, the principles set out in clause 48A shall apply to such Quality Plans provided that no additional costs may be claimed where such costs are required to ensure that the Supplier is in compliance with its obligations set out in this Call off Contract (including but not limited to those under clause 15.1.2).

#### Performance Monitoring

- 15.5 The Authority (and/or its agents and representatives) may monitor the performance of the Services by the Supplier in such manner as it may require including, but not limited to attendance at Site and/or access to Supplier Personnel for the purpose of (without limitation), quality monitoring, conducting clinical risk assessments and in order to ensure that the Supplier is complying with its obligations pursuant to this Call off Contract.

- 15.6 The Supplier shall co-operate, and shall procure that its Sub-Suppliers co-operate, with the Authority (and/or its agents and representatives) in carrying out the monitoring referred to in clause 15.5 at no additional charge to the Authority.
- 15.7 If the Supplier believes that the Authority's monitoring of the Services is unreasonable the Supplier may escalate the issue with the Authority using the Escalation Process.

#### Warning Notices and Increased Monitoring

- 15.8 Without prejudice to the other rights or remedies of the Authority, if at any time the Supplier has:
- 15.8.1 committed any material Default of its obligations under this Call off Contract; or
  - 15.8.2 in respect of its performance of the Services, fallen to the worst Failure Level applicable to that Service Level (i.e. the Failure Level with the most Service Credit Points attached); or
  - 15.8.3 failed to Achieve any Milestone by its associated Milestone Date,
- then the Authority may, but is not obliged to, give a written notice (a "Warning Notice") to the Supplier setting out the matter or matters giving rise to such notice and containing a reminder to the Supplier of the implications of such notice. Any such notice shall state on its face that it is a Warning Notice.



- 15.9 Without prejudice to the other rights or remedies of the Authority, if the Supplier receives two or more Warning Notices in any period of one calendar month in respect of any Services (or any part thereof), the Authority may, by written notice to the Supplier, reasonably increase the level of its monitoring of the Supplier, or (at the Authority's option) require the Supplier to increase the level of its monitoring of its own performance of its obligations under this Call off Contract, in respect of the Services (or relevant part thereof) to which the Warning Notices relate until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Authority that it shall perform (and is capable of performing) its obligations under this Call off Contract, in which case, the following provisions shall apply:
- 15.9.1 any such notice to the Supplier shall specify in reasonable detail the additional measures to be taken by the Authority or by the Supplier (as the case may be) in monitoring the performance of the Supplier;
- 15.9.2 if the Supplier (acting reasonably) objects to any of the specified measures on the grounds that they are excessive it shall notify the Authority in writing within two Working Days of the receipt of the notice referred to in clause 15.9.1 of the measures objected to (and of any changes necessary in order to prevent prejudice to the Supplier's performance of its obligations under this Call off Contract);
- 15.9.3 the measures to be taken by the Authority and/or the Supplier (as the case may be) shall be agreed by the parties or, in the absence of agreement within three Working Days of the Authority's receipt of the Supplier's objection, determined pursuant to the Dispute Resolution Procedure; and
- 15.9.4 the Supplier shall bear its own costs and shall reimburse the Authority in respect of any additional costs that are directly incurred by the Authority in respect of any such additional measures.
- 15.10 Without prejudice to the Supplier's obligation to provide a Correction Plan in the circumstances set out in schedule B16 (Service Levels and Performance Monitoring), if at any time the Supplier is in Default such that any element of the Services has become materially unfit for purpose such that the Supplier

cannot deliver a material part of that Service, the Authority may notify the Supplier that it requires a Remedial Plan which should be prepared in accordance with the Remedial Plan Process detailed in clause 56 (Remedial Plan Process).

## 16. SERVICES IMPROVEMENT

16.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to a) the Services and b) the Future Fixed Price Services in accordance with this clause 16. As part of this obligation the Supplier shall identify and report to the Authority Representative or such other representatives stipulated by the Authority from time to time as soon as reasonably practicable after becoming aware of such potential improvements, but as a minimum once every six months on:

16.1.1 the emergence of new and evolving relevant technologies which could improve the Services and/or the Future Fixed Price Services, and those technological advances potentially available to the Supplier and the Authority which the parties may wish to adopt; and/or

16.1.2 new or potential improvements to the Services and/or the Future Fixed Price Services including the quality, responsiveness, average handling time, improvements in utilisation rates, procedures, benchmarking methods, likely performance mechanisms and Authority support services in relation to the Services/Future Fixed Price Services (as applicable); and/or

16.1.3 new or potential improvements to the interfaces or integration of the Services and/or the Future Fixed Price Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk; and/or

16.1.4 changes in business processes, ways of working or otherwise that would enable the Services and/or the Future Fixed Price Services to be delivered at lower costs and/or at greater benefits to the Authority; and/or

16.1.5 changes to the ICT Environment, business processes and ways of working that would enable reductions in the total energy consumed annually in the delivery of Services and/or the Future Fixed Price Services.

16.2 The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Authority requests.

16.3 If the Authority wishes to incorporate any improvement identified by the Supplier relating to the Services:

16.3.1 the Authority shall send the Supplier a Change Request and the parties shall:

16.3.1.1 develop a plan for the implementation and testing of the improvement for the approval of the Authority; and

16.3.1.2 implement the improvement in accordance with the provisions of the plan approved by the Authority, and

16.3.1.3 where appropriate agree an applicable percentage share of any such cost saving to be shared with the Supplier in accordance with the principles outlined in schedule B20 (Service Improvements Savings).

16.4 If the Authority wishes to incorporate any improvement identified by the Supplier relating to Future Fixed Price Services:

16.4.1 the parties agree that such improvements will be implemented by the Supplier at such time as the relevant Future Fixed Price Services are ordered by the Authority (if any); and

16.4.2 (where the Supplier has identified a cost saving relating to the Future Fixed Price Services), subject to clause 16.4.3 the parties agree that the Authority will be given the benefit of such cost saving and the fixed price for the Future Fixed Price Services shall be reduced accordingly;

16.4.3 the parties shall, where appropriate, agree an applicable percentage share of any such cost saving to be shared with the Supplier in accordance with the principles outlined in schedule B20 (Service Improvements Savings).

## 17. EQUIPMENT

17.1 The Supplier shall be solely responsible for all costs of carriage of Supplier Equipment to and from the Sites (where relevant) and to the Authority Premises, including its loading, off-loading, packing, carriage and making good the Authority Premises following removal and all other associated costs.

17.2 All the Supplier's property located on the Sites, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier.

17.3 Subject to any express provision of the Business Continuity and Disaster Recovery Plan to the contrary, the loss or destruction for any reason of the Supplier Equipment held on any Site shall not relieve the Supplier of its obligation to supply the Services in accordance with the Operating Service Levels.

## 18. CHARGING AND INVOICING

18.1 In consideration of the Supplier carrying out its obligations under this Call off Contract, the Authority shall pay the Charges to the Supplier in accordance with the payment profile specified in schedule B17 (Charges) and the invoicing procedure specified in schedule B1 (Invoicing Procedure).

18.2 The Supplier shall ensure that a term is included in any Sub-contract permitted under this Call off Contract which requires the Supplier to pay any undisputed sums due to the relevant Sub-Supplier within a specified period that does not exceed 30 days from the date the Supplier receives the Sub-Supplier's invoice.

18.3 The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate this Call off Contract under clause 55.7 for failure to pay undisputed Charges. Interest shall be payable on the late payment of any undisputed Charges properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

- 18.4 Except as otherwise provided, the parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under this Call off Contract.

19. TAX

- 19.1 Unless required otherwise by the Authority, the Charges are stated exclusive of VAT which shall be added at the prevailing rate as applicable by law and paid by the Authority following delivery of a valid VAT invoice. Save as otherwise agreed in writing between the parties, the Charges are stated as inclusive of all other forms of tax (including, but not limited to, any value added, sales, turnover, business rates or similar tax imposed in any country).
- 19.2 The Supplier shall indemnify the Authority and each Authority Service Recipient on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority and/or a Authority Service Recipient at any time in respect of the Supplier's failure to account for or to pay any VAT or any other forms of tax in any jurisdiction relating to payments made to the Supplier under this Call off Contract. Any amounts due under this clause 19.2 shall be paid in cleared funds by the Supplier to the Authority not less than five Working Days before the date upon which the tax or other liability is payable by the Authority and/or a Authority Service Recipient (as applicable).
- 19.3 The Supplier shall ensure that invoices are raised by an entity registered in the UK for VAT purposes.

20. RECOVERY OF SUMS DUE

The Authority may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under this Call off Contract or under any other agreement between the Supplier and the Authority.

21. REPRESENTATIVES

- 21.1 Each party appoints the persons named as such in the Order Form as the Authority Representative and the Supplier Representative respectively. The Representatives shall have the authority to act on behalf of their respective

party on the matters set out in, or in connection with, this Call off Contract. Either party may, by further written notice to the other party, revoke or amend the authority of its Representative or appoint a new Representative.

21.2 The respective Representatives shall be sufficiently senior within the organisation of the appointing party, and granted sufficient authority by that party, to ensure full cooperation in relation to the operation and the management of this Call off Contract.

21.2A The Supplier appoints the person named as such in the Order Form as the Supplier's Technical Lead.

21.3 The Authority may require the Supplier to replace the Supplier Representative and/or the Supplier's Technical Lead in accordance with clause 28.9 (Key Personnel).

## 22. GOVERNANCE

The parties agree to manage this Call off Contract through the governance structure detailed in schedule B11 (Governance).

## 23. SUPPLY CHAIN RIGHTS

### Sub-contracting

23.1 The Supplier shall not sub-contract any of its obligations under this Call off Contract without the Authority's prior written consent, which, subject to clause 23.3, shall not be unreasonably withheld or delayed.

23.2 The Authority has consented to the engagement of the Key Sub-Suppliers listed in the Order Form for the purpose detailed therein subject to the provision by the Supplier of the information listed in clause 23.4.

23.3 The Authority may withhold, delay or withdraw its consent where it considers it reasonably necessary, including where:

23.3.1 the appointment of a proposed Key Sub-Supplier may prejudice the provision of the Services or may be contrary to the interests of the Authority or any Authority Service Recipient;

- 23.3.2 the proposed Key Sub-Supplier is considered to be unreliable and/or has not provided reasonable services to its other customers; and/or
- 23.3.3 the proposed Key Sub-Supplier employs unfit persons.
- 23.4 Subject to clause 23.5, the Supplier shall provide the Authority with the following information about the proposed Key Sub-Supplier:
  - 23.4.1 its name, registered office and company registration number;
  - 23.4.2 a copy of the proposed Sub-contract;
  - 23.4.3 the purposes for which the proposed Key Sub-Supplier will be employed, including the scope of any services to be provided by the proposed Sub-Supplier;
  - 23.4.4 if relevant, confirmation that the Sub-contract requires the proposed Key Sub-Supplier to comply with any relevant Operating Service Levels;
  - 23.4.5 where the proposed Key Sub-Supplier is also an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on "arms-length" terms;
  - 23.4.6 the location and jurisdiction from which the proposed Key Sub-Supplier shall provide the Services; and
  - 23.4.7 any further information reasonably requested by the Authority.
- 23.5 If the supply of information required pursuant to clause 23.4 would amount to a breach of any rules and regulations of any exchange on which the Shares of the Supplier are admitted for listing and/or trading, or any other rules or regulations with which the Supplier is obliged to comply as a result of that listing, the Supplier shall provide the Authority with the relevant information to the fullest extent permitted by those rules and regulations.
- 23.6 The Supplier shall not make use of a pre-existing contract with any Key Sub-Supplier without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.

23.7 Except where the Authority has given its prior written consent under clause 23.6, the Supplier shall ensure that each Key Sub-contract shall include:

23.7.1 a right under the Contracts (Rights of Third Parties) Act 1999 (or otherwise) for the Authority to enforce the terms of that Key Sub-contract as if it were the Supplier;

23.7.2 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Authority;

23.7.3 a provision requiring the Key Sub-Supplier to enter into a direct confidentiality agreement with the Authority on the same terms as set out in clause 42 (Confidentiality) for the benefit of the Authority and each Authority Service Recipient;

23.7.4 a provision requiring the Key Sub-Supplier to comply with protection of data requirements pursuant to clauses 39 (Authority Data) and 40 (Protection of Personal Data);

23.7.5 a provision requiring the Key Sub-Supplier to comply with the restrictions on corrupt gifts and payments pursuant to clause 65 (Prevention of Corruption) and clause 66A (Prevention of Fraud);

23.7.6 a provision restricting the ability of the Key Sub-Supplier to further Sub-contract elements of the service provided to the Supplier without first seeking the consent of the Authority;

23.7.7 provisions enabling the Supplier, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in clause 60 (Step-in Rights);

23.7.8 a provision requiring the Key Sub-Supplier to notify the Authority promptly in writing of any material non-payment or late payment of any sums properly due to the Key Sub-Supplier from the Supplier under the Key Sub-contract, under a specified valid invoice and not subject to a genuine dispute;



23.7.9 a provision requiring the Key Sub-Supplier to ensure that no Restricted Person shall at any time hold five percent or more of the total value of any Security in the Key Sub-Supplier, the Key Sub-Supplier's Holding Company or the Key Sub-Supplier Subsidiaries (as defined in the Companies Act 2006); and

23.7.10 a provision requiring the Key Sub-Supplier to promptly notify the Supplier and the Authority in writing of a Sub-Supplier Financial Distress Event or any fact, circumstance or matter which could cause a Sub-Supplier Financial Distress Event (and in any event, provide such notification within ten Working Days of the date on which the Key Sub-Supplier first becomes aware of the Sub-Supplier Financial Distress Event or the fact, circumstance or matter which could cause the Sub-Supplier Financial Distress Event).

23.8 As a condition of granting consent to the engagement of Key Sub-Suppliers pursuant to this clause 23 the Authority may require that the relevant Key Sub-Supplier enters into a direct agreement with the Authority on terms to be mutually agreed between the parties. For the avoidance of doubt, if such terms cannot be mutually agreed, the Authority may withhold its consent to the engagement of that particular Key Sub-Supplier.

#### Termination of Sub-contracts

23.9 The Supplier shall not terminate or materially amend the terms of any Key Sub-contract without the Authority's prior written consent, which shall not be unreasonably withheld or delayed.

23.10 The Authority may require the Supplier to terminate or replace a Key Sub-contract where the acts or omissions of the relevant Key Sub-Supplier have given rise to the Authority's right of termination pursuant to clause 55.1 (Termination or Suspension by the Authority for Cause).

23.11 The Authority may require the Supplier to terminate the relevant Key Sub-contract if there is a Change of Control of a Key Sub-Supplier on the same terms as those set out in clause 55.5 (Termination for Change of Control).

23.11A In the event that Restricted Person(s) at any time hold five percent or more of the total value of any Security in its Key Sub-Suppliers or in any Holding Company or in any of the Subsidiaries (as defined in the Companies Act 2006) of a Key Sub-Supplier, the Authority may by serving a written notice upon the Supplier, require the Supplier to replace the relevant Key Sub-Supplier within such period specified in the written notice.

23.11B Where the Key Sub-Supplier, its Holding Company or any of the Subsidiaries (as defined in the Companies Act 2006) is a Public Company, the provisions of clause 23.11A shall still apply to that Public Company save that the references to five percent shall be construed as thirty percent.

#### Competitive Terms

23.12 If the Authority is able to obtain:

23.12.1 services from any Key Sub-Supplier on more favourable commercial terms than those used by the Supplier in the supply of the Services for the use of that same Key Sub-Supplier; and/or

23.12.2 Commodity Items from any third party on more favourable commercial terms than those used by the Supplier in the supply of the Services,

then the Authority may:

(i) require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or

(ii) subject to clause 23.14, enter into a direct agreement with that Key Sub-Supplier or third party (as appropriate) in respect of the relevant item.

For the avoidance of doubt, this clause 23.12 shall not be construed as allowing the Authority to require the Supplier to provide the Services using Key Sub-Supplier(s) where it was previously providing the Services itself (without the use of Key Sub-Suppliers).

23.13 If the Authority exercises either of its options pursuant to clause 23.12 and the relevant Key Sub-Supplier or third party makes the relevant services or Commodity Item available to the Supplier, then to the extent that this results in a costs saving to the Supplier the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure. The

Supplier shall notify the Authority as soon as reasonably practicable if the Supplier reasonably believes that the exercise of its options pursuant to clause 23.12 would result in additional costs being incurred by the Supplier and in such circumstances the parties shall consult with each other in good faith as to whether the proposed substitute item should be used.

23.14 The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:

23.14.1 the Authority making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services; and

23.14.2 any reduction in the Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

#### Retention of Legal Obligations

23.15 Despite the Supplier's right to sub-contract pursuant to this clause 23 and any Authority consent provided pursuant to clause 23.1, the Supplier shall remain responsible for all acts and omissions of its Sub-Suppliers and the acts and omissions of those employed or engaged by the Sub-Suppliers as if they were its own. An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that its employees, staff, agents and Sub-Suppliers' employees, staff and agents also do, or refrain from doing, such act or thing.

23.16 For the avoidance of doubt, no rights of estoppel or waiver shall arise as a result of the Authority providing its consent to the appointment of a Key Sub-Supplier pursuant to clause 23.2.

## 24. AUDITS

24.1 The Authority (and/or its agents or representatives) may, not more than once per Quarter, conduct an audit, at any time during the Term and for a period of 12 months following the Term, for the following purposes:

24.1.1 to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Call off Contract), and/or the costs of all suppliers (including Sub-Suppliers) of the Services);

24.1.2 to review the integrity, confidentiality and security of the Authority Data;

24.1.3 to review the Supplier's compliance with the Data Protection Act 2018 and the UK GDPR, FOIA in accordance with clauses 40 (Protection of Personal Data) and 41 (Freedom of Information) and any other legislation applicable to the Services;

24.1.4 to review the Supplier's compliance with its obligations under clauses 11.2 and 11.3 (Services) and 15 (Quality Assurance and Performance Monitoring);

24.1.5 to review any books of account relating to the Services kept by the Supplier;

24.1.6 to review the Supplier's records regarding the Staff Vetting Procedures, required pursuant to clause 28.12;

24.1.7 to carry out the audit and certification of the Authority's accounts;

24.1.8 to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 or (where Scots Law applies, Section 23 of the Public Finance and Accountability (Scotland) Act 2000) of the economy, efficiency and effectiveness with which the Authority has used its resources;

24.1.9 to verify the accuracy and completeness of any Management Information delivered or required by this Call off Contract;

24.1.10 to ensure that the Supplier is complying with the Standards;

- 24.1.11 to perform on-going quality audits in respect of any part of the Testing; and/or
- 24.1.12 to ensure that the Supplier is complying with the terms of this Call off Contract.
- 24.2 In addition to the audits detailed above the Authority may:
  - 24.2.1 carry out such audit as may be imposed on the Authority by a Regulatory Body; and
  - 24.2.2 conduct Operational Audits as required.
- 24.3 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- 24.4 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
  - 24.4.1 all information requested by the Authority within the permitted scope of the audit;
  - 24.4.2 reasonable access to any Sites controlled by the Supplier and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
  - 24.4.3 access to Supplier Personnel.
- 24.5 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Operating Service Levels.
- 24.6 The Authority shall endeavour to (but is not obliged to) provide at least 15 Working Days notice of its intention to conduct an audit under clause 24.1.
- 24.7 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this

clause, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.

24.8 If an audit identifies that:

24.8.1 the Supplier has failed to perform its obligations under this Call off Contract in any material manner, the parties shall agree and implement a remedial plan. If the Supplier's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Supplier's costs, then the remedial plan shall include a requirement for the provision of all such information;

24.8.2 the Authority has overpaid any Charges, the Supplier shall pay to the Authority the amount overpaid within 20 Working Days. The Authority may deduct the relevant amount from the Charges if the Supplier fails to make this payment; and

24.8.3 the Authority has underpaid any Charges, the Authority shall pay to the Supplier the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a Default by the Supplier in relation to invoicing within 20 Working Days.

25. RECORDS AND REPORTS AND MONITORING

25.1 The parties shall comply with the provisions of schedule B15 (Records Provision and Monitoring) in relation to the keeping of records and the making of reports.

25.2 Where requested by the Authority, the Supplier shall supply the Monitoring Information to the Authority and to OGC in the form set out in Appendix Two to schedule B15 (Records Provision and Monitoring) during the Term. The Supplier agrees that the Authority may provide OGC with information regarding the Services procured and any payments made under this Call off Contract.

25.3 Upon receipt of the Monitoring Information supplied by the Supplier in response to a request under clause 25.2 above or receipt of information

provided by the Authority to OGC under clause 25.2 , the Authority and the Supplier hereby consent to OGC:

25.3.1 storing and analyzing the Monitoring Information and producing statistics; and

25.3.2 sharing the Monitoring Information or any statistics produced using the Monitoring Information, with any other Contracting Authority.

25.4 In the event that OGC shares the Monitoring Information or information provided under clause 25.2 in accordance with clause 25.3.2, any Contracting Authority receiving the Monitoring Information shall be informed of the confidential nature of that information and shall be requested not to disclose it to any body who is not a Contracting Authority (unless required by law).

25.5 The Authority may make changes to the Monitoring Information which the Supplier is required to supply and shall give the Supplier at least one month's written notice of any changes.

## 26. CHANGE CONTROL

Any requirement for a Change shall be subject to the Change Control Procedure.

## 27. DISPUTES

27.1 The parties shall resolve Disputes arising out of or in connection with this Call off Contract in accordance with the Dispute Resolution Procedure.

27.2 The Supplier shall continue to provide the Services in accordance with the terms of this Call off Contract until a Dispute has been resolved.

## 28. SUPPLIER PERSONNEL

28.1 The Authority may refuse admission to the Authority Premises and/or direct the Supplier to end the involvement in the provision of the Services of any of the Supplier Personnel whom the Authority believes represents a security risk or does not have the required levels of training and expertise or where the Authority has other grounds for doing so. The decision of the Authority shall be final and it shall not be obliged to provide any reasons.

#### Relevant Convictions

28.2 The Supplier shall ensure that no person who discloses that he has a Relevant Conviction, or who is found by the Supplier to have any Relevant Convictions, is employed or engaged in the provision of any part of the Services without the Authority's prior and express written consent.

28.3 For each of the Supplier Personnel who, in providing the Services, has, will have or is likely to be in communication with or have access to any children, vulnerable persons or other members of the public to whom the Authority owes a special duty of care the Supplier shall (and shall procure that the relevant Sub-Supplier shall):

28.3.1 conduct thorough questioning regarding any Relevant Convictions;

28.3.2 carry out a records check with the then applicable government organisation;

28.3.3 ensure a police check is completed and such other checks as may be carried out through the Criminal Records Bureau (or Disclosure Scotland) and the Independent Safeguarding Authority register (or any registers that replace them from time to time); and

28.3.4 if the Supplier Personnel shall be providing the Services from outside the UK, ensure that any equivalent available checks to those detailed above are carried out in the jurisdiction from which the Supplier Personnel shall provide the Services,

and the Supplier shall not (and shall ensure that a Sub-Supplier shall not) engage or continue to employ in the provision of the Services any person who has a Relevant Conviction or what would reasonably be regarded as an inappropriate record.

28.4 where Scots Law applies, the references to the Criminal Records Bureau check in clause 28.3.3 shall always be construed as reference to a Disclosure Scotland check.

#### Key Personnel

28.5 The parties have agreed to the appointment of the Key Personnel identified in the Order Form. The Supplier shall, and shall procure that any Sub-Supplier



shall, obtain the prior written consent of the Authority before removing or replacing any member of the Key Personnel from their corresponding role (such consent not to be unreasonably withheld or delayed). The parties agree that the requirement for consent does not apply where the Supplier is terminating its contract of engagement (employment contract or otherwise) with a member of the Key Personnel as a result of that member of the Key Personnel being in material breach of such contract of engagement,

- 28.6 The Authority shall not unreasonably delay or withhold its consent to the appointment of a replacement to any relevant member of Key Personnel by the Supplier or Sub-Supplier.
- 28.7 The Supplier acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority. The Supplier shall ensure that the role of any Key Personnel is not vacant for any material period of time that impacts the supply of the Services or any of the Supplier's obligations pursuant to this Call off Contract. The Supplier shall further ensure that any replacement shall be as or more qualified than and experienced as the original incumbent of such role and is fully competent to carry out the tasks assigned to the role of the member of Key Personnel whom he or she has replaced.
- 28.8 The Supplier shall ensure that each of the Key Personnel shall work for such a period of time in the performance of the Services that is commensurate with and sufficient to perform the obligation of that person's role unless the Authority otherwise gives its prior written consent.
- 28.9 The Authority may identify any of the roles performed by Supplier Personnel as Key Personnel where it is as the reasonable opinion that such Supplier Personnel are undertaking a role of material significance to the Services, who will then be included on the list of Key Personnel by the Supplier. The Authority may also require the Supplier to remove any member of the Key Personnel that the Authority considers in any respect unsatisfactory.
- 28.10 The Authority shall not be liable for the cost of replacing any member appointed to a Key Personnel role and the Supplier shall indemnify the

Authority and each Authority Service Recipient against all Employee Liabilities that may arise in this respect.

#### Staffing Security

- 28.11 The Supplier shall comply with the Staff Vetting Procedures in respect of all Supplier Personnel employed or engaged in the provision of the Services. The Supplier confirms that all Supplier Personnel employed or engaged by the Supplier at the Effective Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- 28.12 The Supplier shall maintain up to date records regarding its compliance with the Staff Vetting Procedures, to include, to the extent permitted by law, details of each of the Supplier Personnel and the dates on which the relevant checks were undertaken. The Authority reserves the right to audit such records pursuant to clause 24.1.6 (Audit and Records).
- 28.13 The Supplier shall provide training on a continuing basis for all Supplier Personnel employed or engaged in the provision of the Services in compliance with the Security Policy and Security Management Plan.

29. EMPLOYMENT INDEMNITY

Subject to paragraph 2.5 of schedule B18 (No Staff Transfer on Entry) The Supplier shall indemnify the Authority and, where relevant, each Authority Service Recipient against all Employee Liabilities that may arise as a result of any claims brought against the Authority and/or a Authority Service Recipient by any of the Authority's employees or former employees and/or any of the Supplier Personnel where such claim arises from any act or omission of the Supplier or any Supplier Personnel.

30. STAFF TRANSFER

The parties acknowledge that subsequent to the commencement of the Services the provider of the Services may change (as a result of expiry/termination of this Call off Contract or otherwise) which may constitute a Relevant Transfer for the purposes of the Employment Regulations. For this purpose, the provisions of schedule B12 (Staff Transfer on Service Provision Change) shall apply as applicable.

31. HEALTH AND SAFETY

31.1 Where the Services are performed at the Authority Premises the Supplier agrees to comply with the Authority's rules regarding health and safety made known to the Supplier from time to time by the Authority together with all applicable statutory rules and regulations regarding these matters. The Authority will be responsible for ensuring that its employees and agents also comply with these rules and regulations.

31.2 Either party shall notify the other as soon as practicable of any health and safety hazards at the Authority Premises of which it becomes aware. The Supplier will draw these hazards to the attention of the Supplier Personnel and will instruct those persons in connection with any necessary associated safety measures.

31.3 Where the Services are provided at the Supplier's Premises, the Supplier shall comply with its own rules regarding health and safety and the Law.

32. EQUALITY AND DIVERSITY

32.1 The Supplier shall, and shall procure that the Supplier Personnel, comply with any applicable anti-discrimination legislation and with the Authority's equality

and diversity policy as may be amended from time to time, copies of which will be provided by the Authority to the Supplier at the Supplier's written request. Clause 48A shall apply to any updated policies.

32.2 If the Authority or a Authority Service Recipient is located in Northern Ireland, the following provisions shall apply and the Supplier shall:

32.2.1 not unlawfully discriminate within the meaning and scope of the Race Relations Act 1976, Fair Employment (NI) Acts 1976 and 1989, the Sex Discrimination (NI) Orders 1976 and 1988, the Equal Pay Act (NI) 1970, or any statutory modification or re-enactment thereof relating to discrimination in employment; and

32.2.2 take all reasonable steps to ensure the observance of the provisions of clause 32.2.1 by the Sub-Suppliers employed in the execution of this Call off Contract.

32.3 The provisions of clause 74 (Governing Law and Jurisdiction) shall apply in full in respect of Authority Service Recipients located in Northern Ireland save that Northern Irish Law shall apply to the extent necessary to give effect to the provisions of clause 32.2 in respect of that Authority Service Recipient.

33. NON-SOLICITATION

Except in respect of any Staff Transfer or in response to a bona fide advertisement for recruitment, the Authority and the Supplier shall not, and the Supplier shall procure that any Sub-Supplier shall not, during the Term and for 12 months following the termination of this Call off Contract solicit or entice away (or seek to attempt to solicit or entice away) from the employment of the other party any person employed by such other party in the provision of the Services or (in the case of the Authority) in the receipt and/or administration of the Services.

34. INTELLECTUAL PROPERTY RIGHTS

34.1 Except as expressly set out in this Call off Contract:

34.1.1 the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including:

34.1.1.1 the Supplier Software;

34.1.1.2 the Third Party Software; or

34.1.1.3 the Supplier's Background IPRs; and

34.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including:

34.1.2.1 the Authority Software;

34.1.2.2 the Authority Data;

34.1.2.3 the Authority Assigned IPRs;

34.1.2.4 the Authority's documentation, processes and procedures;  
and

34.1.2.5 the Authority's Know-How.

34.2 Where either party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in clause 34.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other party on the request of the other party (whenever made).

35. LICENCES GRANTED BY THE SUPPLIER

Supplier Software and Supplier's Background IPR

35.1 The Supplier hereby grants to the Authority and each Authority Service Recipient a nonexclusive, royalty free licence of the Supplier Software and the Supplier's Background IPR for the Term (and for any Termination Assistance Period) to allow the Authority and each Authority Service Recipient to Use the Supplier Software and the Supplier's Background IPR to the extent necessary to receive the full benefit of the Services from the Supplier.

35.2 The Authority and each Authority Service Recipient may sub-license the rights granted to it pursuant to clause 35.1 to a third party provided that:

35.2.1 the sub-licence only authorises the third party to Use the Supplier Software and the Supplier's Background IPR for the benefit of the Authority/Authority Service Recipient (as applicable); and

35.2.2 the third party has entered into a confidentiality undertaking with the Authority/Authority Service Recipient (as applicable),

For the avoidance of doubt, the rights that may be sub-licensed pursuant to this clause 35.2 shall not extend beyond the rights enjoyed by the Authority pursuant to clause 35.1.

35.2A Save where otherwise agreed between the parties, the Authority shall not sub-licence the Supplier's Software and the Supplier's Background IPR pursuant to clause 35.2 to any third party providing the Authority with services which are the same or similar to the Services for the benefit of such third party services.

35.3 The Authority and each Authority Service Recipient may assign, novate or otherwise dispose of its rights and obligations under clause 35.1 to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Authority and/or each Authority Service Recipient.

- 35.4 Any change in the legal status of a Authority and/or a Authority Service Recipient shall not affect the validity of any licence granted under clause 35.1.
- 35.5 On termination or expiry of this Call off Contract, the Supplier shall, if requested by the Authority grant to the Authority (and/or a Replacement Supplier providing Services for the benefit of the Authority) a perpetual licence to Use the Supplier Software and the Supplier's Background IPR on terms to be agreed between the parties acting reasonably and in good faith.

#### Third Party Software

- 35.6 The Supplier shall ensure that the Authority is appropriately licensed for the Term (and for any Termination Assistance Period) to Use all Third Party Software to the extent that is necessary for the Authority to receive the full benefit of the Services from the Supplier. Save as otherwise agreed between the parties in writing and subject to clause 37.6, the Supplier shall only use Third Party Software that is commonly available on standard commercial licence terms.
- 35.7 Subject to clause 37.6 where the Supplier procures Contract Specific Third Party Licences on behalf of the Authority, the Supplier shall, at the request of the Authority, either (where appropriate) enable the Authority and/or Authority Service Recipient to enter into the Contract Specific Third Party Licence direct or ensure that such Contract Specific Third Party Licences can be freely assigned to the Authority/ Authority Service Recipient/ Replacement Supplier at any time.
- 35.8 If the Supplier cannot obtain for the Authority and each Authority Service Recipient a licence on the terms specified in paragraph 35.7 above, the Supplier will consult with the Authority on whether the rights that can be obtained are nevertheless acceptable to the Authority or whether the Supplier should seek to use an alternative provider of software.
- 35.9 The Supplier shall, if requested by the Authority in accordance with schedule B8 (Exit Management) procure the grant to the Replacement Supplier of a licence to Use any Contract Specific Third Party Licences on the same terms as held by the Supplier.

35.10 The Supplier hereby grants to the Authority and each Authority Service Recipient a non-exclusive licence to copy the Documentation for any purpose connected with the receipt of the Services or that is incidental to the exercise of the rights granted to the Authority under this Call off Contract.

36. LICENCES GRANTED BY THE AUTHORITY

36.1 The Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use:

36.1.1 the Authority Software;

36.1.2 the Authority's documentation, processes and procedures;

36.1.3 the Authority's Know-How;

36.1.4 the Authority Assigned IPR from the date the relevant rights are transferred to the Authority in accordance with clause 37; and

36.1.5 the Authority Data.

36.2 The licence granted in clause 36.1:

36.2.1 includes the right to grant sub-licences to Sub-Suppliers provided that any relevant Sub-Supplier has entered into a confidentiality undertaking with the Supplier on the same terms as set out in clause 42 (Confidentiality); and

36.2.2 is granted solely to the extent necessary for performing the Services in accordance with this Call off Contract. The Supplier shall not, and shall procure that the Sub-Suppliers do not, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.

36.3 Neither party shall have any right to use any of the other party's names, logos or trade marks on any of its products or services without the other party's prior written consent.

36.4 In the event of the termination or expiry of this Call off Contract, the licence referred to in clause 36.1, any sub-licence granted in accordance with clause



36.2.1 and any licence granted in accordance with clause 36.3 shall terminate automatically and the Supplier shall deliver to the Authority all material licensed to the Supplier pursuant to clause 36.1 or clause 36.3 in the Supplier's possession or control.

### 37. AUTHORITY ASSIGNED IPRS

- 37.1 The Supplier hereby assigns to the Authority, with full title guarantee, title to and all rights and interest in the Authority Assigned IPRs or shall procure that the first owner of the Authority Assigned IPRs assigns them to the Authority on the same basis.
- 37.2 Where Scots law applies, the reference to "with full title guarantee" in clause 37.1 shall be replaced with the words "all and whole".
- 37.3 The assignment under clause 37.1 shall either take effect on the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Authority Assigned IPRs.
- 37.4 The Supplier shall waive or procure a waiver of any moral rights in any copyright works assigned to the Authority under this Call off Contract.
- 37.5 If requested to do so by the Authority, the Supplier shall without charge to the Authority execute all documents and do all such further acts as the Authority may require to perfect the assignment under clause 37.1 or shall procure that the owner of the Authority Assigned IPRs does so on the same basis.
- 37.6 To the extent only that this is necessary to enable the Authority to obtain the full benefits of ownership of a) the Authority Assigned IPRs as an integrated product and b) any Database, the Supplier hereby grants to the Authority and each Authority Service Recipient and shall procure that any relevant third party licensor shall grant to the Authority and each Authority Service Recipient a perpetual, irrevocable, non-exclusive, assignable, royalty-free and global licence to Use, sub-license and commercially exploit any Supplier's Software, Supplier's Background IPRs or IPRs owned by a third party that are embedded in or which are an integral part of the Authority Assigned IPRs and/or the Database (as applicable).

- 37.7 The Supplier shall (where applicable) deliver to the Authority the Authority Assigned IPRs and any Database in both Source Code and binary code forms within seven days of the Authority's request and shall provide updates of the Source Code on each new release of the Authority Assigned IPRs and Database on media that is reasonably acceptable to the Authority.

38. ASSETS

Unless otherwise agreed in this Call off Contract, risk and title in Assets shall remain at all times with the Supplier.

39. AUTHORITY DATA

- 39.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 39.2 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Call off Contract or as otherwise expressly authorised in writing by the Authority.
- 39.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority in the format specified by the Authority from time to time provided that such request is within an industry standard format.
- 39.4 The Supplier shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data but only whilst such Authority Data is under the Supplier's control.
- 39.5 Not Used
- 39.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy.

- 39.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:
- 39.7.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in schedule B14 (Business Continuity and Disaster Recovery Plan) and the Supplier shall do so as soon as practicable but not later than 5 Working Days for BAU Services; and/or
- 39.7.2 itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in schedule B14 (Business Continuity and Disaster Recovery Plan).
- 39.8 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.
- 39.9 The Supplier shall indemnify and keep the Authority and each Authority Service Recipient indemnified at all times from and against all losses sustained by the Authority and/or a Authority Service Recipient in the event of any loss, destruction, corruption, degradation or inaccuracy of Authority Data arising by reason of any act, omission or default of the Supplier in the provision of the Services under this Call off Contract.
- 39.10 The Supplier acknowledges the special status of the Authority Data given the sensitive nature of medical records, and accordingly agrees to comply with:
- 39.10.1 The NHS Requirements including the recommendations made in the Confidentiality of NHS: Code of Practice, the Information Security Management: NHS Code of Practice, the Records Management: NHS Code of Practice and the Caldicott Report;
- 39.10.2 Any recommendations or guidance issued from time to time by the Department of Health or any other relevant NHS body; and

- 39.10.3 Any guidance from the Information Commissioner from time to time including the guidance published in May 2002 entitled "Use and Disclosure of Health Data".

#### 40. PROTECTION OF PERSONAL DATA

- 40.1 With respect to the parties' rights and obligations under this Call off Contract, the parties agree that the Authority is the Data Controller and that the Supplier is the Data Processor.

- 40.2 The Supplier shall:

40.2.1 Process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in this Call off Contract or as otherwise notified by the Authority to the Supplier during the Term);

40.2.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;

40.2.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

40.2.4 take reasonable steps to ensure the reliability of any Supplier Personnel who have access to the Personal Data;

40.2.5 obtain prior written consent from the Authority in order to transfer the Personal Data to any Sub-Suppliers or Affiliates for the provision of the Services;

40.2.6 ensure that all Supplier Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 40;

- 40.2.7 ensure that none of Supplier Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority;
- 40.2.8 notify the Authority (within five Working Days) if it receives:
  - 40.2.8.1 a request from a Data Subject to have access to that person's Personal Data; or
  - 40.2.8.2 a complaint or request relating to the Authority's obligations under the Data Protection Legislation;
- 40.2.9 provide the Authority with full cooperation and assistance in relation to any complaint or request made, including by:
  - 40.2.9.1 providing the Authority with full details of the complaint or request;
  - 40.2.9.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Authority's instructions;
  - 40.2.9.3 providing the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority); and
  - 40.2.9.4 providing the Authority with any information requested by the Authority;
- 40.2.10 permit the Authority or the Authority Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with clause 24 (Audits), the Supplier's data Processing activities (and/or those of its agents, subsidiaries and Sub-Suppliers) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Supplier is in full compliance with its obligations under this Call off Contract; and

40.2.11 provide a written description of the technical and organisational methods employed by the Supplier for processing Personal Data (within the timescales required by the Authority),

For the avoidance of doubt, the Supplier's obligations in this clause 40.2 only apply to such Personal Data that it holds or otherwise Processes on behalf of the Authority.

40.3 The Supplier shall not Process or otherwise transfer any Personal Data outside the United Kingdom without the Authority's prior written consent.

40.4 Where at the Effective Date, the Authority has consented to the Supplier (or any Sub-Supplier) Processing and/or transferring any Personal Data outside the United Kingdom, the Supplier shall at all times comply with the provisions set out in schedule B21 (Off shoring requirements).

40.5 If, after the Effective Date, the Supplier (or any Sub-Supplier) wishes to Process and/or transfer any Personal Data outside the United Kingdom, the following provisions shall apply:

40.5.1 the Supplier shall submit a Change Request to the Authority which shall be dealt with in accordance with the Change Control Procedure and clauses 40.5.1.1 to 40.5.1.3 below;

40.5.1.1 the Supplier shall set out in its Change Request and/or Impact Assessment details of the following:

- (a) the Personal Data which will be Processed and/or transferred outside the United Kingdom;
- (b) the country or countries in which the Personal Data will be Processed and/or to which the Personal Data will be transferred outside the United Kingdom;
- (c) any Sub-Suppliers or other third parties who will be Processing and/or transferring Personal Data outside the United Kingdom; and
- (d) how the Supplier will ensure an adequate level of protection and adequate safeguards (in accordance with the Data Protection Legislation and in particular so as to ensure the Authority's compliance with the Data

Protection Legislation) in respect of the Personal Data that will be Processed and/or transferred outside the United Kingdom;

40.5.1.2 in providing and evaluating the Change Request and Impact Assessment, the parties shall ensure that they have regard to and comply with the then-current Authority, Government and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing and/or transfers of Personal Data outside the United Kingdom and/or overseas generally; and

40.5.1.3 the Supplier shall comply with the provisions of schedule B21 (Off shoring requirements) and such other instructions and the Supplier shall carry out such other actions as the Authority may notify in writing, including requirements to conduct security risk assessments.

40.6 The Supplier shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Call off Contract in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation.

40.7 The parties shall comply with the terms of paragraph 9 (Additional Requirements for the General Data Protection Regulation) of Schedule B9 (Security Requirements and Plan).

#### 41. FREEDOM OF INFORMATION

41.1 The Supplier acknowledges that the Authority and each Authority Service Recipient is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority and each Authority Service Recipient to enable the Authority and each Authority Service Recipient to comply with its Information disclosure obligations.

- 41.2 The Supplier shall and shall procure that its Sub-Suppliers shall:
- 41.2.1 transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
  - 41.2.2 provide the Authority with a copy of all relevant Information in its possession, or power in the form that the Authority requires within five Working Days (or such other period as the Authority may specify) of the Authority's request; and
  - 41.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the Freedom of Information Act 2000 and/or section 10 of the Freedom of Information (Scotland) Act 2002 (as applicable) or regulation 5 of the Environmental Information Regulations and/or regulation 5 of the Environmental Information (Scotland) Regulations 2004 (as applicable).
- 41.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Call off Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 41.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 41.5 The Supplier acknowledges that (notwithstanding the provisions of this clause 41) the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000, the Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under the Freedom of Information (Scotland) Act 2002 and the Code of Practice on the Environmental Information (Scotland) Regulations 2004 for Scottish Public Authorities (collectively referred to as the "Code"), be



obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Services:

41.5.1 in certain circumstances without consulting the Supplier; or

41.5.2 following consultation with the Supplier and having taken their views into account;

41.5.3 provided always that where 41.5.1 applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

41.6 The Supplier shall ensure that all Information is retained for disclosure in accordance with schedule B15 (Records Provision and Monitoring) and shall permit the Authority to inspect such records as requested from time to time.

41.7 The Supplier acknowledges that the Commercially Sensitive Information listed in the Order Form is of indicative value only and that the Authority may be obliged to disclose it in accordance with clause 41.5.

41.8 The provisions of clause 74 (Governing Law and Jurisdiction) shall apply in full in respect of Authority Service Recipients located in Scotland save that Scots Law shall apply to the extent necessary to give effect to the provisions of this clause 41 (Freedom of Information) in respect of that Authority Service Recipient.

## 42. CONFIDENTIALITY

42.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Call off Contract, each party shall:

42.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and

42.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

42.2 Clause 42.1 shall not apply to the extent that:

42.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 41 (Freedom of Information);

42.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

42.2.3 such information was obtained from a third party without obligation of confidentiality;

42.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Call off Contract; or

42.2.5 it is independently developed without access to the other party's Confidential Information.

42.3 The Supplier may only disclose the Authority Confidential Information to the Supplier Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Supplier Personnel are aware of and shall comply with these obligations as to confidentiality.

42.4 The Supplier shall not, and shall procure that the Supplier Personnel do not, use any of the Authority Confidential Information received otherwise than for the purposes of this Call off Contract.

42.5 The Supplier may only disclose the Authority Confidential Information to the Supplier Personnel who need to know the information, and shall ensure that such Supplier Personnel are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any Supplier Personnel causes or contributes (or could cause or contribute) to the Supplier breaching its obligations as to confidentiality under or in connection with this Call off Contract, the Supplier shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases.

- 42.6 To the fullest extent permitted by its own obligations of confidentiality to any Supplier Personnel, the Supplier shall provide such evidence to the Authority as the Authority may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the Supplier is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from Supplier Personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Supplier Personnel in connection with obligations as to confidentiality.
- 42.7 At the written request of the Authority, the Supplier shall procure that those members of the Supplier Personnel identified in the Authority's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Call off Contract.
- 42.8 Nothing in this Call off Contract shall prevent the Authority from disclosing the Supplier's Confidential Information (including the Monitoring Information obtained under clause 25):
- 42.8.1 to any Authority Service Recipient;
  - 42.8.2 to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or 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 Crown Body or any Contracting Authority;
  - 42.8.3 to any consultant, Supplier or other person engaged by the Authority or a Authority Service Recipient or any person conducting an Office of Government Commerce gateway review;
  - 42.8.4 for the purpose of the examination and certification of the Authority's and/or a Authority Service Recipient's accounts;
  - 42.8.5 to employees, consultants and professional advisors of the Authority and/or any Authority Service Recipient to the extent that the Authority

and/or a Authority Service Recipient consider that they have a reasonable need to receive and consider the same;

42.8.6 to any other third party to the extent the Authority and/or a Authority Service Recipient considers it reasonably necessary so as to enable or assist such persons in providing services to the Authority (or bid for the provision of such services); or

42.8.7 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority or any Authority Service Recipient has used its resources.

42.9 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Supplier to whom it has disclosed the Supplier's Confidential Information pursuant to clause 42.8 is made aware of the Authority's obligations of confidentiality.

42.10 Nothing in this clause 42 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Call off Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.

42.11 The Supplier shall indemnify and keep the Authority and each Authority Service Recipient indemnified at all times from and against all losses sustained by the Authority and/or a Authority Service Recipient in the event of any breach by the Supplier of this clause 42 (Confidentiality).

## Return of Confidential Information

42.12 The Supplier shall promptly following termination or expiry of this Call off Contract or if so directed to do so by the Authority at any other time return to the Authority or destroy (at the option of the Authority) all Authority Confidential Information in its possession or under its control (and shall, at the request of the Authority, certify that it does not retain any such Confidential Information). This obligation shall not apply to the extent that any Authority Confidential Information needs to be retained:

42.12.1 by the Supplier for the purposes of the provision of the Services or compliance with any Exit Management obligations; or

42.12.2 by the Supplier in order to enforce any of its rights or remedies under this Call off Contract.

## 43. COMMERCIAL SENSITIVE INFORMATION

43.1 Without prejudice to the Authority's general obligation of confidentiality, the parties acknowledge that the Authority may have to disclose Information in or relating to the Call off Contract following a Request for Information pursuant to clause 41 (Freedom of Information).

43.2 In the Order Form the parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be contrary to the public interest and, where possible, where any relevant Information will cease to fall into the category of Commercially Sensitive Information.

43.3 Without prejudice to the Authority's obligation to disclose Information in accordance with FOIA, the Authority will, acting reasonably but in its sole discretion, seek to apply the commercial interests exemption set out in section 43 of the Freedom of Information Act 2000 or section 33 of the Freedom of Information (Scotland) Act 2002 (as applicable) to the Commercially Sensitive Information listed in the Order Form.

43.4 The Supplier acknowledges that the Authority and/or OGC may disclose Monitoring Information to other Contracting Authority's in accordance with clause 25. The Supplier acknowledges that notwithstanding any other

provision to the contrary, the transparency obligations detailed in the Framework Agreement, in particular clauses 15.9 to 15.11 inclusive of the Framework Agreement, shall apply in respect of this Call off Contract.

#### 44. REQUIREMENT TO ACCEPT NOVATION OF ANOTHER SERVICE AGREEMENT

Where the Authority has entered into a Call off Contract for similar services as the Services with another service provider which has been terminated or is subject to step in by the Authority, the Supplier shall (where required by the Authority), enter into good faith negotiations with the Authority to agree an assignment or novation of the whole or part of such Call off Contract.

#### 45. GENERAL OBLIGATIONS OF THE PARTIES

##### Supplier's Obligations

##### 45.1 The Supplier shall:

45.1.1 at all times allocate sufficient resources to provide the Services in accordance with the terms of this Call off Contract;

45.1.2 subject to clause 48 (Change in Law) obtain, and maintain throughout the duration of this Call off Contract, all the consents, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary to enable the provision of the Services;

45.1.3 provide to the Authority's other suppliers (as are notified to the Supplier periodically), such reasonable co-operation, information (including any Documentation), advice and assistance in connection with the Services to enable any such person to create and maintain technical or organisational interfaces with the Services and, on the ending of this Call off Contract for any reason, to enable the timely transition of the Services (or any of them) to any Related Service Provider (including a Replacement Supplier); and

45.1.4 provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services.

45.2 In respect of network, communications, computer or other equipment provided by a third party Supplier that do or are required to interface with the Supplier System, the Authority shall have primary management responsibility for incident or problem resolution, including:

45.2.1 for ensuring that such requirement does not interfere with the provision of the Services in accordance with this Call off Contract; and

45.2.2 for taking all necessary steps within its power to ensure that the interface is successfully achieved,

provided that if it is subsequently agreed by the parties, or determined in accordance with the Dispute Resolution Procedure, that the third party supplier should have been responsible, or partly responsible, for resolving the relevant incident, the Supplier may recover its reasonable additional expenses for resolving the issue to the extent that the third party supplier is agreed or is determined to have been responsible and to the extent that the Authority is able to recover an equivalent amount from the relevant third party supplier.

45.3 Any change in the way in which the Supplier provides the Services which would affect the Authority's use of the Services, materially increase the Authority's risk or reduce the effect of the governance provisions of the Call off Contract shall require the Authority's prior written approval.

45.4 The Supplier undertakes to:

45.4.1 inform the Authority in writing reasonably in advance of any adverse effects of carrying out its obligations under this clause 45 on the Services or (to the extent that it is aware of the same) any Related Services;

45.4.2 minimise any such adverse effects to the extent reasonably practicable in the circumstances; and

45.4.3 liaise with the Authority regarding the most appropriate time to carry out these obligations and comply with the Authority's requirements in this regard.

45.5 If there is any dispute between the Supplier and:

45.5.1 any Related Service Provider; or

45.5.2 another service provider with whom the Authority has entered into a Call off Contract for similar services to the Services,

relating to the interfacing or interoperability of all or any part of the Services, the Supplier shall promptly notify the Authority in writing of the dispute and shall provide, at the request of the Authority, the Related Service Provider or the other service provider (as applicable), all reasonable co-operation and assistance (including the provision of personnel, documents, design information/documentation know-how, information, materials and codes) to assist with the resolution, correction or remedy of that dispute.

#### 46. AUTHORITY'S RESPONSIBILITIES

46.1 The Authority shall comply with the Authority Responsibilities set out in schedule B5 (Authority Responsibilities).

46.2 Where the Authority is required to stipulate any timescales regarding the performance of the Supplier's obligations pursuant to this Call off Contract it shall at all times act reasonably in doing so.

#### 47. WARRANTIES

47.1 The Supplier warrants, represents and undertakes that:

47.1.1 it has full capacity and authority to enter into and to perform this Call off Contract;

47.1.2 this Call off Contract is executed by a duly authorised representative;

47.1.3 there are no actions, suits or proceedings or regulatory investigations pending or, to its knowledge, threatened against or affecting it before any court or administrative body or arbitration tribunal that might affect its ability to meet and carry out its obligations under this Call off Contract;



- 47.1.4 once duly executed this Call off Contract will constitute its legal, valid and binding obligations;
- 47.1.5 all personnel used to provide the Services will be vetted in accordance with Good Industry Practice, the Security Policy and the Standards (as appropriate);
- 47.1.6 it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Supplier's obligations under this Call off Contract;
- 47.1.7 each person to whom the Supplier has subcontracted its obligations has the full capacity and authority to carry out their functions and exercise the powers and authorities delegated to them;
- 47.1.8 it has and will continue to have all necessary rights in and to the Supplier Software or the Third Party Software and/or the Supplier's Background IPRs, or any other materials made available by the Supplier and/or the Sub-Suppliers to the Authority necessary to perform the Supplier's obligations under this Call off Contract;
- 47.1.9 as at the Effective Date all statements and representations made to the Authority in the proposal documentation or annexed to or referred to in the Supplier Tender Response are to the best of its knowledge, information and belief, true and accurate and that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render any such statement or representation to be false or misleading;
- 47.1.10 it is aware of the reliance that the Authority shall have on the Supplier's obligations set out in schedule B8 (Exit Management) to support a smooth transition or ramp down of the Services (as applicable) on termination, ramp down or expiry of this Call off Contract and will ensure that any Documentation required pursuant to that schedule will contain all necessary information and explanation required for suitably qualified employees of the Authority or of the Replacement Supplier to be able to perform the Replacement Services on termination or expiry; and

47.1.11 it shall at all times comply with Law in carrying out its obligations under this Call off Contract.

47.2 Except as expressly stated in this Call off Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.

47.3 For the avoidance of doubt the fact that any provision within this Call off Contract is expressed as a warranty shall not preclude any right of termination the Authority may have in respect of breach of that provision by the Supplier.

#### 48. CHANGE IN LAW

48.1 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms of this Call off Contract nor be entitled to an increase in the Charges as the result of:

48.1.1 a General Change in Law; or

48.1.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Effective Date.

48.2 If a Specific Change in Law occurs or will occur during the Term (other than those referred to in clause 48.1.2), the Supplier shall notify the Authority of the likely effects of that change, including whether any Change is required to the Services, the Charges or this Call off Contract.

48.3 As soon as practicable after any notification in accordance with clause 48.2, the parties shall discuss and agree the matters referred to in that clause and any ways in which the Supplier can mitigate the effect of the Specific Change in Law, including:

48.3.1 providing evidence that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Suppliers;

48.3.2 demonstrating that the foreseeable effects of a Specific Change in Law had been taken into account by the Supplier before it occurred;

48.3.3 giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and

48.3.4 demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of clause 16 (Services Improvement), has been taken into account in amending the Charges.

48.4 Any increase in the Charges or relief from the Supplier's obligations agreed by the parties pursuant to clause 48.3 shall be implemented in accordance with the Change Control Procedure.

#### 48A. COST IMPACT OF CHANGES TO POLICIES AND PLANS

48A.1 The Supplier acknowledges that throughout the Term of this Call off Contract, the Authority's policies and plans shall be updated from time to time to comply with the Authority's requirements. The Supplier shall implement such revised policies in accordance with the timescales stipulated by the Authority (acting reasonably).

48A.2 Where requested by the Authority, in addition to its obligations in clause 48A.3 below, the Supplier shall confirm to the Authority whether the proposed change to the relevant Authority's policies/plans would have a material and unavoidable cost implication to the Services and if so provide the Authority with an indicative cost impact.

48A.3 Save for revisions to policies and plans made as the result of a Change of Law as detailed in clause 48.1, if the Supplier believes that a change or proposed change to the Authority's policies or plans under this Call off Contract will have a material and unavoidable cost implication to the Services, the Supplier:

48A.3.1 shall notify the Authority as soon as practicable and in any event within 5 working days of the date of receipt of the revised policy/plan; and

48A.3.2 subject to clause 48A.4 may submit a Change Request to the Authority for recovery of such costs (subject to clause 49.4) on a

retrospective basis. In doing so, the Supplier must support its request by providing evidence of the cause of any increased or potential increased costs and the steps that it has taken (or will take) to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Procedure.

- 48A.4 Any Change Request for increased costs pursuant to the clause 48A.3 must be made within 30 days of receipt of the revised policy or such other period agreed in writing between the parties (acting reasonably). The Supplier shall not be permitted to receive increased costs for a Change Request submitted after this date.
- 48A.5 Subject to clause 49.4 and unless otherwise agreed between the parties, clause 48A.3.2 operates ex post facto to the implementation of the amended policies/plans. For the avoidance of doubt, the Supplier shall not delay the implementation of the amended policies/plan unless specifically requested to do so by the Authority.

#### 49. SECURITY REQUIREMENTS

- 49.1 The Supplier shall comply with its obligations in schedule B9 (Security Requirements and Plan).
- 49.2 The Supplier shall comply, and shall procure the compliance of the Supplier Personnel, with the Security Policy and the Security Management Plan and the Supplier shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.
- 49.3 The Authority shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 49.4 Until and/or unless a change to the Charges is agreed by the Authority pursuant to clause 48A the Supplier shall continue to perform the Services in accordance with its existing obligations.

##### Malicious Software

- 49.5 The Supplier shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and

minimise the impact of Malicious Software in the ICT Environment (or as otherwise agreed by the parties).

49.6 Notwithstanding clause 49.5, if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

49.7 Any cost arising out of the actions of the parties taken in compliance with the provisions of clause 49.6 shall be borne by the parties as follows:

49.7.1 by the Supplier where the Malicious Software originates from the Supplier Software, the Third Party Software, the Specially Written Software supplied by the Supplier (except where the Authority has waived the obligation set out in clause 49.6) or the Authority Data (whilst the Authority Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Authority when provided to the Supplier; and

49.7.2 by the Authority if the Malicious Software originates from the Authority Software (excluding the Specially Written Software) (in respect of which the Authority has waived its obligation set out in clause 49.6) or the Authority Data (whilst the Authority Data was under the control of the Authority).

## 50. BUSINESS CONTINUITY AND DISASTER RECOVERY

50.1 The parties shall comply with the provisions of the BCDR Plan and the provisions of schedule B14 (Business Continuity and Disaster Recovery Plan).

50.2 The Supplier shall ensure that it is able to implement the BCDR Plan at any time in accordance with its terms.

50.3 Not Used

- 50.4 The Supplier shall establish, maintain, and review its own internal processes and procedures with respect to the identification of any threats or risks to the provision of the Services, how such threats and risks may be mitigated and how the provision of the Services may be maintained in the event of any such identified threats or risks materialising.

51. FORCE MAJEURE

- 51.1 Subject to the remaining provisions of this clause 51, either party to this Call off Contract may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event. The Charges shall be reduced to the extent that the Authority does not receive the Services as a result of the Force Majeure Event.
- 51.2 A party cannot claim relief if the Force Majeure Event is attributable to its (or its sub-Suppliers) wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 51.3 The Supplier cannot claim relief from a Force Majeure Event to the extent that it is required to comply with the BCDR Plan but has failed to do so (unless this failure is also due to a Force Majeure Event affecting the operation of the BCDR Plan).
- 51.4 An Affected Party cannot claim relief as a result of a failure or delay by any other person in the performance of that other person's obligations under a contract with the Affected Party (unless that other person is itself prevented from or delayed in complying with its obligations as a result of a Force Majeure Event).
- 51.5 The Affected Party shall immediately give the other party written notice of the Force Majeure Event. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.
- 51.6 As soon as practicable following the Affected Party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event

and to facilitate the continued performance of this Call off Contract. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

- 51.7 The Affected Party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Call off Contract. Following such notification, this Call off Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

## 52. IPR INDEMNITY

- 52.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and each Authority Service Recipient and keep the Authority and each Authority Service Recipient indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Authority and/or a Authority Service Recipient arising from an IPR Claim.

- 52.2 The Authority agrees that:

52.2.1 it will notify the Supplier in writing of any IPR Claim; and

52.2.2 it will not, without first agreeing with the Supplier, make an admission of infringement relating to the IPR Claim.

- 52.3 The Supplier shall consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Authority or any Authority Service Recipient into disrepute and the Supplier shall keep the Authority fully informed and consult with the Authority with respect to any such IPR Claim.

- 52.4 The Authority shall at the request of the Supplier provide reasonable assistance to the Supplier in the management of any IPR Claim. In such circumstances, the Supplier shall reimburse the Authority for any costs and expenses incurred in providing such assistance.

- 52.5 At the option of the Authority, the Authority shall be entitled to manage an IPR Claim including the conduct of any litigation and all discussions and negotiations regarding any proposed settlement. In doing so, it shall consult with and pay due regard to the interests and views of the Supplier and shall, where it is reasonable to do so, comply with such views.
- 52.6 The Supplier shall not settle or compromise any IPR Claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).
- 52.7 If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:
- 52.7.1 procure for the Authority and each Authority Service Recipient the right to continue to receive the Services and to use the relevant item which is subject to the IPR Claim; or
- 52.7.2 replace or modify the Services and/or the relevant item with non-infringing substitutes provided that:
- 52.7.2.1 there is no adverse effect on the performance and functionality of the Services or any Related Service or the receipt or use of any IPR to be provided by the Supplier under this Call off Contract;
- 52.7.2.2 there is no additional cost to the Authority; and
- 52.7.2.3 the terms of the Call off Contract shall apply to the replaced or modified Services.
- 52.8 If the Supplier elects to modify or replace an item pursuant to clause 52.7.2 or to procure a licence in accordance with clause 52.7.1, but this has not avoided or resolved the IPR Claim, then the Authority may terminate this Call off Contract by written notice with immediate effect and, without prejudice to the indemnity set out in clause 52, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.



52.9 The provisions of clauses 52.1 to 52.8 (inclusive) shall not apply in respect of any IPR Claim caused by:

52.9.1 any use by the Authority of any Software supplied by the Supplier in combination with any item not supplied or approved by the Supplier (or otherwise provided for or anticipated by this Call off Contract); or

52.9.2 any modification carried out by the Authority to any Software supplied by the Supplier under this Call off Contract where such modification is not authorised by the Supplier; or

52.9.3 the use by the Authority of the Software in a manner not reasonably to be inferred from the Services Description or the provisions of this Call off Contract; or

52.9.4 Use by the Supplier in fulfilling its obligations under this Call off Contract of any of the Authority Materials provided to the Supplier by the Authority.

## 53. LIMITATIONS ON LIABILITY

53.1 Neither party limits its liability for:

53.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-Suppliers (as applicable); or

53.1.2 fraud or fraudulent misrepresentation by it or its employees; or

53.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 or section 11B of the Supply of Goods and Services Act 1982.

### Financial Limits

53.2 Subject to clause 53.1, the Supplier's total aggregate liability:

53.2.1 in respect of the indemnity in clauses 19.2 (Tax), 29 (Employment Indemnity and 52 (IPR Indemnity), shall be unlimited;

53.2.2 in respect of breach of clause 42 (Confidentiality) shall be unlimited;

53.2.3 in respect of any Wilful Default, shall be unlimited;

53.2.3B in respect of breach of clauses 40.2.1, 40.2.3, 40.2.5, 40.3, 40.4 and 40.5 shall be unlimited. In respect of any other breach of clause 40 (Protection of Personal Data) shall in no event exceed £150,000.00 per year (subject to indexation);

53.2.4 for all loss of or damage to the Authority Premises, property or assets (including technical infrastructure, assets or equipment but excluding any loss or damage to the Authority Data or any other data) of the Authority caused by the Supplier's Default shall in no event exceed £500,000.00 per year (subject to indexation);

53.2.5 in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Call off Contract in each Contract Year shall in no event exceed £150,000.00 (subject to indexation) or, if greater, an amount equivalent to 125% of the aggregate Charges paid, due or which would have been payable in the future in respect of that Contract Year prior to the calculation of any reduction to those Charges pursuant to this Call off Contract.

53.3 Subject to clause 53.1, the Authority's total aggregate liability, in addition to its obligation to pay the Charges as and when they fall due for payment:

53.3.1 for all Defaults by the Authority resulting in loss of or damage to the property or assets (including technical infrastructure, assets or equipment) of the Supplier shall in no event exceed £500,000.00 (subject to indexation);

53.3.2 in respect of all other Defaults by the Authority shall in no event exceed the total Charges paid or properly invoiced and due to be paid under this Call off Contract in the 12 month period immediately preceding the event giving rise to the liability.

53.4 Subject to clauses 53.1 and 53.5, neither party will be liable to the other party for:

53.4.1 any indirect, special or consequential loss or damage; or

53.4.2 any loss of profits, turnover, business opportunities or damage to goodwill (whether direct or indirect).

53.5 Subject to clause 53.2, the Authority may, amongst other things, recover as a direct loss:

53.5.1 any additional operational and/or administrative costs and expenses arising from the Supplier's Default;

53.5.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Authority arising from the Supplier's Default under this Call off Contract;

53.5.3 the additional cost of procuring Replacement Services for the remainder of the Term; and

53.5.4 where forecast savings are agreed between the parties and clearly set out in this Call off Contract, those forecast savings.

53.6 The parties expressly agree that if any limitation or provision contained or expressly referred to in this clause 53 is held to be invalid under any Law, it will be deemed omitted to that extent, and if any party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this clause 53.

53.7 Nothing in this clause 53 shall act to reduce or affect a party's general duty to mitigate its loss.

#### 54. INSURANCE

54.1 The Supplier shall maintain the Required Insurances which shall apply in respect of this Call off Contract and take out and maintain any additional and/or increased insurances as included in this Call off Contract. Such additional and/or increased insurances shall be deemed to be "Required Insurances" for the purpose of this Call off Contract and schedule 12 of the Framework Agreement.

54.2 If at any time the Supplier is unable to maintain any of the Required Insurances, the Supplier shall promptly procure replacement cover which the

Authority agrees is a satisfactory equivalent. If the Supplier is unable to maintain any of the Required Insurances, the Supplier will consult with the Authority as to whether an appropriate replacement insurance can be obtained which is acceptable to the Authority or whether the Supplier must use alternative cover.

## 55. TERMINATION AND SUSPENSION RIGHTS

### 55.1 Termination or suspension by the Authority for Cause

55.1.1 The Authority may terminate or suspend this Call off Contract by giving written notice of termination to the Supplier if one or more of the following circumstances exist:

55.1.1.1 the Supplier is in material Default which it has failed to remedy in accordance with the Remedial Plan Process;

55.1.1.2 the Supplier commits a material Default of this Call off Contract which is irremediable;

55.1.1.3 there are persistent Critical Service Failures in accordance with paragraph 4 of schedule B16 (Service Levels and Performance Monitoring);

55.1.1.4 there has been a material adverse change in the Supplier's circumstances pursuant to clauses 10.2.2 or 10.2.3 of the Framework Agreement and the Supplier has failed to provide the Authority with acceptable assurances regarding such change;

55.1.1.5 clause 23.11A applies and the Supplier has failed to replace the Key Sub-Supplier within the relevant period specified in the Authority's written notice;

55.1.1.6 the Supplier is in breach of clause 8.7 of the Framework Agreement (Engagement Process);

55.1.1.7 pursuant to:

- (a) clause 52.8 (where a modification or replacement of an item pursuant to clause 52.7.2 or where procuring a licence in accordance with clause 52.7.1 has not avoided or resolved an IPR Claim); or
- (b) clause 65 (Prevention of Corruption);
- (c) clause 66A (Prevention of Fraud);

55.1.1.8 the Supplier is in material Default of:

- (a) clause 40 (Protection of Personal Data);
- (b) clause 41 (Freedom of Information);
- (c) clause 42 (Confidentiality); or
- (d) the security requirements set out in the Services Description or the Security Policy;

55.1.1.9 an Insolvency Event affecting the Supplier occurs; or

55.1.1.10 in respect of a Financial Distress Event:

55.1.1.11 the circumstances described in paragraph 6 of schedule 6 (Financial Distress) of the Framework Agreement;

55.1.1.12 the Guarantor is in breach of the Guarantee (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Authority) or the Guarantor suffers an Insolvency Event; or

55.1.1.13 the Supplier committing a Default (other than as a consequence of a Default by the Authority) which results in the criminal investigation, prosecution and conviction of the Supplier or any Sub-Supplier under the Health and Safety Regime. In determining whether to exercise any right of termination pursuant to this clause 55.1.1.13 the Authority shall:

- (a) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing it; and
- (b) give all due consideration, where appropriate, to action other than termination of this Call off Contract;

55.1.1.14 there has been a disaster and the Supplier has not acted in accordance with its obligations under the BCDR Plan and such failure to act is in itself a material Default or the result of such failure to act has a material adverse impact on the Authority; or

55.1.1.15 the Supplier makes any public announcement or a director of the board of directors of the Supplier advises an officer of the Authority that the Supplier is no longer going to continue to develop or to offer similar services to the Services.

55.2 Where the Authority is terminating this Call off Contract for a material Default of this Call off Contract or one of the specific provisions in clause 55.1.1.8 it may rely on a single Default or on a number of Defaults or repeated Defaults that taken together constitute a material Default.

55.3 The rights of the Authority under this clause 55 are in addition (and without prejudice) to any other right or remedy which the Authority and/or any Authority Service Recipient may have to claim the amount of loss or damage suffered by the Authority and/or a Authority Service Recipient on account of the acts or omissions of the Supplier (or to take any action other than termination of this Call off Contract).

56.3A Termination by the Authority for circumstances other than breach

56.3A.1 The Authority may terminate or suspend this Call off Contract by giving written notice of termination to the Supplier if one or more of the following circumstances exist:

56.3A.1.1 the Authority is entitled to terminate any other Call off Contract entered into with the Supplier under the Framework Agreement for material breach; and/or

56.3A.1.2 the Authority has terminated the Framework Agreement on the grounds set out in clause 18.1.8 of the Framework Agreement (Restricted Persons) or, (following termination or expiry of the Framework Agreement), the Authority would have been in a position to terminate the Framework Agreement on the grounds set out in clause 18.1.8 of the Framework Agreement had the Framework Agreement still been in full force and effect.

56.3A.2 In the circumstances described in paragraph 56.3A, schedule B19 (Payments on termination) shall not apply.

55.4 Termination for Convenience by the Authority

55.4.1 Subject to the provisions of clause 58 and schedule B19 (Payments on Termination) the Authority may terminate this Call off Contract (in whole or part) for convenience at any time on giving no less than 3 months' written notice (or such other period as may be agreed in this Call off Contract) to the Supplier.

55.4.2 Subject to any obligation to provide the Services in accordance with the Exit Plan, the Supplier's obligation to provide the Services shall end on the date set out in the Authority's notice.

55.4.3 Without prejudice to clause 55.4.2 and unless otherwise stipulated by the Authority in its notice of termination, any Services that have not commenced at the date of the Authority's notice shall be cancelled automatically and irrevocably.

55.4.4 This right of termination is in addition to any other rights of the Authority and/or any Authority Service Recipient under this Call off Contract and its exercise shall be without prejudice to any claim, remedy or right of action that party may have in relation to this Call off Contract.

## 55.5 Termination for Change of Control

55.5.1 The Authority may terminate this Call off Contract by written notice without penalty if there is a Change of Control except where the Authority:

55.5.1.1 has given its prior written consent to the particular Change of Control (such approval not to be withheld unreasonably), which subsequently takes place as proposed; or

55.5.1.2 has not served its notice within six months of the later of the date the Change of Control took place or the date on which the Authority was given notice of the Change of Control.

55.5.2 The Supplier shall notify the Authority in writing within one month of any Change of Control taking place.

## 55.6 Partial Termination

55.6.1 Subject to the provisions of clauses 55.6.3 and 55.6.4, the Authority may, without any obligation to compensate the Supplier, serve notice on the Supplier, requiring the termination of any part of the Services if the Supplier commits a material Default of this Call off Contract in relation to those Services which is irremediable or (if the Default is capable of remedy) is not remedied in accordance with the Remedial Plan Process.

55.6.2 In exercising its rights pursuant to clause 55.6.1, the Authority shall consult with the Supplier regarding the severability of any part of the Services and the effect and any material issues that a Partial Termination would have on the Supplier's ability to deliver the remaining Services.

55.6.3 On receipt of the Authority's notice of Partial Termination, the Supplier shall notify the Authority in writing within such timescales stipulated by the Authority and either:

55.6.3.1 accept the Partial Termination of this Call off Contract; or



55.6.3.2 reject the Partial Termination of this Call off Contract.

55.6.4 If the Supplier rejects the Partial Termination, or where consequential amendments pursuant to clause 55.6.5 below are not agreed within the timescales set by the Authority, the Authority may, in its sole discretion terminate the whole Call off Contract without any obligation to compensate the Supplier.

55.6.5 The parties shall agree the effect of any Change made necessary to the Call off Contract by the Partial Termination, including the effect the Partial Termination may have on any other Services and the Charges, in accordance with the Change Control Procedure. In order to facilitate this the Supplier shall provide the Authority with proposed amended Charges for acceptance or rejection by the Authority (in its sole discretion) provided that:

55.6.5.1 the Supplier shall not be entitled to an overall increase in the Charges; and

55.6.5.2 where, as a result of Partial Termination, the remaining Services fall within any 'rate card(s)' within the Catalogue, such proposed amended Charges must not exceed the Guaranteed Maximum Prices detailed in the Catalogue. If more than one rate card option applies, the Authority shall (in its sole discretion) be entitled to select which rate card (and Guaranteed Maximum Price) applies.

55.6.6 Termination in accordance with this clause 55.6 shall be without prejudice to any right of action or remedy of either party or of any Authority Service Recipient which has accrued or which subsequently accrues.

## 55.7 Termination by the Supplier

55.7.1 The Supplier may terminate this Call off Contract only if the Authority is in material breach of its obligation to pay undisputed Charges by giving the Authority 90 days written notice specifying the breach and

requiring its remedy. The Supplier's right of termination under this clause 55.7 shall:

55.7.1.1 only apply where the amount of undisputed Charges exceeds £500,000 or if greater, 10% of the annual Charges; and

55.7.1.2 only apply where the Authority has failed to remedy such breach within the 90 day remedy period; and

55.7.1.3 not apply to non-payment of the Charges by the Authority where such non-payment is due to the Authority exercising its rights under clause 20 (Recovery of Sums Due).

55.8 The Supplier shall not exercise, or purport to exercise, any right to terminate this Call off Contract (or accept any repudiation of this Call off Contract) except as expressly set out in this Call off Contract.

55.9 Termination for Continuing Force Majeure Event

The Authority may, by written notice to the Supplier, terminate this Call off Contract, or require the Partial Termination of any part of the Services on the occurrence in relation to that part, if:

55.9.1 a Force Majeure Event occurs which affects all or a substantial part of the Services for a continuous period of more than 30 days; or

55.9.2 a Force Majeure Event occurs which affects a part but not a substantial part of the Services for a continuous period of more than 45 days.

## 56. REMEDIAL PLAN PROCESS

56.1 Subject to clause 55.6.1 and paragraph 4.1 of schedule B16 (Services Levels and Performance Monitoring) and the following provisions of this clause 56, if the Supplier commits a material Default and the Authority determines (acting reasonably) that the Default is capable of remedy, the Authority may not terminate this Call off Contract in whole or in part without first notifying the Supplier that it requires remedy of the Default and:

56.1.1 giving the Supplier 30 days to remedy the Default; or

56.1.2 allowing the Supplier to prepare a Remedial Plan for approval by the Authority setting out sufficient detail (including timescales) how the Supplier intends to remedy the Default and implement the remedial arrangements set out in the Remedial Plan so as to remedy the relevant Default. Any such notification should identify itself on its face as a request for a Remedial Plan.

56.2 Where clause 56.1.1 applies, the Authority shall be entitled to terminate this Call off Contract in accordance with clause 56.5 if the Supplier does not remedy the relevant Default within the 30 day period. The Authority may reduce or extend the 30 day remedy period where it considers it reasonably necessary to do so.

56.3 Where clause 56.1.2 applies, the Authority shall specify (in its sole discretion) the timescales for the preparation of any Remedial Plan, the approval process and the implementation. The Authority shall be entitled to terminate this Call off Contract in accordance with clause 56.5 if the Remedial Plan is not prepared and/or approved in accordance with these provisions or if the Remedial Plan is not implemented by the Supplier, or if implementation of the Remedial Plan does not result in remedy of the relevant Default.

56.4 The Authority shall be entitled to terminate this Call off Contract in accordance with clause 56.5 without following the Remedial Plan Process if:

56.4.1 the relevant Default is a repetition of substantially the same material Default within a period of three months from a previous material Default; or

56.4.2 the circumstances described in clause 7A.6 apply (failure to comply with a Correction Plan requirement).

56.5 The Authority shall be entitled to terminate this Call off Contract by serving a Termination Notice in the circumstances described in clauses 56.2, 56.3 and 56.4. Following service of such Termination Notice this Call off Contract shall terminate on the last day of the period specified by the Authority in such notice.

## 57A CONSEQUENCES OF SUSPENSION

57A.1 During any period of suspension of the whole or part of this Call off Contract:

57A.1.1 subject to clause 57A.1.4, the Supplier shall cease providing the relevant part of the Services subject to the period of suspension;

57A.1.2 the Authority shall cease paying the relevant part of the Charges (save for the Supplier's right to receive payment for Services properly performed at the date of suspension);

57A.1.3 both parties shall act reasonably and enter into good faith discussions in order to:

(a) resolve the issue that resulted in the suspension period; and

(b) agree whether (and if applicable, the period for which) the Supplier shall retain the services of human resources and the duration of a reasonable ramp up period for the Supplier to restart the Services once the suspension period is over;

57A.1.4 the Supplier shall comply with all reasonable requirements of the Authority; and

57A.1.5 the Authority shall keep the Supplier updated with regard to the length of the suspension period and notify the Supplier in the event that the suspension is lifted by the Authority.

57A.2 For the avoidance of doubt, the Supplier shall not be able to exercise its rights of termination under clause 55 as a result of suspension.

## 57. CONSEQUENCES OF EXPIRY OR TERMINATION

57.1 Following the service of a Termination Notice for any reason the Supplier shall continue to be under an obligation to provide the Services to the required Operating Service Levels and to ensure that there is no degradation in the standards of the Services until the date of the termination.

57.2 In the event of termination or expiry, the Supplier shall:

57.2.1 repay to the Authority all Charges it has been paid in advance in respect of Services not provided by the Supplier as at the date of expiry or termination; and

57.2.2 comply with its obligations contained in the Exit Plan; and

57.2.3 subject to the content of the Exit Plan, cease to use the Authority Data and, at the direction of the Authority provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the

Authority Data in electronic form in the formats and on media agreed with the Authority and/or the Replacement Supplier; and

57.2.4 on receipt of the Authority's written instructions, destroy all copies of the Authority Data, excepting a copy of any such Authority Data which is also a record as set out in schedule B15 (Records Provision and Monitoring) and promptly provide written confirmation to the Authority that the data has been destroyed; and

57.2.5 provide access during normal working hours to the Authority and/or the Replacement Supplier for up to 12 months after expiry or termination to:

57.2.5.1 such information relating to the Services as remains in the possession or control of the Supplier; and

57.2.5.2 such members of the Supplier Personnel as have been involved in the provision of the Services and who are still employed by the Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this clause 57.2.5.

57.3 The following clauses shall survive termination or expiry of this Call off Contract - 1 (Definitions and Interpretation), 19.2 (Tax Indemnity); 20 (Recovery of Sums Due); 24 (Audits), 25 (Records and Reports and Monitoring), 27 (Disputes), 29 (Employment Indemnity), 30 (Staff Transfer), 33 (Non-Solicitation), 34 (Intellectual Property Rights), 35 (Licences Granted by the Supplier), 37 (Authority Assigned IPRs), 39.9 (Authority Data), 40 (Protection of Personal Data), 41 (Freedom of Information), 42 (Confidentiality), 43 (Commercially Sensitive Information), 47(Warranties), 52 (IPR Indemnity), 53 (Limitations on Liability), 54 (Insurance) 57 (Consequences of Expiry or Termination), 58 (Payments made on Termination), 59 (Exit Management), 62 (Waiver and Cumulative Remedies), 63 (Relationship of the Parties), 66 (Publicity and Branding), 67 (Severance), 68 (Further Assurances), 69 (Entire Agreement), 72 (Third Party Rights) and 74 (Governing Law and Jurisdiction), and the provisions of Part D

(Definitions), schedules B17 (Charges), B12 (Staff Transfer on Service Provision Change) and B8 (Exit Management Plan) and any other relevant schedules together with such of the Optional Terms and Special Terms as may apply to this Call off Contract and any other provision of this Call off Contract which is expressed to survive termination or expiry or which is required to give effect to such termination or expiry or the consequences of such termination or expiry.

58. PAYMENTS MADE ON TERMINATION

58.1 The Authority shall pay the Supplier the Termination Payment if this Call off Contract is terminated by the Authority pursuant to clause 55.4 (Termination for Convenience by Authority) or by the Supplier pursuant to clause 55.7 (Termination by the Supplier).

58.2 The costs of termination incurred by the parties shall lie where they fall if the Authority terminates or partially terminates this Call off Contract pursuant to clause 55.9 (Termination for Continuing Force Majeure Event).

58.3 The Termination Payment shall be the Supplier's sole remedy for the Authority's termination of this Call off Contract in accordance with clause 55.4 (Termination for Convenience by the Authority) or the Supplier's termination of this Call off Contract in accordance with clause 55.7 (Termination by the Supplier).

58.4 The Authority shall not make a payment to the Supplier:

58.4.1 on the expiry of the Term;

58.4.2 for Termination by the Authority for Cause in accordance with clause 55.1 or for Partial Termination in accordance with clause 55.6; or

58.4.3 for termination for Change of Control in accordance with clause 55.5.

For the avoidance of doubt, nothing in this paragraph 58.4 shall affect the Supplier's right to receive payment for Services properly performed at the date of termination.

Payments made by the Supplier

- 58.5 The Supplier shall return to the Authority on demand (if, and to the extent the Authority requires) the aggregate sum of all Reclaimable Milestone Payments (if applicable) in the event this Call off Contract is terminated by the Authority pursuant to clause 55.1 (Termination by the Authority for Cause) or 55.6 (Partial Termination) to the extent that the Reclaimable Milestone Payments relate to the Services partially terminated.

59. EXIT MANAGEMENT

- 59.1 The Authority and the Supplier shall comply with the Exit Management requirements set out in schedule B8 (Exit Management) and any current Exit Plan.

- 59.2 Unless the Authority otherwise requires, during the time between service of a notice of termination of this Call off Contract, or for Partial Termination in accordance with clause 55.6, and such termination or exercise taking effect, the Supplier shall take all steps, which are necessary and consistent with its continuing obligations, to mitigate any losses, costs, liabilities and expenses which the Supplier may incur as a result of the termination, including to:

59.2.1 cancel all capital and recurring cost commitments in connection with the Implementation Plan and/or The Provision of Healthcare Clinical Information System Services on the most cost-effective terms;

59.2.2 terminate all relevant contracts or the relevant parts of relevant contracts with its Sub-Suppliers in connection with The Provision of Healthcare Clinical Information System Services on the most favourable terms as can be achieved in the particular circumstances, having first ascertained from the Authority whether such contracts are required to be transferred to the Authority or Replacement Supplier instead;

59.2.3 reduce labour costs by the redeployment or release of Supplier Personnel other than Key Personnel to the extent possible in the circumstances; and

59.2.4 apply any applicable insurance monies available to the reduction of any unavoidable costs remaining in respect of the required actions in clauses 59.2.1 to 59.2.3 (inclusive).

59.3 If the Supplier does not fulfil its obligations in accordance with clause 59.2, the Authority shall not pay any sums in excess of those which the Authority would have paid had such action been taken.

## 60. STEP-IN RIGHTS

60.1 The Authority may take action under this clause in the following circumstances:

60.1.1 there is a Default entitling the Authority to terminate in accordance with clause 55.1 (Termination by the Authority for Cause);

60.1.2 there is a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any part of the Services;

60.1.3 a Force Majeure Event occurs which materially prevents or materially delays the performance of the Services or any part of the Services;

60.1.4 the Supplier has incurred Service Credits in the last quarterly period in excess of 7% of the Charges relating to that quarterly period;

60.1.5 where the Supplier is not in breach of its obligations under this Call off Contract but the Authority considers that the circumstances constitute an emergency;

60.1.6 where a Regulatory Body has advised the Authority that the exercise by the Authority of its rights under this clause is necessary;

60.1.7 because a serious risk exists to the health or safety of persons, property or the environment;

60.1.8 to discharge a statutory duty; and/or

60.1.9 on the occurrence of an Insolvency Event in respect of the Supplier.



#### Action To Be Taken Prior To Exercise Of The Right Of Step-in

- 60.2 Before the Authority exercises its right of step-in under this clause 60 it shall permit the Supplier the opportunity to demonstrate to the Authority's reasonable satisfaction within such timescales specified by the Authority (acting reasonably) that the Supplier is still able to provide the Services in accordance with the terms of this Call off Contract and/or remedy the circumstances giving rise to the right to step-in without the requirement for the Authority to take action.
- 60.3 If the Authority is not satisfied with the Supplier's demonstration pursuant to clause 60.2 the Authority may:
- 60.3.1 where the Authority considers it expedient to do so, require the Supplier by notice in writing to take those steps that the Authority considers necessary or expedient to mitigate or rectify the state of affairs giving rise to the Authority's right to step-in;
  - 60.3.2 appoint any person to work with the Supplier in performing all or a part of the Services (including those provided by any Sub-Supplier); or
  - 60.3.3 take the steps that the Authority considers appropriate to ensure the performance of all or part of the Services (including those provided by any Sub-Supplier).
- 60.4 The Supplier shall co-operate fully and in good faith with the Authority, or any other person appointed in respect of clause 60.3.2 and shall adopt any reasonable methodology in providing the Services recommended by the Authority or that person.

#### Exercise of the Right of Step-in

- 60.5 If the Supplier:
- 60.5.1 fails to confirm within two Working Days of a notice served pursuant to clause 60.3.1 that it is willing to comply with that notice; or
  - 60.5.2 fails to work with a person appointed in accordance with clause 60.3.2; or

60.5.3 fails to take the steps notified to it by the Authority pursuant to clause 60.3.3, then the Authority may take action under this clause either through itself or with the assistance of third party Suppliers, provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to clause 42 (Confidentiality).

60.6 If the Authority takes action pursuant to clause 60.5, the Authority shall serve notice ("Step-in Notice") on the Supplier. The Step-in Notice shall set out the following:

60.6.1 the action the Authority wishes to take and in particular the Services or Sub-Supplier it wishes to control or manage;

60.6.2 the reason for and the objective of taking the action and whether the Authority reasonably believes that the primary cause of the action is due to the Supplier's Default;

60.6.3 the date it wishes to commence the action;

60.6.4 the time period which it believes will be necessary for the action;

60.6.5 whether the Authority will require access to the Supplier's premises and/or the Sites;

60.6.6 to the extent practicable, the effect on the Supplier and its obligations to provide the Services during the period the action is being taken.

60.7 Following service of a Step-in Notice, the Authority shall:

60.7.1 take the action set out in the Step-in Notice and any consequential additional action as it reasonably believes is necessary (together, the "Required Action");

60.7.2 co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide any Services in relation to which the Authority is not assuming control; and

60.7.3 act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Authority's rights under this clause.

- 60.8 For so long as and to the extent that the Required Action is continuing, then:
- 60.8.1 the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
  - 60.8.2 subject to clause 60.9, the Authority shall pay to the Supplier the Charges after the deduction of any applicable Service Credits, Delay Payments and the Authority's costs of taking the Required Action.
- 60.9 If the Required Action results in:
- 60.9.1 the degradation of any Services not subject to the Required Action; or
  - 60.9.2 the non-Achievement of a Milestone, beyond that which would have been the case had the Authority not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Charges, provided that the Supplier can demonstrate to the reasonable satisfaction of the Authority that the Required Action has led to the degradation or non-Achievement.
- 60.10 Before ceasing to exercise its step in rights under this clause the Authority shall deliver a written notice to the Supplier ("Step-Out Notice"), specifying:
- 60.10.1 the Required Action it has actually taken; and
  - 60.10.2 the date on which the Authority plans to end the Required Action ("Step-Out Date") subject to the Authority being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with clause 60.11
- 60.11 The Supplier shall, following receipt of a Step-Out Notice and unless agreed otherwise with the Authority, not less than 20 Working Days prior to the Step-Out Date, develop for the Authority's approval a draft plan ("Step-Out Plan") relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Call off Contract.
- 60.12 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Supplier of its reasons for not approving it. The Supplier shall then

revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.

60.13 The Supplier shall bear its own costs in connection with any step-in by the Authority under this clause 60 provided that the Authority shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:

60.13.1 clauses 60.1.3 or 60.1.5; or

60.13.2 clauses 60.1.6, 60.1.7 and 60.1.8 (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of a Supplier's Default).

## 61. ASSIGNMENT AND NOVATION

61.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Call off Contract without the prior written consent of the Authority.

61.2 The Authority may:

61.2.1 assign, novate or otherwise dispose of any or all of its rights and obligations under this Call off Contract and any associated third party licences to a Authority Service Recipient or any other Contracting Authority; or

61.2.2 novate this Call off Contract and any associated third party licences to any other body which substantially performs any of the functions that previously had been performed by the Authority. If this transfer increases the burden of the Supplier's obligations under this Call off Contract the Supplier shall be entitled to any additional Charges that are reasonable by way of compensation and which can be agreed through the Change Control Procedure.

61.3 A change in the legal status of the Authority shall not (subject to clause 61.4) affect the validity of this Call off Contract and this Call off Contract shall be binding on any successor body to the Authority.

61.4 If this Call off Contract is novated to a body which is not a Contracting Authority, or a body which is not a Contracting Authority succeeds the Authority, (both "transferee" in the rest of this clause):

61.4.1 the Supplier shall be entitled to exercise a right of termination if:

61.4.1.1 the transferee suffers an Insolvency Event; or

61.4.1.2 the transferee commits:

(a) a material Default which Default, subject to the exercise of a process equivalent to the Remedial Plan Process, is not remedied within 30 days after notice of Default from the Supplier to the transferee requiring its remedy; or

(b) a material Default which is irremediable;

61.4.2 save where the transferee assigns or novates to a Contracting Authority, the transferee may only assign, novate or otherwise dispose of its rights and obligations under this Call off Contract (or any part) with the prior written consent of the Supplier (which consent shall not be unreasonably withheld or delayed).

61.4.3 the following clauses shall be varied from the date of the novation or the date of the Authority's change of status (as appropriate) as if this Call off Contract had been amended by the parties in accordance with the Change Control Procedure:

61.4.3.1 in clauses 65.1.1, 65.1.2 and 65.2.2 (Prevention of Corruption) the words "or any other Crown Body" shall be deleted; and

61.4.3.2 the definition of "Crown Body" in Part D shall be deleted and clause 42.8.2 (Confidentiality) shall be deleted.

- 61.5 If subsequent to the operation of 61.4, a transferee novates this Call off Contract to a Contracting Authority pursuant to clause 61.4.2 or the transferee becomes a Contracting Authority, the variations previously made to this Call off Contract pursuant to clause 61.4 shall no longer apply.

62. WAIVER AND CUMULATIVE REMEDIES

- 62.1 The rights and remedies provided by this Call off Contract may be waived only in writing by the relevant Representative in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.
- 62.2 Unless a right or remedy of the Authority is expressed to be an exclusive right or remedy, the exercise of it by the Authority is without prejudice to the Authority's other rights and remedies. Any failure to exercise or any delay in exercising a right or remedy by either party shall not constitute a waiver of that right or remedy or of any other rights or remedies.
- 62.3 The rights and remedies provided by this Call off Contract are cumulative and, unless otherwise provided in this Call off Contract, are not exclusive of any right or remedies provided at law or in equity or otherwise under this Call off Contract.

63. RELATIONSHIP OF THE PARTIES

Nothing in this Call off Contract is intended to create a partnership, or legal relationship of any kind that would impose liability upon one party for the act or failure to act of the other party, or to authorise either party to act as agent for the other party. Neither party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other party.

64. Not Used

65. PREVENTION OF CORRUPTION

- 65.1 The Supplier shall not:

65.1.1 offer or agree to give any person working for or engaged by the Authority or any other Crown Body any gift or other consideration

which could act as an inducement or a reward for any act or failure to act connected to this Call off Contract, or any other agreement between the Supplier and the Authority or any Crown Body, including its award to the Supplier and any of the rights and obligations contained within it; nor

65.1.2 enter into this Call off Contract if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Authority or any other Crown Body by or for the Supplier, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Authority before execution of this Call off Contract; or

65.1.3 defraud or attempt to defraud or conspire to defraud any Relevant Person.

65.2 If the Supplier (including any Supplier employee, Sub-Supplier or agent, in all cases whether or not acting with the Supplier's knowledge) breaches:

65.2.1 clause 65.1; or

65.2.2 the Prevention of Corruption Acts 1889 - 1916 in relation to this Call off Contract or any other contract with the Authority or any Crown Body,

the Authority may terminate this Call off Contract by written notice with immediate effect.

65.3 Any termination under clause 65.2 shall be without prejudice to any right or remedy which has already accrued, or subsequently accrues, to the Authority.

65.4 Notwithstanding clause 27 (Disputes), any dispute relating to:

65.4.1 the interpretation of clauses 65.1 to 65.3 inclusive; or

65.4.2 the amount or value of any gift, consideration or commission,

shall be determined by the Authority and the decision shall be final and conclusive.

## 66A PREVENTION OF FRAUD

66A.1 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent fraud by the Supplier and Supplier Personnel in connection with the receipt of monies from the Authority.

66A.2 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.

66A.3 If the Supplier or Supplier Personnel commits fraud in relation to this or any other contract with the Crown (including the Authority) the Authority may:

66A.3.1 terminate this Call off Contract and recover from the Supplier the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Term; or

66A.3.2 recover in full from the Supplier any other loss sustained by the Authority in consequence of any breach of this clause.

66A.4 The Supplier warrants that in entering into this Call off Contract it has not committed fraud.

## 66. PUBLICITY AND BRANDING

66.1 The Supplier shall not:

66.1.1 make any press announcements, discuss with any third parties or publicise this Call off Contract or its contents in any way; or

66.1.2 use the Authority's name or brand in any promotion or marketing or announcement of orders;

without the prior written consent of the Authority.

66.2 If the Supplier receives any requests from the media or otherwise regarding this Call off Contract (or its contents) or any related issues, it will refer all such requests to the Authority's Media Representative or such other person as specified by the Authority in writing from time to time.



66.3 The Authority is entitled to make any press announcements or publish this Call off Contract or its contents in any way in accordance with prevailing government policies without consulting with the Supplier.

66.4 Each party acknowledges to the other that nothing in this Call off Contract either expressly or by implication constitutes an endorsement of any products or services of the other party (including the Services, the Supplier System and the Authority System) and each party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

## 67. SEVERANCE

If any provision of this Call off Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remaining provisions. If a provision of this Call off Contract that is fundamental to the accomplishment of the purpose of this Call off Contract is held to any extent to be invalid, the Supplier and the Authority shall immediately commence good faith negotiations to remedy that invalidity.

## 68. FURTHER ASSURANCES

Each party undertakes at the request of the other, and at the cost of the requesting party to do all acts and execute all documents which may be necessary to give effect to the meaning of this Call off Contract.

## 69. ENTIRE AGREEMENT

69.1 This Call off Contract, together with the documents referred to in it and attached to it and (to the extent relevant) the Framework Agreement, constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the parties in relation to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.

69.2 Each of the parties acknowledges and agrees that in entering into this Call off Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or

innocently made) other than as expressly set out in this Call off Contract or referred to in this Call off Contract and/or attached to it. The only remedy available to either party in respect of any such statements, representations, warranty or understanding shall be for breach of contract under the terms of this Call off Contract.

69.3 Nothing in this clause 69 shall operate to exclude any liability for fraud.

## 70. COUNTERPARTS

70.1 Subject to clause 70.2, this Call off Contract may be executed in one or more counterparts and by the parties on separate counterparts, but will not be effective until each party has executed and delivered at least one counterpart and informed the other that it has done so. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute one and the same agreement and a full original of this Call off Contract for all purposes.

70.2 If Scots Law applies to this Call off Contract, clause 70.1 shall not apply.

## 71. COSTS AND EXPENSES

Each party shall be responsible for paying its own costs and expenses incurred in connection with the preparation and execution of this Call off Contract.

## 72. THIRD PARTY RIGHTS

72.1 Subject to clause 42 (Confidentiality), paragraph 7 of schedule B12 (Staff Transfer on Service Provision Change) and the remainder of this clause, a person who is not a party to this Call off Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Call off Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

72.2 All warranties, representations, undertakings, indemnities and those terms of this Call off Contract which place obligation(s) on the Supplier are for the benefit of the Authority and each Authority Service Recipient.

- 72.3 The parties agree that pursuant to the Contracts (Rights of Third Parties) Act 1999, with the Authority's consent, any Authority Service Recipient shall have rights under this Call off Contract in respect of each clause thereof to the extent that a breach of that clause or failure to perform in respect of that clause causes them loss or damage.
- 72.4 The Authority may, as an alternative to clause 72.3, enforce any clause of this Call off Contract (and recover all monies) on behalf of any Authority Service Recipient that has suffered loss or damage resulting from the Supplier committing a breach of that clause or failure to perform in respect of that clause.
- 72.5 With the exception of the Authority, no consent of any Authority Service Recipient is necessary for any variation (including any release or compromise in whole or in part of any liability) suspension, or termination of this Call off Contract or any one or more clauses of it.

### 73. NOTICES

- 73.1 Any notices given under or in relation to this Call off Contract shall be in writing, signed by or on behalf of the party giving it and shall be served by delivering it personally or by sending it by pre-paid first class post, recorded delivery or registered post or by fax or by email to the address and for the attention of the relevant party specified in the Order Form (or such other address as that party may stipulate in accordance with this clause).
- 73.2 A notice shall be deemed to have been received:
- 73.2.1 if delivered personally, at the time of delivery;
  - 73.2.2 in the case of pre-paid first class post, three Working Days from the date of posting;
  - 73.2.3 in the case of fax, on the day of transmission if sent before 16:00 hours of any Working Day and otherwise at 09:00 hours on the next Working Day and provided that, at the time of transmission of a fax, an error-free transmission report has been received by the sender; and

73.2.4 in the case of email, at the time that the email enters the Information System of the intended recipient if sent before 16:00 hours of any Working Day and otherwise at 09:00 hours on the next Working Day and provided that no error message indicating failure to deliver has been received by the sender and provided further that within twenty four hours of transmission a hard copy of the email signed by or on behalf of the person giving it is sent by pre-paid first class post, recorded delivery or registered post to the intended recipient.

73.3 In proving service, it shall be sufficient to prove that the envelope containing the notice was addressed to the relevant party at its address previously notified for the receipt of notices (or as otherwise notified by that party) and delivered either to that address or into the custody of the postal authorities as pre-paid first class post, recorded delivery, registered post or airmail letter, or that the notice was transmitted by fax to the fax number of the relevant party at its fax number previously notified for the receipt of notices (or as otherwise notified by that party).

#### 74. GOVERNING LAW AND JURISDICTION

74.1 This Call off Contract shall be governed by and construed in accordance with English law and without prejudice to the Dispute Resolution Procedure each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

74.2 Where the Authority is a Scottish Public Authority, this Call off Contract shall be governed by and construed in accordance with Scots Law, and without prejudice to the Dispute Resolution Procedure each party agrees to submit to the exclusive jurisdiction of the courts of Scotland. References in this Call off Contract to the Contracts (Rights of Third Parties) Act 1999 (which does not apply under Scots Law) shall be construed as references to the *jus quaesitum tertio* at common law.

74.3 Where the Authority is located in Northern Ireland, this Call off Contract shall be governed by and construed in accordance with Northern Irish Law, and without prejudice to the Dispute Resolution Procedure each party agrees to submit to the exclusive jurisdiction of the courts of Northern Ireland.



CALL OFF CONTRACT  
relating to the provision of health-related  
managed contact centre services

Section C :  
Optional Terms

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1. STAFF TRANSFER ON ENTRY

Not Used

2. SOFTWARE

There is no:

- Project Specific IPR;
- Specially Written Software; or
- Database

Included in this Call off Contract.

3. ESCROW

Not Used



**CALL OFF CONTRACT**  
relating to the provision of Healthcare  
Clinical Information System services

**Section D:  
Definitions**

Unless the context otherwise requires the following expressions shall have the meanings set out below.

<b>"Achieve"</b>		in respect of a Test, to successfully pass a Test without any Test Issues and, in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone in accordance with schedule B10 (Testing Procedures), and <b>"Achieved"</b> and <b>"Achievement"</b> shall be construed accordingly;
<b>"Acquired Rights Directive"</b>		the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended;
<b>"Activity Services"</b>		means any services that involves an "Activity Service" as further described in the Catalogue;
<b>"Additional Requirements"</b>	<b>Security</b>	means any further security requirements of the Authority (in addition to those specified within the Security Policy and the provisions of schedule B9 (Security Requirements and Plan) as detailed further within this Call off Contract, including in particular within the Services Description;
<b>"Additional Services"</b>		means the additional services which are to be provided by the Supplier if requested by the Authority in accordance with clause 11.6;
<b>"Affected Party"</b>		the party seeking to claim relief in respect of a Force Majeure Event;
<b>"Affiliate"</b>		in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that

body corporate from time to time;

<b>"Assets"</b>	means all assets and rights used by the Supplier to provide the Services in accordance with this Call off Contract but excluding the Authority Assets;
<b>"At Risk Amount"</b>	the percentage of the Charges that apply in each Measurement Period that is potentially repayable to the Authority for bad service performance in accordance with the mechanism in schedule B17 (Charges) to this Call off Contract;
<b>"Authority to Proceed" or "ATP"</b>	(where applicable), the point at which the Supplier is authorised to provide the Services (or the relevant part thereof) to the Authority;
<b>"Authority"</b>	has the meaning ascribed in the Order Form;
<b>"Authority Assets"</b>	means the Authority Materials, the specially written material, the Authority infrastructure and any other data, software, assets, equipment or other property owned by the Authority and which is or may be used in connection with the provision or receipt of the Services;
<b>"Authority Assigned IPRs"</b>	means the Project Specific IPR and the Specially Written Software;
<b>"Authority Cause"</b>	means any breach by the Authority of any of the Authority Responsibilities (except to the extent that it is the result of any act or omission by the Authority to which the Supplier has given its prior consent) and the failure by the Authority to provide any deliverable or undertake any action (including any scripts, instructions, guidelines or policies) reasonably required and notified in writing as being required by the Supplier from or on behalf of Authority for which

Supplier's provision or timely provision of any of the Services or its other deliverables, obligations or performance hereunder depends, including, management information, provision of call volumes, systems availability and access and approvals or consents required pursuant to this Call off Contract, or any other dependency agreed upon from time to time

**"Authority Information"**

**Confidential** all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Authority, and each Authority Service Recipient, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;

**"Authority Data"**

(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:

(i) supplied to the Supplier by or on behalf of the Authority or a Authority Service Recipient; or

(ii) which the Supplier is required to generate, process, store or transmit pursuant to this Call off Contract; or

(b) any Personal Data for which the Authority or a Authority Service Recipient is the Data Controller;

For the avoidance of doubt Authority Data excludes any Supplier Software, Third Party Software and Supplier's Proprietary Know How notwithstanding that such might comprise of text, drawings, diagrams,

images or sounds generated, processed, stored or data transmitted as part of this Call off Contract and or which incorporates a database.

**"Authority Materials"**

means the Authority Data together with any materials, documentation, information, programs and codes supplied by, or on behalf of, the Authority or a Authority Service Recipient to the Supplier, the IPR in which:

(i) are owned or used by or on behalf of the Authority or a Authority Service Recipient; and

(ii) are or may be used in connection with the provision or receipt of the Services,

but excluding any specially written material, Supplier Materials and Third Party Material;

**"Authority Personal Data"**

Personal Data for which the Authority and/or any Authority Service Recipient is the Data Controller;

**"Authority Premises"**

means premises owned, controlled or occupied by the Authority, a Authority Service Recipient or their Affiliates which are made available for use by the Supplier or its Sub-Suppliers for provision of the Services (or any of them) on the terms set out in this Call off Contract or any separate agreement or licence;

**"Authority Representative"**

the representative appointed by the Authority as specified in the Order Form pursuant to clause 21 (Representatives);

**"Authority's Change Manager"**

the person appointed to that position by the Authority from time to time and notified in writing to the Supplier or, if no person is notified, the Authority Representative;

<b>"Authority Service Recipient(s)"</b>	means any entity which is authorised by the Authority to receive the benefit or use of the Services;
<b>"Authority Software"</b>	software which is owned by or licensed to the Authority and/or a Authority Service Recipient, including software which is or will be used by the Supplier for the purposes of providing the Services but excluding the Supplier Software and Third Party Software;
<b>"Authority's Records Retention Policy"</b>	means any retention policy provided to the Supplier and updated from time to time relating to the retention of Personal Data;
<b>"Authority Responsibilities"</b>	the responsibilities of the Authority specified in schedule B5 (Authority Responsibilities);
<b>"Authority's Sustainability and Environmental Policies"</b>	means any policies, procedures or guidelines made available by the Authority from time to time in respect of the protection of the environment and/or the sustainability of the Authority's operations;
<b>"Authority System"</b>	the Authority's and each Authority Service Recipient's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority, a Authority Service Recipient or the Supplier in connection with this Call off Contract which is owned by or licensed to the Authority or the relevant Authority Service Recipient (as applicable) by a third party and which interfaces with the Supplier System or which is necessary for the Authority and/or a Authority Service Recipient to receive the Services;
<b>"Average Price"</b>	in relation to the Comparable Services provided by the Comparison Group, the mean average of prices for those Comparable Services as adjusted to produce Equivalent Services Data over the previous 12 month period, or other period as agreed between the

Authority and the Supplier. (For the avoidance of doubt, the "mean average price" shall be calculated by aggregating the prices derived from Equivalent Services Data for each of the services and dividing the same by the number instances of Comparable Services);

**"BAU Services"**

any services other than Health Related Emergency Services;

**"BCDR Services"**

the disaster recovery and/or business continuity services (as the context may require) to be provided by the Supplier pursuant to schedule B14 (Business Continuity and Disaster Recovery Plan);

**"BCDR System"**

the system and/or processes identified by the Supplier in the Supplier Tender Response which shall be used for the purpose of delivering the BCDR Services;

**"Benchmarked Services"**

the Services that the Authority elects to include in a Benchmark Review under paragraph 1 of schedule C3 (Value for Money Provisions);

**"Benchmarker"**

the independent third party appointed under paragraph 3.1 of schedule C3 (Value for Money Provisions);

**"Benchmark Report"**

means the report produced by the Benchmarker following the Benchmark Review as further described in schedule C3 (Value for Money Provisions);

**"Benchmark Review"**

a review of the Services carried out in accordance with paragraph 4 of schedule C3 (Value for Money Provisions) to determine whether those Services represent Good Value;

**"Best Price Request"**

has the meaning ascribed in paragraph 2.4 of schedule B2 (Formal Instruction Process);

**"Breach of Security"**

in accordance with the security requirements in the Services Description and the Security Policy, the occurrence of:

- (a) any unauthorised access to or use of the Services and to the extent that such are under the control of the Supplier, the Sites, the Supplier System and/or any ICT, information or data (including the Confidential Information and the Authority Data) used by the Authority, a Authority Service Recipient and/or the Supplier in connection with this Call off Contract; and/or
- (b) to the extent that such are under the control of the Supplier, the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Authority Data), including any copies of such information or data, used by the Authority, a Authority Service Recipient and/or the Supplier in connection with this Call off Contract;

**"Business Continuity and Disaster Recovery Plan" or "BCDR Plan"**

any plan prepared pursuant to schedule B14 (Business Continuity and Disaster Recovery Plan) as may be amended from time to time;

**"Call off Contract"**

the terms and conditions in this agreement (comprising the Order Form, Special Terms, the Core Terms, the relevant Optional Terms and the Defined Terms), the relevant provisions of the Catalogue and schedules in this Call off Contract together with any documents attached to this Call off Contract;

**"Catalogue"**

has the meaning ascribed in the Framework Agreement;



<b>"Catalogue Items"</b>	has the meaning ascribed in the Framework Agreement;
<b>"Centre for Effective Dispute Resolution " or "CEDR"</b>	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
<b>"Change"</b>	any change to this Call off Contract;
<b>"Change Authorisation Note"</b>	the form used by the parties to set out the agreed Contract Change and which shall be substantially in the form of Appendix 3 to schedule B6 (Change Control Procedure);
<b>"Change Communication"</b>	any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to schedule B6 (Change Control Procedure);
<b>"Change Control Note Signatory"</b>	means the person identified in the Order Form and amended by the Authority from time to time;
<b>"Change Control Procedure"</b>	the procedure for changing this Call off Contract, as set out in schedule B6 (Change Control Procedure);
<b>"Change in Law"</b>	any change in Law, which impacts on the performance of the Services which comes into force after the Effective Date;
<b>"Change of Control"</b>	a change in Control of the Supplier or a Key Sub-Supplier;
<b>"Change Request"</b>	a written request for a Contract Change which shall be substantially in the form of Appendix 1 to schedule B6 (Change Control Procedure);
<b>"Charges"</b>	the agreed charges for the provision of the Services required to be made by the Authority to the Supplier as

set out in schedule B17 (Charges);

<b>"Commercially Sensitive Information"</b>	the information listed in the Order Form comprising the information of a commercially sensitive nature relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;
<b>"Commodity Item"</b>	means any goods or software which are either (a) available from more than one source or (b) freely interchangeable with other goods or software (as applicable), in each case without material differentiation as to quality;
<b>"Comparable Services"</b>	services that are identical or materially similar to the Benchmarked Services (including in terms of scope, specification, volume and quality of performance) provided that if no identical or materially similar services exist in the market, the Benchmarking shall propose an approach for developing a comparable service benchmark;
<b>"Comparable Supply"</b>	the supply of services to another Authority of the Supplier that are the same or similar to the Services;
<b>"Comparison Group"</b>	a sample group of organisations providing Comparable Services identified by the Benchmarking under paragraph 4 of schedule C3 (Value for Money Provisions) which consists of organisations which are either of similar size to the Supplier or which are similarly structured in terms of their business and their service offering so as to be (in the Benchmarking's professional opinion) fair comparators with the Supplier or which, in the professional opinion of the Benchmarking, are best practice organisations and that are carrying on at least a significant part of their

business within the same jurisdiction as that from which the Supplier provides the Services (or a material part thereof);

<b>"Catalogue Options"</b>	has the meaning ascribed in the Framework Agreement;
<b>"Confidential Information"</b>	the Authority Confidential Information and/or the Supplier's Confidential Information;
<b>"Contract Change"</b>	any change to this Call off Contract other than an Operational Change;
<b>"Contracting Authority"</b>	any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 other than the Authority;
<b>"Contract Specific Third Party Licences"</b>	licences for Third Party Software which the Supplier procures solely for the purpose of providing the Services to the Authority under this Call off Contract and is not used by the Supplier for the benefit of its other customers;
<b>"Contract Year"</b>	a period of 12 months (or shorter period in the period immediately prior to the end of the Term) commencing on the Effective Date or on an anniversary of the Effective Date;
<b>"Control"</b>	means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and <b>"Controls"</b> and <b>"Controlled"</b> shall be interpreted accordingly;
<b>"Conviction"</b>	other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and

binding-over orders in any jurisdiction (including, but not limited to any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being made the subject of a prohibition or restriction under section 218(6) of the Education Reform Act 1988 or equivalent legislation or rules in any jurisdiction);

**"Core Terms"**

the terms and conditions set out in Section B of this Call off Contract;

**"Correction Plan"**

the Supplier's plan for:

(a) the remediation of any Test Issues or the resolution of any non-conformities in any Deliverable to be agreed in accordance with clause 7 (Implementation Delays - General Provisions); or

(b) the rectification or prevention of a Critical Service Failure from taking place or reoccurring in accordance with clause 12 (Service Levels) and schedule B16 (Service Levels and Performance Monitoring);

**"Critical Service Failure"**

has the meaning given in schedule B16 (Service Levels and Performance Monitoring);

**"Crown Body"**

any department, office or agency of the Crown;

**"Database"**

in respect of such databases that are expressly requested by the Authority to be developed by the Supplier in schedule A1, the rights in or to any such database. For the avoidance of doubt the database that forms an inherent part of the Supplier's

	application or a Sub-Supplier's software does not fall within the definition of Database or Authority Data notwithstanding that the Supplier may be required to, generate, process, store or transmit such database as part of this Call off Contract."
<b>"Data Controller"</b>	shall have the same meaning as set out in the Data Protection Legislation.
<b>"Data Processor"</b>	shall have the same meaning as set out in the Data Protection Legislation.
<b>"Data Protection Legislation"</b>	means (i) the UK GDPR (as enacted through the European Union (Withdrawal) Act 2018) and Data Protection Act 2018 in each case as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019/419) (ii) all other applicable Law concerning privacy, confidentiality or the processing of personal data including but not limited to the Human Rights Act 1998, the Health and Social Care (Safety and Quality) Act 2015, the common law duty of confidentiality and the Privacy and Electronic Communications (EC Directive) Regulations 2003 and (iii) including where applicable the guidance and codes of practice issued by the Information Commissioner (all as amended from time to time);
<b>"Data Subject"</b>	shall have the same meaning as set out in the Data Protection Legislation.
<b>"Debt Securities"</b>	means debentures, debenture or loan stock, bonds and notes, whether secured or unsecured;
<b>"Default"</b>	any breach of the obligations of the relevant party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant party, its employees, servants, agents or

Sub-Suppliers in connection with or in relation to the subject-matter of this Call off Contract and in respect of which such party is liable to the other;

**"Defined Terms"**

the defined terms set out in Section D of this Call off Contract;

**"Delay"**

the period of time by which the implementation of the Services by reference to the Implementation Plan is delayed arising from a failure to Achieve a Milestone;

**"Delay Payments"**

any amounts payable by the Supplier to the Authority in respect of a Delay and specified in schedule B17 (Charges), if applicable;

**"Deliverable"**

an item, feature or service associated with the provision of the Services or a change in the provision of the Services which is required to be delivered by the Supplier at a Milestone Date or at any other stage during in the performance of this Call off Contract;

**"Deposited Software"**

any Software listed in schedule A2 (Supplier Tender Response) as to be placed into escrow;

**"Detailed Implementation Plan"**

means the plan developed in accordance with paragraph 3 of schedule B3 (Implementation Plan);

**"Disaster"**

the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services, will be unavailable for period of 2 hours or which is reasonably anticipated will mean that the Services or a material part of the same will be unavailable for that period;

**"Dispute"**

any dispute, difference or question of interpretation arising out of or in connection with this Call off Contract, including any dispute, difference or question of interpretation relating to the Services, failure to

agree in accordance with the Change Control Procedure or any matter where this Call off Contract directs the parties to resolve an issue by reference to the Dispute Resolution Procedure;

**"Dispute Resolution Procedure"** the dispute resolution procedure set out in schedule B7 (Dispute Resolution Procedure);

**"Dispute Resolution Timetable"** the Standard Dispute Timetable or the Expedited Dispute Timetable;

**"Documentation"** descriptions of the Services and Service Levels, technical specifications, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:

- (a) is required to be supplied by the Supplier to the Authority under this Call off Contract;
- (b) is required by the Supplier in order to provide the Services; or
- (c) has been or shall be generated for the purpose of providing the Services;

**"Effective Date"** the date on which this Call off Contract is signed by both parties;

**"Emergency Change"** means a Change required as a result of any situation which, in the reasonable opinion of the Authority, has, or may have, a detrimental effect on the Services;

**"Emergency Exit"** any termination of this Call off Contract which is a (i) termination of the whole or part of this Call off Contract in accordance with clause 55 (Termination and Suspension Rights), except where the period of notice given under that clause is greater than or equal to two months; (ii) termination of the provision of the Services for any reason prior to the expiry of any

period of notice of termination served pursuant to clause 55 (Termination and Suspension Rights); or  
(iii) wrongful termination or repudiation of this Call off Contract by either party;

**"Emergency Maintenance"**

ad hoc and unplanned maintenance provided by the Supplier where:

(i) the Authority reasonably suspects that the Supplier System or the Services, or any part thereof, has or may have developed a fault, and notifies the Supplier of the same; or

(ii) the Supplier reasonably suspects that the Supplier System or the Services, or any part thereof, has or may have developed a fault;

**"Employee Liabilities"**

all claims, including, but not limited to, claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, age, race, disability or any unlawful discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort/delict, contract or statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Commission for Equality and Human Rights or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation), and any legal costs and expenses on an indemnity basis;



<b>"Employment Regulations"</b>	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Council Directive 77/187/EEC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses;
<b>"End User"</b>	any person authorised by the Authority or a Authority Service Recipient to use the Supplier System and/or receive the benefit of the Services;
<b>"Engagement Process"</b>	means the process undertaken by the Supplier and the Authority prior to the award of this Call off Contract in accordance with schedule 2 of the Framework Agreement;
<b>"Environmental Information Regulations"</b>	the Environmental Information Regulations 2004 or (in respect of any Authority or Authority Service Recipient which is a Scottish Public Authority) the Environmental Information (Scotland) Regulations 2004 together with any guidance and/or codes of practice issues by the Information Commissioner, the Scottish Information Commissioner or relevant Government Department in relation to such regulations;
<b>"Equivalent Services Data"</b>	data derived from an analysis of the Comparable Services provided by the Comparison Group as adjusted in accordance with paragraph 4.7.2 of Part B of schedule C3 (Value for Money Provisions);
<b>"Escalation Process"</b>	the initial stages of the process for dealing with Disputes without the intervention of third parties as set out in schedule B7 (Dispute Resolution Procedure);
<b>"Excused Performance"</b>	means the situation where there is a Service Failure but the Supplier demonstrates to the satisfaction of

the Authority that such failure was directly attributable to one of the circumstances specified in paragraph 5 of Part A of schedule B16 (Service Levels and Performance Monitoring);

**"Exit Management"**

the obligations and rights of the respective parties pertaining to managing a smooth transition from the provision of the Services by the Supplier to the provision of Replacement Services by the Authority or any Replacement Supplier, all as set out in schedule B8 (Exit Management);

**"Exit Manager"**

the person appointed by each party pursuant to paragraph 2.5 of schedule B8 (Exit Management) for managing the parties' respective obligations under schedule B8 (Exit Management);

**"Exit Plan"**

the plan produced and updated by the Supplier during the Term in accordance with schedule B8 (Exit Management);

**"Expedited Dispute Timetable"**

the reduced timetable for the resolution of Disputes set out in the Appendix to schedule B7 (Dispute Resolution Procedure) to be used in accordance with the provisions of paragraph 1.6 of schedule B7 (Dispute Resolution Procedure);

**"Extension Period"**

the Authority's option to extend the Initial Term by the periods set out in the Order Form;

**"Failure Level(s)"**

means the failure levels specified for each of the Service Levels where Service Credit Points accrue;

**"Fast-track Change"**

any Contract Change which the parties agree to expedite in accordance with paragraph 7 of schedule B6 (Change Control Procedure);

**"Financial Distress Event"**

has the meaning given in the Framework Agreement;

<b>"FOIA"</b>	the Freedom of Information Act 2000 or (in respect of any Authority or Authority Service Recipient which is a Scottish Public Authority) the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under the relevant Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner, the Scottish Information Commissioner or relevant Government Department in relation to such legislation;
<b>"Force Majeure Event"</b>	means:  (a) (in relation to BAU Services) any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Supplier, the Supplier Personnel or any other failure in the Supplier or the Sub-Supplier's supply chain; and
<b>"Forecast AHT"</b>	has the meaning ascribed in the Catalogue;
<b>"Forecast Activity"</b>	has the meaning ascribed in the Catalogue;
<b>"Forecast Interval"</b>	has the meaning ascribed in the Catalogue;
<b>"Forecast of Demand"</b>	has the meaning ascribed in the Catalogue;
<b>"Forecast Period"</b>	has the meaning ascribed in the Catalogue;
<b>"Formal Instruction"</b>	has the meaning ascribed in paragraph 2.3 of schedule B2 (Formal Instruction Process);
<b>"Formal Instruction Form"</b>	means the proforma instruction form contained in schedule B2 (Formal Instruction Process);

<b>"Formal Instruction Process"</b>	the process set out in schedule B2 (Formal Instruction Process);
<b>"Framework Agreement"</b>	means the framework agreement relating to the provision of Healthcare Clinical Information System services entered into by the Supplier and NHS Shared Business Services on or around 16 February 2015;
<b>"Framework Representative"</b>	<b>Senior</b> means such person nominated by the Authority from time to time as the senior representative pursuant to schedule 7 of the Framework Agreement;
<b>"Future Fixed Price Services"</b>	any services that the Supplier has committed to provide the Authority at a fixed price as part of the ISFT Response or otherwise, in the event that such services are required by the Authority during the Term. For the avoidance of doubt, Future Fixed Price Services does not include those Catalogue Items that only have a Guaranteed Maximum Price;
<b>"General Change in Law"</b>	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
<b>"Good Industry Practice"</b>	means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector;
<b>"Good Value"</b>	that:  (i) the Charges attributable to a Benchmarked Service are, having taken into account the Service Levels, less than or equal to the Average Price;  and

- (ii) any Service Levels attributable to Benchmarked Services are, having taken into account the Charges, equal to or greater than the median service levels for Comparable Services as adjusted using Equivalent Services Data;

<b>"Governance Board"</b>	means the governance board established pursuant to schedule B11 (Governance);
<b>"Government"</b>	means the governments and administrations of the United Kingdom;
<b>"Guarantee"</b>	means any deed of guarantee in favour of the Authority and/or the Authority entered into by the Guarantor (which is in the form set out in schedule 5 (Guarantee) of the Framework Agreement), or any guarantee acceptable to the Authority that replaces it from time to time;
<b>"Guaranteed Maximum Price(s)"</b>	has the meaning ascribed in the Framework Agreement;
<b>"Guarantor"</b>	any person that has, or is required to provide a Guarantee under the Framework Agreement;
<b>"Health and Safety Regime"</b>	the Food Safety Act 1990 (and associated regulations), the Health & Safety at Work etc. Act 1974 (and associated regulations), the Fire Precautions Act 1971, the Environmental Protection Act 1998, the Water Industry Act 1991, the Water Resources Act 1991 and any similar or analogous health, safety or environmental legislation in force from time to time;
<b>"Health Related Emergency" or "HRE"</b>	means any circumstance or occurrence which the Authority in its reasonable opinion considers constitutes a health related emergency;

<b>"Health Related Emergency Services" or "HRE Services"</b>	<p>means any services, detailed in the Catalogue or otherwise, that relate, or are in any way connected, to a Health Related Emergency including, but not limited to:</p> <ul style="list-style-type: none"><li>(a) retainer, maintenance and other preparatory services in order to provide the Authority with ready capacity and preparedness for a potential future Health Related Emergency; and/or</li><li>(b) the Supplier maintaining a state of readiness or dormancy in order to perform the services listed in paragraph (a) or other services if required by the Authority in connection with a Health Related Emergency and services relating thereto;</li></ul>
<b>"Health Related Records"</b>	<p>means any Personal Data consisting of information as to the physical or mental health or condition of an individual including but not limited to any call recordings and a patient's NHS number or other equivalent identification;</p>
<b>"Hours of Service"</b>	<p>the period identified as the Hours of Service in schedule A1 (Services Description), as updated by agreement from time to time;</p>
<b>"HR Policies"</b>	<p>the Authority's human resources policies provided to the Supplier from time to time;</p>
<b>"ICT"</b>	<p>information and communications technology;</p>
<b>"ICT Environment"</b>	<p>the Authority System and the Supplier System;</p>
<b>"Impact Assessment"</b>	<p>an assessment of a Change Request substantially in</p>

the form of Appendix 2 of schedule B6 (Change Control Procedure);

**"Implementation Plan"**

means the Outline Implementation Plan or (and when approved by the Authority pursuant to clause 5 (Implementation Plan)) the Detailed Implementation Plan as updated in accordance with paragraph 3 of schedule B3 (Implementation Plan) from time to time;

**"Information"**

has the meaning given under section 84 of the Freedom of Information Act 2000 or (in respect of any Authority or Authority Service Recipient which is a Scottish Public Authority) section 73 of the Freedom of Information (Scotland) Act 2002 (as applicable);

**"Information Governance Statement of Compliance"**

means the process by which organisations enter into an agreement with NHS Connecting for Health for access to the NHS National Network (N3), further details of which can be found at:

<http://www.connectingforhealth.nhs.uk/systemsandservices/infogov/igsoc/non-nhs>

**"Information System"**

means a system for generating, sending, receiving, storing or otherwise processing electronic communications;

**"Initial Call Off Notice"**

has the meaning ascribed in the Framework Agreement;

**"Initial Term"**

has the meaning ascribed in the Order Form;

**"Insolvency Event"**

the occurrence of any of the following events (or any event analogous to any of the following in a jurisdiction other than England and Wales) in relation to the relevant entity:

- (a) the entity passing a resolution for its winding up or a court of competent jurisdiction making

an order for the entity to be wound up or dissolved or the entity being otherwise dissolved or ceasing or threatening to cease to carry on the whole or a substantial part of its business;

- (b) the appointment of an administrator of or, the making of an administration order in relation to the entity or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or selling, the whole or part of the entity's undertaking, assets, rights or revenue;
- (c) the entity entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them or takes steps to obtain a moratorium or makes an application to a court of competent jurisdiction for protection from its creditors;
- (d) the entity being unable to pay its debts or being capable of being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (e) the entity entering into any arrangement, compromise or composition in satisfaction of its debts with its creditors;

However, a resolution by the relevant entity or a court order that such entity be wound up for the purpose of a bona fide reconstruction or amalgamation shall not amount to an Insolvency Event;

**"Institutional Investor"**

means an organisation whose primary purpose is to invest its own assets or those held in trust by it for others, including banks, mutual funds, pension funds,



private equity firms, venture capitalists, insurance companies and investment trusts;

<b>"Intellectual Property Rights" or "IPRs"</b>	<p>(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>(c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
<b>"IPR Claim"</b>	any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR used to provide the Services or as otherwise provided by the Supplier (or to which the Supplier has provided access) to the Authority in the fulfilment of its obligations;
<b>"ISFT Response"</b>	means the Supplier's ISFT Response as set out in schedule 1 of the Framework Agreement;
<b>"ISMS"</b>	the Information Security Management System as defined by ISO/IEC 27001;
<b>"Key Personnel"</b>	those members of the Supplier Personnel identified as Key Personnel in the Order Form;
<b>"Key Sub-contract"</b>	means each Sub-contract with a Key Sub-Supplier;

**"Key Sub-Supplier"**

- (a) each of the Sub-Suppliers identified as a key Sub-Suppliers in the Order Form;
- (b) any Sub-Supplier replacing any Key Sub-Supplier;
- (c) any Sub-Supplier that Processes any Personal Data for which the Authority or a Authority Service Recipient is the Data Controller; and
- (d) any Sub-Supplier which in the reasonable opinion of the Authority performs a business critical role in the provision of the Services.

**"Know-How"**

all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the Supplier's or the Authority's possession before this Call off Contract;

**"Law"**

any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;

**"Losses"**

(without limitation) any damages, liabilities, claims, demands, proceedings, actions, costs, charges, losses and/or expenses;

**"Maintenance Schedule"**

shall have the meaning set out in paragraph 8 of Part A of schedule B16 (Service Levels and Performance Monitoring);

**"Malicious Software"**

any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its

operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

**"Management Information"**

the management information specified in schedule B16 (Service Levels and Performance Monitoring), schedule B17 (Charges) and schedule B1 (Invoicing Procedure) to be provided by the Supplier to the Authority;

**"Mandatory Change"**

means any Change which is necessary to manage the risk of harm to be caused to a patient or user of the service including, but not limited to, Changes in response to patient safety alerts issued by the Department of Health, or such other body with responsibility for the health care of individuals;

**"Man Day"**

means 7.5 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;

**"Man Hours"**

means the hours spent by the Supplier Personnel properly working on the Services including time spent travelling (other than to and from the Supplier's offices, or to and from the premises at which the services are to be principally performed) but excluding lunch breaks and any other breaks taken by the Supplier Personnel;

**"Measurement Period"**

the period over which Service Levels shall be measured, as described in the Catalogue and/or schedule B16 (Service Levels and Performance Management) (as applicable).

**"Mediator"**

the independent third party appointed in accordance with paragraph 3.2 of schedule B7 (Dispute Resolution Procedure);

<b>"Milestone"</b>		an event or task described in the Implementation Plan which, if applicable, must be completed by the relevant Milestone Date;
<b>"Milestone Certificate"</b>	<b>Achievement</b>	the formal notification provided by the Authority to the Supplier when the Supplier has Achieved a Milestone;
<b>"Milestone Date"</b>		the date set against the relevant Milestone in the Implementation Plan;
<b>"Milestone Payment"</b>		a payment identified in schedule B17 (Charges) made following the issue of a Milestone Achievement Certificate;
<b>"Mobilisation Services"</b>		has the meaning ascribed in the Catalogue;
<b>"Monitoring Information"</b>		means the information specified in Appendix Two to schedule B15 (Records Provision and Monitoring);
<b>"month"</b>		a calendar month and <b>"monthly"</b> shall be interpreted accordingly;
<b>"NHS Information Governance Standards"</b>		means those standards and policies made available and/or required by the Informatics Directorate of the Department of Health from time to time;
<b>"Non-Catalogue Items"</b>		has the meaning ascribed in the Framework Agreement;
<b>"Non-Core Hours"</b>		means any period other than the Hours of Service;
<b>"Notice of Dispute"</b>		a written notice served by one party on the other stating that the party serving the notice believes that there is a Dispute;
<b>"Off-site"</b>		has the meaning ascribed in paragraph 20 of schedule A1 (Services Description)
<b>"OGC"</b>		means the Office of Government Commerce or any body that replaces or subsumes its obligations from

time to time;

**"Operating Service Level"**

the minimum level of performance for a Service Level which the Supplier is required to provide, such levels are identified in the Catalogue and/or the schedule B16 (Service Levels and Performance Management) (as applicable) as "Operating Service Levels";

**"Operational Audit"**

any audit, spot checks or other periodic assessment of the Services, the Supplier's Personnel, the Sites and related documents required by the Authority, including but not limited to:

(a) attending Sites (and inspecting Supplier Personnel involved in the delivery of the Services);

(b) engaging with individual Supplier Personnel regarding the provision of the Services;

(c) where call recording is permitted, listening to call records; and

(d) reviewing records and data (including databases) held by the Supplier for the purpose of the Services;

**"Operational Change"**

any change in the Supplier's operational procedures which in all respects, when implemented:

(a) will not affect the Charges or the Supplier's costs of performing the Services and will not result in any other costs to the Authority; and/or

(b) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services; and/or

(c) will not adversely affect the interfaces or interoperability of the Services with any of the Authority's IT infrastructure; and/or

(d) will not require a change to this Call off Contract;

**"Optional Terms"**

the terms and conditions set out in Section C of this Call off Contract;

**"Outline BCDR Plan"**

means the outline version of the BCDR Plan prepared by the Supplier and submitted to the Authority during the Engagement Process (or otherwise where agreed) consistent with the principles in schedule B14 (Disaster Recovery and Business Continuity Plan);

**"Outline Implementation Plan"**

means the plan set out in schedule B3 (Implementation Plan);

**"Outline Security Management Plan"**

means the Supplier's draft Security Management Plan submitted to the Authority as part of the engagement process (or otherwise where agreed) and agreed between the parties, a copy of which is set out at schedule B9 (Security Requirements and Plan);

**"Order Form"**

means the duly completed order form set out in Section A of this Call off Contract together with documents annexed thereto and referred to therein as updated during the Term by:

(a) each Formal Instruction issued by the Authority as part of the Formal Instruction Process together with documents annexed thereto and referred to therein; and/or

(b) any other updates or other amendments to the Order Form agreed between the parties;

<b>"Ordering Body"</b>	has the meaning ascribed in the Framework Agreement;
<b>"Ordinary Exit"</b>	any termination of this Call off Contract which occurs: (i) pursuant to clause 55 (Termination and Suspension Rights) where the period of notice given by the party serving notice to terminate pursuant to such clause is greater than or equal to two months; or (ii) as a result of the expiry of the Term;
<b>"Partial Termination"</b>	the partial termination of this Call off Contract to the extent that it relates to the provision of any part of the Service as further provided for in clause 55.6 (Partial Termination);
<b>"Performance Indicators"</b>	No performance indicators have been identified in the Catalogue for this Service. The only Performance Indicators (if any) are those detailed in Appendix A to schedule B16;
<b>"Performance Monitoring Report"</b>	the summary of the performance by the Supplier to be provided by the Supplier to the Authority pursuant to paragraph 6 of Part B of schedule B16 (Service Levels and Performance Monitoring);
<b>"Performance Monitoring System"</b>	has the meaning set out in paragraph 1.1 of Part B of schedule B16 (Service Levels and Performance Monitoring). Where a provision indicates that a matter is set out or detailed in the Performance Monitoring System it shall be as stated within Appendix A to Schedule B16 or as agreed between the Parties from time to time both acting reasonably
<b>"Performance Review Meeting"</b>	the regular meeting between the Supplier and the Authority to manage and review the Supplier's performance under the Call off Contract, as further described in paragraph 6 of Part B of schedule B16

(Service Levels and Performance Monitoring);

**"Permitted Maintenance"**

Means the planned maintenance as described in paragraph 8.2 of Part A to schedule B16 (Service Levels and Performance Monitoring);

**"Personal Data"**

shall have the same meaning as set out in the Data Protection Legislation.

**"Plan Approval Process"**

means the process described in clause 11A;

**"Process"**

has the meaning given to it under the Data Protection Legislation but, for the purposes of this Call off Contract, it shall include both manual and automatic processing and **'Processed'** and **'Processing'** shall be interpreted accordingly;

**"Project Specific IPRs"**

(a) IPRs in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Call off Contract and updates and amendments of these items; and/or

(b) IPRs arising as a result of the performance of the Supplier's obligations under this Call off Contract;

including, but not limited to, any Database but which shall not include (i) the Supplier's Background IPRs, (ii) the Supplier Software, (iii) the Specially Written Software and (iv) any other software created by the Supplier for its own purposes;

**"Public Company"**

means a company which has securities listed on a stock exchange in any jurisdiction;

**"Quality Plans"**

the Supplier's plan that reflects the quality management systems as further described in clause 14.4 (Quality Assurance and Performance



Monitoring);

<b>"Quarter"</b>		a three month period beginning on January 1, April 1, July 1 and October 1 each year (or reduced period immediately prior to the end of the Term);
<b>"Reclaimable Payments"</b>	<b>Milestone</b>	Milestone Payments which have been paid to the Supplier in respect of the Achievement of Milestones and are expressed as being reclaimable in schedule B17 (Charges);
<b>"Registers"</b>		has the meaning set out in paragraph 2.1 of schedule B8 (Exit Management);
<b>"Regulatory Bodies"</b>		those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Call off Contract or any other affairs of the Authority or any Authority Service Recipient and <b>"Regulatory Body"</b> shall be construed accordingly;
<b>"Related Service"</b>		means a Replacement Service or any other service which the Authority obtains or provides itself that is related to the Services, or any part of the Services, or which interfaces with or is intended to interface with the Services;
<b>"Related Service Provider"</b>		means the provider of a Related Service;
<b>"Relevant Conviction"</b>		a Conviction that is relevant to the nature of the Services to be provided including but not limited to offences relating to dishonesty, violence or sexual offences;
<b>"Relevant Person"</b>		the Authority, a Authority Service Recipient or any other public body or any person employed by or on

behalf of the Authority, a Authority Service Recipient or any other public body;

<b>"Relevant Transfer"</b>	means a "relevant transfer" as such term is defined in Regulation 2 of the Employment Regulations;
<b>"Remedial Plan"</b>	the plan referred to in clause 56 (Remedial Plan Process) to correct a material Default;
<b>"Remedial Plan Process"</b>	the process set out in clause 56 (Remedial Plan Process);
<b>"Replacement Supplier"</b>	any third party service provider of Replacement Services appointed by the Authority or any Authority Service Recipient from time to time;
<b>"Replacement Services"</b>	any services which are substantially similar to any of the Services and which the Authority and/or each Authority Service Recipient receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Call off Contract, whether those services are provided by the Authority or a Authority Service Recipient internally and/or by any third party;
<b>"Representatives"</b>	either or both of the Authority Representative and the Supplier Representative;
<b>"Request for Information"</b>	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
<b>"Required Action"</b>	has the meaning given in clause 60.7.1 (Step-In Rights);
<b>"Required Insurances"</b>	the policies of insurance listed in schedule 12 of the Framework Agreement;

<b>"Reserve Capacity"</b>	has the meaning ascribed in the Framework Agreement;
<b>"Restricted Person(s)"</b>	means any person who (a) (other than an Institutional Investor), has a material interest in the production of tobacco products or alcoholic beverages; or (b) the Authority otherwise reasonably believes taking into account government Policy is inappropriate for public policy reasons to have an interest in any Key Sub-Supplier or any other entity detailed in clause 23.11A.
<b>"Satisfaction Survey"</b>	a survey undertaken pursuant to paragraph 7.1 of Part B of schedule B16 (Service Levels and Performance Monitoring);
<b>"Scottish Public Authority"</b>	has the meaning ascribed in section 3(1) of the Freedom of Information (Scotland) Act 2002;
<b>"Security"</b>	means Shares, Debt Securities, units in a collective investment scheme (as defined in the Financial Services and Markets Act 2000) miscellaneous warrants, certificates representing debt securities, warrants or options to subscribe or purchase securities, other securities of any description and any other type of proprietary or beneficial interest in a limited company;
<b>"Security Management Plan"</b>	the Supplier's security plan (including the ISMS) prepared pursuant to paragraph 3 of schedule B9 (Security Requirements and Plan);
<b>"Security Policy"</b>	the security policy attached to schedule B9 (Security Requirements and Plan) and any additional security policy provided by the Authority to the Supplier and updated from time to time;

<b>"Security Policy Framework"</b>	means the Cabinet Office Security Policy Framework (available from the Cabinet Office Security Policy Division);
<b>"Service Areas"</b>	has the meaning ascribed in paragraph 2.1 of schedule B2 (Formal Instruction Process);
<b>"Service Credit Points"</b>	the points that are set out in the Catalogue and/or schedule B17 (Charges) (as applicable) which shall accrue to the Supplier in the event of any Service Failure;
<b>"Service Commencement Date"</b>	means the date on which the operational services commence as detailed on the Order Form;
<b>"Service Credits"</b>	the sums payable in respect of any Service Failure;
<b>"Service Failure"</b>	a failure to meet the Operating Service Levels and includes all failure levels referred to in the Catalogue and/or schedule B16 (Service Levels and Performance Monitoring) (as applicable);
<b>"Service Failure Log"</b>	the hard copy and electronic version of the log created and maintained by the Supplier as part of the Services in accordance with paragraph 4 of Part B of schedule B16;
<b>"Service Levels"</b>	the service levels, set out in the Service Specification Sheet(s) against which the Supplier's performance of the Services will be measured;
<b>"Service Period"</b>	shall mean a calendar month period and in particular: (i) the first Service Period of this Call off Contract shall begin on the Service Commencement Date; and

(ii) the final Service Period of this Call off Contract shall commence on the day immediately following the penultimate Service Period and shall end on the expiry or termination of the Term;

<b>"Service Specification Sheet"</b>	means a completed version of the pro-forma Service Specification Sheet attached to the Catalogue and set out in schedule A1;
<b>"Services"</b>	any and all of the services to be provided by the Supplier under this Call off Contract including those set out in the Services Description;
<b>"Services Description"</b>	the description of the Services set out in schedule A1 (Services Description), and the relevant sections of the Catalogue (applicable to the Services);
<b>"Service Transfer"</b>	has the meaning given in paragraph 2 of schedule B12 (Staff Transfer on Service Provision Change);
<b>"Service Type"</b>	each type of services detailed in the Catalogue that the Supplier is permitted to order namely, Activity Services; Specialist Services, Mobilisation Services and Technical Infrastructure Services;
<b>"Service Transfer Date"</b>	the date of a Service Transfer;
<b>"Shares"</b>	has the meaning given to it in section 540 of the Companies Act 2006, including preference shares;
<b>"Sites"</b>	any premises from which the Services are provided or from which the Supplier manages, organises or otherwise directs the provision or the use of the Services or where any part of the Supplier System is situated or where any physical interface with the Authority System takes place;
<b>"Software"</b>	Specially Written Software, Supplier Software and

Third Party Software;

**"Source Code"**

computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all technical information and documentation necessary for the use, reproduction, modification and enhancement of such software;

**"Specialist Services"**

has the meaning ascribed in the Catalogue;

**"Specially Written Software"**

means

a) any software created by the Supplier (or by a third party on behalf of the Supplier) at the Authority's request specifically for the purposes of this Call off Contract; or

b) any software created by the Supplier (or by a third party on behalf of the Supplier) as a service improvement that is proposed by the Supplier pursuant to clause 16 (Services Improvement) which is subsequently implemented by the Authority pursuant to schedule B20 (Service Improvement Savings) whereby the Supplier receives a percentage share of the cost saving made to the Authority under this Call off Contract;

**"Special Terms"**

the additional terms and conditions applicable to this Call off Contract as agreed by the Supplier and the Authority and detailed in the Order Form;

**"Specific Change in Law"**

a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;

**"Staffing Information"**

in relation to all person's named on the Supplier's Provisional Staff List and/or the Authority's Provisional

Staff List (as applicable), such information as the Authority may reasonably request and / or reasonably provide (as applicable)(subject to Data Protection Legislation), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they be employed, self employed Suppliers or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) the wages, salaries, profit sharing;
- (f) details of other employment related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence; and

- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other "employee liability information" as such term is defined in Regulation 11 of the Employment Regulations;

**"Staff Transfer"**

the transfer of staff pursuant to the Employment Regulations under this Call off Contract;

**"Staff Vetting Procedures"**

the Authority's procedures and departmental policies for the vetting of personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures, including, but not limited to, the provisions of the Official Secrets Act 1911 to 1989;

**"Standard Dispute Timetable"**

the standard timetable for the resolution of Disputes set out in Appendix to schedule B7 (Dispute Resolution Procedure);

**"Standards"**

the British or international standards and Government codes of practice and guidance referred to in schedule B4 (Standards) together with any other specified policies or procedures identified in schedule B4 (Standards) and any other policies or procedures which the Authority may reasonably require the Supplier to adhere to during the term of this Call off Contract;

**"Sub-contract"**

any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services or any part thereof or facilities or



services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;

**"Sub-Supplier"**

the third party with whom the Supplier enters into a Sub-contract or its servants or agents and any third party with whom that third party enters into a Sub-contract or its servants or agents;

**"Sub-Supplier Financial Distress Event"**

means a Financial Distress Event that applies to a Key Sub-Supplier;

**"Supplier Equipment"**

the hardware, computer and telecoms devices and equipment supplied by the Supplier or its Sub-Suppliers (but not hired, leased or loaned from the Authority) for the provision of the Services;

**"Supplier Final Staff List"**

the relevant list of all Supplier Personnel engaged in or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the Service Transfer;

**"Supplier Materials"**

means the Supplier Software together with the Documentation relating to the Supplier Software;

**"Supplier Party"**

the Supplier's agents and Suppliers, including each Sub-Supplier;

**"Supplier Personnel"**

all employees, agents, consultants and Suppliers of the Supplier and/or any Sub-Supplier;

**"Supplier Tender Response"**

the Supplier's solution for the Services attached to this Call off Contract at schedule A2 (Supplier Tender Response);

**"Supplier Representative"**

the representative appointed by the Supplier and specified in the Order Form pursuant to clause 21 (Representatives);

<b>"Supplier's Background IPRs"</b>	<p>(a) IPRs owned by the Supplier before the Effective Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or</p> <p>(b) IPRs created by the Supplier independently of this Call off Contract,</p> <p>but excluding IPRs owned by the Supplier subsisting in the Supplier Software;</p>
<b>"Supplier's Change Manager"</b>	<p>the person appointed to that position by the Supplier from time to time and notified in writing to the Authority or, if no person is notified, the Supplier's Representative;</p>
<b>"Supplier's Information"</b>	<p><b>Confidential</b> any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Supplier, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information;</p>
<b>"Supplier Software"</b>	<p>software which is proprietary to the Supplier and which is or will be used by the Supplier for the purposes of providing the Services, including any modification, upgrade or new release thereof;</p>
<b>"Supplier's Proprietary Know How"</b>	<p>means all confidential ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how belonging to the Supplier that (a) was already in the Supplier's</p>

possession before this Call off Contract or (b) came into existence during the Term of this Call off Contract but excluding Authority Assigned IPRs;

**"Supplier's Provisional Staff List"** a list prepared and updated by the Supplier of all Supplier Personnel who are engaged in or wholly or mainly assigned to, the provision of the Services or any part of the Services as at the date of such list;

**"Supplier System"** the information and communications technology system used by the Supplier in performing the Services including the Software, the Supplier Equipment and related cabling (but excluding the Authority System);

**"Sustainable Development in Government"** means the updated framework of environmental targets imposed upon the Authority as a UK public body following the expiry of the Sustainable Operations on the Government Estate framework;

**"Sustainable Operations on the Government Estate"** means the framework of environmental targets imposed upon the Authority as a UK public body;

**"Technical Infrastructure Services"** has the meaning ascribed in the Catalogue;

**"Term"** the period commencing on the Effective Date and continuing until the expiry date set out in the Order Form, or for such longer period that this Call off Contract is extended in accordance with the Order Form or on earlier termination of this Call off Contract;

**"Termination Assistance Notice"** has the meaning set out in paragraph 6.1 of schedule B8 (Exit Management);

**"Termination Assistance Period"** the period specified in (or implied within) the Termination Assistance Notice in which the Supplier shall provide the Termination Services as may be extended pursuant to paragraph 6.2 of schedule B8

(Exit Management);

<b>"Termination Notice"</b>	a notice to terminate this Call off Contract or part of the Services either immediately or at a date specified in the notice;
<b>"Termination Payment"</b>	the payment calculated in accordance with paragraph 2 of schedule B19 (Payments on Termination);
<b>"Termination Services"</b>	the services and activities to be performed by the Supplier pursuant to the Exit Plan, including those activities listed in paragraph 7.1 of schedule B8 (Exit Management) and any other services required pursuant to the Termination Assistance Notice;
<b>"Test Certificate"</b>	the certificate issued by the Authority when a Deliverable has satisfied its relevant Test Success Criteria satisfactorily;
<b>"Testing Procedures"</b>	the applicable testing procedures and Test Success Criteria set out in schedule B10 (Testing Procedure);
<b>"Test Issue"</b>	any variance or non-conformity of a Deliverable from its requirements as set out in the relevant Test Success Criteria;
<b>"Test Issue Management Log"</b>	a log for the recording of Test Issues as described further in paragraph 9.1 of schedule B10 (Testing Procedures);
<b>"Test Plan"</b>	a plan for the Testing of Deliverables and other agreed criteria related to the Achievement of Milestones as described further in paragraph 5 of schedule B10 (Testing Procedures);
<b>"Test Report"</b>	a report setting out the results of any Tests which shall include without limitation the information set out in paragraph 8.5 of schedule B10 (Testing Procedures);

<b>"Tests" and "Testing"</b>	any tests required to be carried out under this Call off Contract in accordance with the provisions in schedule B10 (Testing Procedures);
<b>"Test Specification"</b>	the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in paragraph 7 of schedule B10 (Testing Procedures);
<b>"Test Strategy"</b>	a strategy for the conduct of Testing as described further in paragraph 4 of schedule B10 (Testing Procedures);
<b>"Test Success Criteria"</b>	the test success criteria referred to in paragraph 6 of schedule B10 (Testing Procedures);
<b>"Test Witness"</b>	any person appointed by the Authority pursuant to paragraph 10 of schedule B10 (Testing Procedures);
<b>"Third Party Material"</b>	the Third Party Software together with any Documentation relating to the Third Party Software;
<b>"Third Party Software"</b>	software which is proprietary to any third party which is or will be used by the Supplier for the purposes of providing the Services, including the software specified as such in schedule A2 (Supplier Tender Response);
<b>"Transferring Supplier Employees"</b>	means employees of the Supplier or a Supplier Party identified as "transferring Supplier employees" on the Supplier Final Staff List and who transfer to the Authority or a Replacement Supplier, as the case may be, in the event of a Service Transfer pursuant to the Acquired Rights Directive or the Employment Regulations;
<b>"Transferring Contracts"</b>	shall have the meaning set out in paragraph 10.2 of schedule B8 (Exit Management);

<b>"UK"</b>	the United Kingdom;
<b>"Use"</b>	<p>(a) with respect to software which is licensed pursuant to clause 35 the right to load, execute, store, transmit, display and copy (for the purposes of loading, execution, storage, transmission or display) that Software;</p> <p>(b) with respect to clause 37 for Software, the right to load, execute, store, transmit, display, copy (for the purposes of loading, execution, storage, transmission or display), modify, adapt, enhance, reverse compile, decode, translate, or otherwise utilise that Software; and</p> <p>(c) with respect to clause 37 for IPRs other than Software, the right to copy, adapt, publish (including on the ICT Environment), distribute or otherwise use any other IPRs;</p>
<b>"VAT"</b>	value added tax as provided for in the Value Added Tax Act 1994 and includes all orders and subordinate legislation made there under and any legislation which shall amend or replace it;
<b>"Volume Guarantee"</b>	has the meaning ascribed in the Catalogue;
<b>"Warning Notice"</b>	has the meaning given in sub-clause 15.8; and
<b>"Wilful Default"</b>	means a deliberate or reckless act or omission which results in a breach of this Call off Contract or non-performance of the Supplier's obligations under this Call off Contract; and
<b>"Working Day"</b>	any day other than a Saturday, Sunday or public holiday or bank holiday in the jurisdiction of the Authority.

Schedules to Call off Contract

## SCHEDULE A1

### Services Description

To provide support and maintenance services for the Supplier's iLAB TP Software as provided to the Authority immediately prior to the Service Commencement Date albeit through a different contractual arrangement.

#### Hours of Service:

Severity 1 and Severity 2 Incidents (as described in Appendix A to schedule B16 Service Levels and Performance Monitoring) will be responded to, managed, fixed and measured 24 hours a day, seven days a week.

Severity 3 and 4 Incidents (as described in Appendix A to schedule B16 Service Levels and Performance Monitoring) will be responded to, managed, fixed and measured between the hours of 09.00 and 17.30 Monday to Friday excluding Public Holidays.

Non-Core Hours will be deemed to be the maintenance slots agreed between the Parties in accordance with Appendix A to Schedule B16.



## SCHEDULE A2 (SUPPLIER'S TENDER RESPONSE)

### (ILAB TP SOFTWARE AND SERVICES)

The Supplier shall deliver the iLab TP Software and the Services as defined in the Call off Contract, comprising the licensed use by the Authority of the iLab TP Software and associated maintenance and support services to the testing, training and production environments.

Support and maintenance services to the testing and training environments are on a reasonable endeavors basis. The deployment of Releases and / or Upgrades to test and training environments will be undertaken during normal business hours. Where the Authority requires this activity to be undertaken in Non-Core Hours this may be requested through a Service Request and will be chargeable.

The Supplier shall provide the maintenance and support services relating to the latest version and the previous version (N-1) for a maximum period of twelve months from the date of release of the then current version of the iLab TP Software in the production environment only.

As at the Effective Date the iLab TP Software and Interfaces are as detailed in the Support Schedule detailed in Schedule B17.

Application support will be provided as follows:

- Resolution of Incidents
- Problem Management
- Reasonable advice and guidance.
- Provision of new Releases and Upgrades. Although the licensed use and support of new Releases and Upgrades is included in the Charges, the deployment of new Releases and Upgrades (other than in the case of a single Release or Upgrade in any twelve month period that the Authority is willing to have deployed in normal working hours which will be provided at no additional cost to the Authority) are at additional charge. These will be charged at the Supplier's then current day rates.

#### Out of Scope

The Services do not include provision of additional functionality to the iLAB TP Software core application. The Supplier reserve the right to charge the Authority for additional functionality delivered as separate and optional functional module(s) to the core application.

Maintenance of rules created by the Authority.

Cache support will be provided as follows:

- Resolution of Incidents
- Problem Management
- Space management
- At the Supplier's option the provision of new Releases and Upgrades. The Authority may also request the provision of a new Release or Upgrade but where requested this will be provided at additional cost (unless such Release or Upgrade is deployed with an Upgrade or Release of the application software during normal working hours). In the event of the software owner issuing a de-support notice on the installed version of the software that requires the purchase of new licenses the purchase cost will be the responsibility of the Authority.

#### Database Backup and Recovery

The Supplier will be responsible for scheduling a daily database backup and a monthly application layer backup at times to be agreed with the Authority.

The Authority will be responsible for maintaining a rotation of tapes into the tape unit and for the secure storage of tapes when not in use and the renewal / replacement of tapes as required.

Recovery will be in accordance with the BCDR Plan.

## SCHEDULE B1

### Invoicing Procedure

#### 1. PURPOSE OF THIS SCHEDULE

This schedule B1 sets out the method by which the Supplier shall raise invoices to the Authority for payment, together with the requirements which apply to such invoices, and the payment terms thereof.

#### 2. SUPPLIER INVOICES

2.1. The Supplier shall prepare and provide to the Authority for approval a draft pro forma invoice within ten Working Days of the Effective Date (or such other period agreed between the parties) which shall include, as a minimum, the details set out in paragraph 2.4 of this schedule B1 together with such other information as the Authority may reasonably require. If the draft pro forma invoice is not approved by the Authority then the Supplier shall make such amendments as may be reasonably required by the Authority.

2.2. The Supplier shall be entitled to raise an invoice in respect of any payment which falls payable to the Supplier pursuant to this Call off Contract.

2.3. The Supplier shall invoice the Authority in respect of the Services in accordance with the arrangements for invoicing detailed in the Order Form. Unless specified otherwise in schedule B17 (Charges), the timescales for the issue of invoices shall be every Service Period (payable in arrears for the Services performed).

2.4. The Supplier shall ensure that each invoice contains the following information:

2.4.1. the date of the invoice;

2.4.2. a unique invoice number;

2.4.3. the Service Period or other period(s) to which the relevant Charge(s) relate;

2.4.4. details of the correct Call off Contract reference;

2.4.5. the reference number of the purchase order to which it relates (if any);

2.4.6. the dates between which the Services which are the subject of each of the Charges detailed on the invoice were performed;

- 2.4.7. any payments due in respect of achievement of a Milestone (if applicable);
  - 2.4.8. the total Charges gross and net of any applicable deductions and, separately, the amount of any disbursements properly chargeable to the Authority under the terms of the Call off Contract, and, separately, any VAT or other sales tax payable in respect of the same;
  - 2.4.9. full details (including supporting information) of any Service Credits or Delay Payments or similar deductions that shall apply to the Charges detailed on the invoice;
  - 2.4.10. reference to any reports required by the Authority in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by the Authority, then to any such reports as are validated by the Authority in respect of the Services);
  - 2.4.11. a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries;
  - 2.4.12. the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number); and
  - 2.4.13. such other requirements as may be set out in schedule B17 (Charges).
- 2.5. Each invoice shall at all times be accompanied by sufficient information ("Supporting Documentation") to enable the Authority to reasonably assess whether the Charges detailed thereon are properly payable. Any such assessment by the Authority shall not be conclusive. The Supplier undertakes to provide to the Authority any other documentation reasonably required by the Authority from time to time to substantiate an invoice.
- 2.6. The Supplier shall submit all invoices and Supporting Documentation in such format as the Authority may specify from time to time to such person at such place as is stated in the Order Form (or schedule B17 (Charges) which may be updated in writing by the Authority from time to time) with a copy (again including any Supporting Documentation) to such other person and at such place as the Authority may notify to the Supplier from time to time.

2.7. All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.

2.8. The Authority shall only regard an invoice as valid if it complies with the provisions of this schedule B1. Where any invoice does not conform to the Authority's requirements set out in paragraph 2 of this schedule B1, the Authority will return the disputed invoice to the Supplier. The Supplier shall issue a replacement invoice as soon as reasonably practicable and in any event within 5 working days which shall comply with the same. For the avoidance of doubt, the Authority will not be obliged to pay any part of an invoice where the Supplier has provided insufficient Supporting Documentation such that the Authority is unable to reasonably assess whether the relevant Charges relating to that part are properly payable. Once the Supplier provides sufficient Supporting Documentation in connection with an invoice and such Charges are properly payable, the Authority shall make payment to the Supplier in accordance with paragraph 3 below.

### 3. PAYMENT TERMS

Subject to the provisions of paragraph 2 of this schedule B1, the Authority shall make payment to the Supplier within thirty days of receipt of a valid invoice by the Authority at its nominated address for invoices.

### 4. DISPUTED INVOICING

If the Authority (acting in good faith) disputes all or any part of the Charges or any other amount that the Supplier claims is payable to it which has been validly invoiced in accordance with paragraph 2, the undisputed amount of the Charges or any other undisputed amount shall be paid by the Authority in accordance with paragraph 3, save that the Authority shall be entitled to retain the disputed amount of the invoiced Charges or other amount (as the case may be) and the provisions of this paragraph 4 shall apply. The parties shall use all reasonable endeavours to resolve the dispute in question within ten Working Days of the dispute arising.

**SCHEDULE B3**

Not Used

## SCHEDULE B4

### Standards

The Supplier shall comply with the following standards:

1.1 TBC

1.2 ITIL Guidelines

1.2.1. The Supplier shall ensure that it is compliant with the Information Governance Statement of Compliance ("IG SoC") as applicable to the Services and shall provide evidence of such compliance to the Authority on request."

1.2.2. Where appropriate the Supplier shall comply with the standards of ISO 20000 (IT Service Management). Where Supplier has not obtained ISO 20000 certification, the Supplier warrants that it has appropriate processes in place to ensure that it complies with the standards of ISO 20000.

1.2.3. Not Used

1.2.4. The Supplier shall on reasonable request allow the Authority to engage the services of a Registered Certification Body (RCB) to audit their compliance with the ISO 20000 standard, provided that such audit shall be on reasonable notice to the Supplier, shall not take place more frequently than once in any 12 month period and the cost of such audit is borne by the Authority.

### BUSINESS SECURITY

1.1 The Supplier shall ensure that security is maintained to the level required by the Standards set out in the Services Description, schedule B9 (Security Requirements and Plan), and subject to the relevant audit rights at clause 24 (Audit).

1.2 The Supplier shall ensure that it is compliant with the Information Governance Statement of Compliance ("IG SoC") as applicable to the Services and shall provide evidence of such compliance to the Authority on request.

### ENVIRONMENT

- 2.1 The Supplier undertakes to follow a sound environmental management policy so that its activities comply with all applicable environmental legislation and regulations and that its products or services are procured, produced, packaged, delivered and are capable of being used and ultimately disposed of, in ways that are appropriate from an environmental protection perspective.
- 2.2 The Supplier shall comply with the standards of ISO 14000/14001 for environmental management. Where the Supplier has not obtained ISO 14000/14001 certification, the Supplier warrants that it has appropriate processes in place to ensure that it complies with the standards of ISO 14000/14001.
- 2.3 The Supplier shall comply with relevant obligations under the Waste Electrical and Electronic Equipment Directive 2002/96/EC ("WEE Directive") and the Waste Electrical and Electronic Equipment Regulations 2006 (and, where applicable, any other member state national legislation implementing the WEE Directive) as updated from time to time.
- 2.4 The Supplier shall comply with the Sustainability and Environmental Policies as provided to the Supplier by the Authority and as updated from time to time.
- 2.5 Not Used

#### SERVICE SPECIFIC STANDARDS

- 3.1 Where relevant, the Supplier shall comply with the Office of Communications Revised Statement of Policy on the Persistent Misuse of an Electronic Communications Network or Service, September 2008, as updated from time to time together with such additional standards as may be specified in schedule A1 (Services Description) and/or otherwise agreed between the parties from time to time.
- 3.2 Unless otherwise agreed by the Authority, the Supplier shall ensure that the relevant Supplier Personnel are appropriately trained to provide the Services in accordance with standard industry best practice.



## SCHEDULE B5

### Authority Responsibilities

#### 1. INTRODUCTION

The responsibilities of the Authority set out in this schedule B5 shall constitute the Authority Responsibilities under this Call off Contract. Any obligations of the Authority in the Services Description and schedule A2 (Supplier Proposal) shall not be Authority Responsibilities and the Authority shall have no obligation to perform any such obligations unless they are specifically highlighted as "Authority Responsibilities".

The responsibilities specified within this schedule B5 shall be provided to the Supplier free of charge, unless otherwise agreed between the parties.

#### 2. GENERAL OBLIGATIONS

The Authority shall:

2.1. perform those of its obligations which are expressly set out in the clauses of this Call off Contract and the paragraphs of the schedules thereto (except the Services Description and schedule A2 (Supplier Proposal));

2.2. use its reasonable endeavours to provide the Supplier with access to appropriate members of the Authority's staff, as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Term;

2.3. provide sufficient and suitably qualified staff to fulfil the Authority's roles and duties under this Call off Contract;

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

2.5. procure for the Supplier such agreed access and use of the Authority's premises, facilities, including relevant ICT systems as is reasonably required for the Supplier to comply with its obligations under this Call off Contract, such access to be provided during the

Authority's normal working hours on each Working Day or otherwise as agreed by the Authority (such agreement not to be unreasonably withheld or delayed); and

2.6 notify the Supplier promptly in the event that the Authority considers that the Supplier has committed a material Default together with sufficient detail that is reasonably available to the Authority to enable the Supplier to understand and correct such Default and take appropriate actions to prevent any reoccurrence.

### 3. SPECIFIC OBLIGATIONS

The Authority shall:

3.1 to the extent that the following are not expressly provided for elsewhere in the Call off Contract, use its reasonable endeavours to respond to requests for approval, authority to proceed, guidance or assistance in a prompt and timely manner;

3.2 allow the Supplier to have appropriate remote connectivity to the Authority's IT systems in order for the Supplier to provide the Services in accordance with this Call off Contract;

3.3 subject to the Authority's operational needs, provide accommodation and basic office facilities for the Supplier's staff on the Authority's premises as mutually agreed on an ad hoc basis (i.e. providing 'hot desks' for a small number of Supplier staff on an occasional basis for the purpose of visits and meetings);

3.4 ensure that an up-to-date back-up copy of the Software is available to the Supplier to the extent necessary for the Supplier to perform the Services;

3.5 be responsible for ensuring the application, operating system and databases are regularly backed up and the backup media is stored securely. The Authority is responsibility for the restoration of the system in both test and real Disaster Recovery scenarios;

3.6 implement Upgrades in accordance with the Supplier's reasonable instructions;

3.7 advise the Supplier of any increase in user accounts that may impact Third Party licence agreements;

3.8 install and manage any security and/or anti-virus software in compliance with the Authority's Security Policy

3.9 provide or procure any National Services required for the Services.

3.10 ensure that all hardware and operating system software provided for the hosting and running of the Software conforms to the manufacturer's or owner's (as appropriate) specific requirements for continued support, and are in accordance with the Supplier's requirements specified within the Supplier's technology roadmap (included in Appendix A to this schedule B) unless otherwise agreed by the Parties in writing. The technology roadmap may be updated from time to time by the Supplier on reasonable notice to the Authority.

3.11 manage the relationship with the Authority's third parties including the hardware support vendor. Ensuring that third party supplied support is in place for the length of this Call off Contract and that as required appropriate assistance is procured from such third parties to analyse the root cause or reported faults and to test and/or assist as appropriate in the Resolution of reported faults.

### **Service Desk**

3.12 provide an adequately resourced first line helpdesk facility which shall use its reasonable endeavours to triage Incidents prior to submission to the Supplier, ensuring that only Incidents relating to the Software are logged on the Supplier's Service Desk tool. The Authority shall follow the procedures for logging Incidents provided by the Supplier.

3.13 report all Incidents and Service Requests to the Supplier's Service Desk via the web or by phone. The preferred route would be the web based Service Desk tool that the Supplier will make available to the Authority.

3.14 provide to the Supplier, and maintain the currency of, an internal contact listing for use by the Service Desk for escalation purposes;

3.15 define the criteria for user entitlement to service at the Service Desk; and

3.16 Ensuring that contacts with the Suppliers Service Desk, either via the phone or online systems contain the required minimum data set notified to the Authority by the Supplier.

### **Out of Scope**

The parties acknowledge that the following activities are outside the scope of the Services and the Supplier is not under an obligation to perform such activities:

- the provision, maintenance and support of the Authority's ICT Infrastructure that the Software is deployed on and any other peripheral hardware, networks and communication equipment;
- the prevention of any unauthorised access to the Authority's ICT Infrastructure; and
- the resolution of an Incident in accordance with the applicable Service Levels if the Incident occurs as a result of modifications of the Software without the Supplier's approval.

## APPENDIX A – TECHNOLOGY ROADMAP



Technology\_Roadmap(i.Lab TP)\_v2.5.xlsx

## SCHEDULE B6

### Change Control Procedure

#### 1. GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE

- 1.1 This schedule B6 sets out the procedure for dealing with Contract Changes.
- 1.2 Operational Changes shall be processed in accordance with paragraph 9 below. If either party is in doubt about whether a change falls within the definition of an Operational Change then it will be processed as a Contract Change.
- 1.3 Under this Change Control Procedure:
  - 1.3.1 either party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with paragraph 3;
  - 1.3.2 unless required otherwise by the Authority, the Supplier will assess and document the potential impact of a proposed Contract Change in accordance with paragraph 4 before the Contract Change can be either approved or implemented;
  - 1.3.3 the Authority shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in paragraph 5;
  - 1.3.4 the Supplier shall have the right to reject a Change Request solely in the manner set out in paragraph 6;
  - 1.3.5 no proposed Contract Change shall be implemented by the Supplier until such time as a Change Authorisation Note has been signed and issued by the Authority in accordance with paragraph 5.2;
  - 1.3.6 if the circumstances or nature of a proposed Contract Change mean that it is a Fast-track Change then it shall be processed in accordance with paragraph 7;
  - 1.3.7 in certain circumstances, the Authority may designate a Change to be an Emergency Change, in accordance with paragraph 7.4; and

1.3.8 either party may identify the occurrence of an event requiring a Mandatory Change, in accordance with paragraph 8.

1.4 Until such time as a Change Authorisation Note has been signed and issued by the Authority in accordance with paragraph 5.2, then:

1.4.1 unless the Authority expressly agrees otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of the Call off Contract as if the proposed Contract Change did not apply; and

1.4.2 any discussions, negotiations or other communications which may take place between the Authority and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each party's other rights under this Call off Contract.

## 2. COSTS

2.1 Subject to paragraph 2.4, each party shall bear its own costs in relation to the preparation and agreement of each Change Request and Impact Assessment.

2.2 The parties acknowledge and agree that the agreement of a Contract Change shall not, of itself give rise to a change in the Charges. Any reductions, increases, deletions or additions to the Charges shall be implemented in accordance with the principles set out in this paragraph 2 and schedule B17 (Charges). The Supplier will only be entitled to increase the Charges if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources or additional technology and, in any event, any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources/technology required for the provision of the Services as amended by the Contract Change.

2.3 Where the Contract Change:

2.3.1 requires an additional service which is a Catalogue Item; or

2.3.2 requires an amendment to an existing service, and that amended service (that is to say after the incorporation of the proposed Contract Change) is a Catalogue Item,

with an applicable Guaranteed Maximum Price in the Catalogue the Supplier shall ensure that any proposed price change pursuant to paragraph 2.2 shall not exceed the applicable Guaranteed Maximum Price, so long as the specification can be shown to be equivalent to or less onerous than that of the equivalent Catalogue Item.

2.4 Both parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Supplier shall be paid for by the Supplier.

### 3. CHANGE REQUEST

3.1 Either party may issue a Change Request to the other party at any time during the Term. The Change Request shall be substantially in the form of Appendix 1 to this schedule B6 and must state whether the party issuing the Change Request considers the proposed Contract Change to be a Fast-track Change.

3.2 If the Supplier issues the Change Request, then it shall also provide an Impact Assessment to the Authority as soon as is reasonably practicable but in any event within five Working Days of the date of issuing the Change Request.

3.3 If the Authority issues the Change Request, then the Supplier shall provide an Impact Assessment to the Authority as soon as is reasonably practicable but in any event within ten Working Days of the date of receiving the Change Request from the Authority provided that if the Supplier requires any clarifications in relation to the Change Request before it can deliver the Impact Assessment, then it will notify the Authority as soon as reasonably practicable but in any event within five days and the time period shall be extended by the time taken by the Authority to provide those clarifications. The Authority shall respond to the request for clarifications as soon as is reasonably practicable and the Supplier shall provide the Authority with



sufficient information to enable it to understand fully the nature of the request for clarification.

- 3.4 Where the Supplier has received multiple Change Requests from the Authority that need to be processed simultaneously, the parties shall collaborate (acting reasonably) to determine which Change Requests are to be given first priority and any variations to the timescales within which the Impact Assessments should be provided to the Authority.

#### 4. IMPACT ASSESSMENT

- 4.1 Each Impact Assessment shall be completed in good faith and shall include (without limitation):

4.1.1 details of the proposed Contract Change including the reason for the Contract Change; and

4.1.2 details of the impact of the proposed Contract Change on the Services or the Additional Services and the Supplier's ability to meet its other obligations under the Call off Contract and any variation to the terms of the Call off Contract that will be required as a result of that impact and including without limitation changes to:

4.1.2.1 the Services Description and the Service Levels;

4.1.2.2 the format of Authority Data;

4.1.2.3 the Milestones, Implementation Plan and any other timetables previously agreed by the parties;

4.1.2.4 other services provided by third party Suppliers to the Authority (to the extent that such services are within the knowledge of the Supplier), including any changes required by the proposed Contract Change to the Authority's IT infrastructure;

4.1.2.5 details of the cost of implementing the proposed Contract Change;

4.1.2.6 details of any proposed increase or decrease in the Charges (in accordance with paragraph 2.2 above), any alteration in the

resources and/or expenditure required by either party and any alteration to the working practices of either party;

4.1.2.7 where appropriate, a timetable for the implementation, together with any proposals for the testing of the Contract Change in accordance with the procedure set out in schedule B10 (Testing Procedures), including any proposed Milestone and Milestone Date for the purpose of such procedures;

4.1.2.8 where appropriate, details of how the proposed Contract Change will ensure compliance with any applicable Change in Law;

4.1.2.9 where the proposed change relates to an improvement to the Services in accordance with clause 16, full details about the identified improvement including, but not limited to, the extent of any projected anticipated savings for the Authority; and

4.1.2.10 such other information as the Authority may reasonably request in (or in response to) the Change Request.

4.2 If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to clause 40.5.

4.3 Subject to the provisions of paragraph 4.4, the Authority shall review the Impact Assessment and shall respond to the Supplier in accordance with paragraph 5.

4.4 If the Supplier has proposed the Contract Change and the Authority reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment, then as soon as reasonably practicable after receiving the Impact Assessment, it shall notify the Supplier of this fact and detail the further information that it requires. The Supplier shall then re-issue the relevant Impact Assessment to the Authority as soon as reasonably practicable and in any event within five Working Days of receiving such notification. At the Authority's discretion, the parties may repeat the process

described in this paragraph until the Authority is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.

## 5. AUTHORITY'S RIGHT OF APPROVAL

5.1 Within fifteen Working Days of receiving the Impact Assessment from the Supplier or within ten Working Days of receiving the further information that it may request pursuant to paragraph 4.4, the Authority shall evaluate the Change Request and the Impact Assessment and shall do one of the following:

5.1.1 approve the proposed Contract Change, in which case the parties shall follow the procedure set out in paragraph 5.2 below;

5.1.2 in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. The Authority shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any Changes in Law. If the Authority does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection;

5.1.3 in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Supplier to modify the document accordingly, in which event the Supplier shall make such modifications as soon as reasonably practicable and in any event within five Working Days of such request. Subject to paragraph 4.4 above, following receipt of the modified Change Request and/or Impact Assessment, the Authority shall approve or reject the proposed Contract Change.

5.2 If the Authority approves the proposed Contract Change pursuant to paragraph 5.1 and it has not been rejected by the Supplier in accordance with paragraph 6 below, then it shall inform the Supplier and the Supplier shall prepare two copies of a Change Authorisation Note which it shall sign and deliver to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign both copies and return one copy

to the Supplier. On the Authority's signature, the Change Authorisation Note shall constitute a binding variation to the Call off Contract provided that the Change Authorisation Note is signed by:

- 5.2.1 the appropriate person(s) specified in paragraph 10.1 of this schedule B6; and
- 5.2.2 the Authority within fifteen Working Days of receiving the Supplier's signed copy. If the Authority does not sign the Change Authorisation Note within this time period, then the Supplier shall have the right to notify the Authority and if the Authority does not sign the Change Authorisation Note within ten Working Days of the date of such notification, then the Supplier may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.

## 6. SUPPLIER'S RIGHT OF APPROVAL

- 6.1 Following an Impact Assessment, if the Supplier reasonably believes that any proposed Contract Change which is requested by the Authority:
  - 6.1.1 would materially and adversely affect the risks to the health and safety of any person;
  - 6.1.2 would require the Services to be performed in a way that infringes any Law or is inconsistent with Good Industry Practice; and/or
  - 6.1.3 would materially and adversely affect the Supplier's ability to deliver the Services, then the Supplier shall be entitled to reject the proposed Contract Change and shall notify the Authority of its reasons for doing so within five Working Days after the date on which it is obliged to deliver the Impact Assessment.
- 6.2 In the event that the Supplier rejects a proposed Contract Change in accordance with paragraph 6.1, the parties shall work together in good faith to revise the proposed Contract Change in question in order to enable the amended Contract Change to be agreed between the parties and brought into effect in accordance with paragraph 5.2 above as soon as reasonably practicable and in any event within ten Working Days of the date of the Supplier's rejection.

## 7. FAST-TRACK CHANGES

7.1 The parties acknowledge that in the circumstances described in paragraph 7.2 below in order to ensure operational efficiency it may be desirable to expedite the processes set out above. In such circumstances, or where the parties otherwise agree, the parties shall use the process set out in paragraphs 2, 3, 4, 5 and 6 above but with reduced timescales as detailed in the Change Request, or (if no such periods are specified) such that any period of fifteen Working Days is reduced to five Working Days, any period of ten Working Days is reduced to two Working Days and any period of five Working Days is reduced to one Working Day.

7.2 If both parties agree in relation to a proposed Contract Change that:

7.2.1 the Contract Change does not involve any alteration to, or deviation from, the contractual principles set out in the Call off Contract; and

7.2.2 the total number of Contract Changes in relation to which this fast track procedure has been applied does not exceed two within a calendar month (or such higher number as the Authority may determine from time to time in writing);

7.2.3 the value of the proposed Contract Change does not exceed 10% of the aggregate Charges paid, due or which would have been payable in the future (calculated as at the date of the Change Request); and

7.2.4 the proposed Contract Change is not significant (as determined by the Authority acting reasonably).

then the parties shall, unless agreed otherwise, use the timescales referred to in paragraph 7.1 in agreeing the Contract Change.

7.3 The parameters set out in paragraph 7.1 may be revised from time to time by agreement between the parties in writing.

7.4 Where the Authority indicates that a proposed Change is an Emergency Change, the Supplier shall use all reasonable endeavours to carry out such Change as soon as reasonably practicable and, in any event, no later than the timescales applicable to a Fast-track Change.

## 8. MANDATORY CHANGES

- 8.1 Either party shall notify the other party if it becomes aware of the occurrence of an event that in its reasonable opinion requires a Mandatory Change. In such circumstances, the Authority may issue a Change Request in respect of such Mandatory Change and, upon receipt of such Change Request, the Supplier shall prepare and provide an Impact Assessment to the Authority in accordance with paragraph 4 above as soon as reasonably practicable but in any event within ten Working Days.
- 8.2 Upon receipt of the Supplier's Impact Assessment pursuant to paragraph 8.1, the Authority shall approve, reject or request amendments to the Impact Assessment in question in accordance with paragraph 5.1 above as soon as reasonably practicable following receipt of the same. If the Authority approves the proposed Contract Change the Supplier shall, within five days of such approval, provide the relevant Change Authorisation Note to the Authority for execution in accordance with paragraph 5.2, save that paragraph 6.1.3 shall not apply in respect of Mandatory Changes.
- 8.3 Any timescales set out within this paragraph 8 may be altered by agreement of the parties in respect of a particular Mandatory Change, having due regard to the operational urgency of such Mandatory Change.

## 9. OPERATIONAL CHANGE PROCEDURE

- 9.1 Any changes identified by the Supplier to improve operational efficiency of the Services may be implemented by the Supplier without following the Change Control Procedure for proposed Contract Changes provided they do not:
- 9.1.1 have an impact on the Authority or the users of the Services;
  - 9.1.2 require a change to the Call off Contract;
  - 9.1.3 have a negative impact on the Services or use of the Services; or
  - 9.1.4 involve the Authority in paying any additional Charges or other consequential costs.

- 9.2 The Supplier shall notify the Authority of any Operational Changes prior to implementation.
- 9.3 The Authority may require an Operational Change by submitting a written request for Operational Change ("RFOC") to the Supplier Representative.
- 9.4 The RFOC shall include the following details:
  - 9.4.1 the proposed Operational Change; and
  - 9.4.2 time-scale for completion of the Operational Change.
- 9.5 The Supplier shall inform the Authority of any impact on the Services that may arise from the proposed Operational Change.
- 9.6 The Supplier shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC, and shall promptly notify the Authority when the Operational Change is completed.

## 10. CHANGE AUTHORISATION

- 10.1 Any proposed Contract Change processed in accordance with this schedule B6 will not be authorised and the Supplier shall not implement any proposed Contract Change until the Change Authorisation Note is signed and executed by the Change Control Note Signatory in accordance with the Authority's Contract Change authorisation and sign off procedure(s), as notified to the Supplier in writing from time to time.

## 11. COMMUNICATIONS

- 11.1 For any Change Communication to be valid under this schedule B6, it must be sent to either the Authority's Change Manager or the Supplier's Change Manager, as applicable. The provisions of clause 73 (Notices) of the Call off Contract shall apply in relation to the service of Change Communications pursuant to this schedule B6.

## APPENDIX 1 TO SCHEDULE B6

## Change Request Form

CR NO.:	TITLE:	TYPE OF CHANGE: Contract Change: Fast Track Change: Emergency Change:
PROJECT:	REQUIRED BY DATE:	
ACTION:	NAME:	DATE:
RAISED BY:		
AREA(S) IMPACTED (OPTIONAL FIELD):		
ASSIGNED FOR IMPACT ASSESSMENT BY:		
ASSIGNED FOR IMPACT ASSESSMENT TO:		
SUPPLIER REFERENCE NO.:		
FULL DESCRIPTION OF REQUESTED CONTRACT CHANGE:		
DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS:		
REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED CONTRACT CHANGE:		
SIGNATURE OF REQUESTING CHANGE OWNER:		
DATE OF REQUEST:		



## APPENDIX 2 TO SCHEDULE B6

## Impact Assessment Form

CR NO.:	TITLE:	DATE RAISED:
PROJECT:		REQUIRED BY DATE:
DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED:		
REASON FOR CHANGE		
DETAILS OF THE IMPACT OF THE PROPOSED CHANGE ON THE SERVICES		
DETAILS OF ANY PROPOSED CONTRACT AMENDMENTS:		
DETAILS OF ANY SERVICE LEVELS AFFECTED:		
DETAILS OF ANY OPERATIONAL SERVICE IMPACT INCLUDING AFFECTED THIRD PARTIES:		
DETAILS OF ANY INTERFACES OR AUTHORITY DATA AFFECTED:		
DETAILED RISK ASSESSMENT:		
PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE CONTRACT CHANGE:		
DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE OR COST-PLUS BASIS):		
DETAIL EFFECT OF CHANGE ON ANY TIMESCALES		
ADDITIONAL INFORMATION		
RECOMMENDATIONS:		

## APPENDIX 3 TO SCHEDULE B6

## Change Authorisation Note

CR NO.:	TITLE:	DATE RAISED:
PROJECT:	TYPE OF CHANGE:	REQUIRED BY DATE:
[KEY MILESTONE DATE: [if any] ]		
DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND DETAILS OF ANY RELATED CONTRACT CHANGES:		
PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE CONTRACT CHANGE:		
DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE OR COST-PLUS BASIS):		
SIGNED ON BEHALF OF THE AUTHORITY:		SIGNED ON BEHALF OF THE SUPPLIER:
Signature: _____		Signature: _____
Name: _____		Name: _____
Position: _____		Position: _____
Date: _____		Date: _____

## SCHEDULE B7

### Dispute Resolution Procedure

#### 1. INTRODUCTION

- 1.1 The Dispute Resolution Procedure shall start with the service of a Notice of Dispute.
- 1.2 The Notice of Dispute shall:
  - 1.2.1 set out the material particulars of the Dispute;
  - 1.2.2 set out the reasons why the party serving the Notice of Dispute believes that the Dispute has arisen;
  - 1.2.3 elect (subject to the provisions of paragraph 1.6 below) whether the Dispute should be dealt with under the Standard Dispute Timetable or the Expedited Dispute Timetable; and
  - 1.2.4 if the party serving the Notice of Dispute believes that the Dispute should be dealt with under the Expedited Dispute Timetable, explain the reason why.
- 1.3 Unless agreed otherwise, the parties shall continue to comply with their respective obligations under the Call off Contract regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.
- 1.4 Subject to paragraph 2.4, the parties shall seek to resolve Disputes firstly by commercial negotiation (as prescribed in paragraph 2 below), then by mediation (as prescribed in paragraph 3 below) and lastly by recourse to arbitration (as prescribed in paragraph 4) or litigation (in accordance with clause 74 (Governing Law and Jurisdiction)).
- 1.5 The time periods set out in the Dispute Resolution Timetable shall apply to all Disputes unless the parties agree in writing that any alternative time periods should apply in respect of a specific Dispute.

- 1.6 The parties may only agree to use the Expedited Dispute Timetable in exceptional circumstances where the use of the Standard Dispute Timetable would be unreasonable, including (by way of example) where one party would be materially disadvantaged by a delay in resolving the Dispute. If the parties are unable to reach agreement on the use of the Expedited Dispute Timetable within five Working Days of the issue of the Notice of Dispute then the use of this timetable shall be at the sole discretion of the Authority (acting reasonably).
- 1.7 Nothing in this schedule B7 shall prevent either party from seeking injunctive relief at any time.

## 2. COMMERCIAL NEGOTIATIONS

- 2.1 Subject to paragraph 2.4, the parties shall use all reasonable endeavours to settle any Dispute between them in good faith and in accordance with the procedure set out in this paragraph 2.
- 2.2 In the first instance, the Authority and the Supplier will make reasonable endeavours to resolve all Disputes as soon as possible, by discussions in good faith between the Authority Representative and Supplier Representative. Where either party considers that a Dispute cannot be resolved within acceptable timescales, the dissatisfied party may escalate the Dispute to their executive management ("Escalation Process").
- 2.3 If the parties have not settled the Dispute in accordance with the Escalation Process and the time period provided in the Dispute Resolution Timetable at the Appendix to this schedule B7, then the parties shall refer the matter to mediation in accordance with paragraph 3 of this schedule B7.
- 2.4 If either party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution or that the parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiations in accordance with this paragraph 2, that party shall serve a written notice to that effect and the parties shall proceed to mediation in accordance with paragraph 3.

### 3. MEDIATION

- 3.1 In the event that a Dispute between the parties cannot be resolved by commercial negotiation in accordance with paragraph 2 the parties shall attempt to resolve it by mediation unless the Authority considers that the Dispute is not suitable for resolution by mediation.
- 3.2 The mediation shall be conducted in accordance with the Centre for Effective Dispute Resolution Model Mediation Procedure and the following shall prevail in the event of a conflict with that procedure.
  - 3.2.1 the mediation shall be conducted by a single mediator who shall be appointed by agreement in writing between the parties or, if the parties are unable to agree on the identity of the mediator within the timescale specified in the applicable section of the Dispute Resolution Timetable following the date of the request that the Dispute be determined by a mediator, or if the mediator appointed is unable or unwilling to act, the mediator shall be appointed by the Centre for Effective Dispute Resolution on the application of either party;
  - 3.2.2 the mediation shall be conducted in London and in the English language;
  - 3.2.3 the mediation shall be conducted in private and without prejudice to the rights of the parties in any future proceedings; and
  - 3.2.4 the mediation shall be held within the timescales specified in the applicable section of the Dispute Resolution Timetable, following the appointment of the mediator pursuant to paragraph 3.2.1 above.

### 4. ARBITRATION

- 4.1 The parties may at any time before court proceedings are commenced agree that the Dispute should be referred to arbitration in accordance with the provisions of paragraph 4.4 or, where Scots Law applies, in accordance with the provisions of paragraph 4.5.
- 4.2 Before the Supplier may commence any court proceedings it shall serve written notice on the Authority of its intention and the Authority shall have

fifteen Working Days from receipt of the Supplier's notice in which to reply requiring the Dispute to be referred to arbitration in accordance with the provisions in paragraph 4.4.

- 4.3 In its notice to the Authority pursuant to paragraph 4.2, the Supplier may request that the Dispute is referred to arbitration, to which the Authority may, in its sole discretion consent.
- 4.4 If a Dispute is referred to arbitration the parties shall comply with the following provisions:
  - 4.4.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the London Court of International Arbitration ("LCIA") procedural rules shall be applied and are deemed to be incorporated into this Call off Contract (save that in the event of any conflict between those rules and this Call off Contract, this Call off Contract shall prevail);
  - 4.4.2 the decision of the arbitrator shall be binding on the parties (in the absence of any material failure by the arbitrator to comply with the LCIA procedural rules);
  - 4.4.3 the tribunal shall consist of a sole arbitrator to be agreed by the parties and in the event that the parties fail to agree the appointment of the arbitrator within ten Working Days or, if the person appointed is unable or unwilling to act, as appointed by the LCIA; and
  - 4.4.4 the arbitration proceedings shall take place in London.
- 4.5 If a Dispute is referred to arbitration, and Scots Law applies, the parties shall comply with the following provisions:
  - 4.5.1 the arbitration shall be governed by the provisions of the Arbitration (Scotland) Act 2010. For the purpose of such arbitration rules 22 (referral on point of jurisdiction) and 41 (referral on point of law) of the Scottish Arbitration Rules shall be disapplied;

4.5.2 the decision of the arbitrator shall be binding on the parties (in the absence of any material failure by the arbitrator to comply with the provisions of the Arbitration (Scotland) Act 2010);

4.5.3 the Dispute must be referred to a sole arbitrator to be agreed by the parties and in the event that the parties fail to agree the appointment of the arbitrator within ten Working Days or if the person appointed is unable or unwilling to act, as nominated by the President of the Law Society of Scotland for the time being on the application of either party;

4.5.4 the arbitration proceedings shall be seated in Scotland.

## 5. SUB-SUPPLIERS

5.1 The Supplier shall procure that any Sub-Supplier involved in the Services which are the subject of a Dispute shall, at the request of either party, provide any assistance required in order to resolve the relevant Dispute, including the provision of any information, data or documentation and the attendance at any meetings or hearings.

5.2 The Authority shall not be responsible for any costs incurred by any Sub-Supplier participating in the resolution of any Dispute.

## APPENDIX TO SCHEDULE B7

## Dispute Resolution Timetable

Disputes will be escalated in accordance with the following timetable:

Stage	Standard Dispute Timetable	Expedited Dispute Timetable
Time permitted for resolution of Dispute by commercial negotiations pursuant to paragraph 2 of this schedule B7 from the date of the Notice of Dispute	one month	ten Working Days
Period of time in which Dispute is to be referred to mediation in accordance with paragraph 3	ten Working Days	five Working Days
Time permitted in paragraph 3.2.1 to agree the appointment of the Mediator	ten Working Days	five Working Days
Period of time in which Mediator may convene the mediation meeting from the date of appointment in accordance with paragraph 3.2.4	thirty Working Days	twenty Working Days



## SCHEDULE B8

### Exit Management

A complete version of the Authority Data will be returned by the Supplier to the Authority by the termination date in an industry standard format.

On receiving a termination notice from the Authority, the Supplier agrees to promptly discuss any exit management the Authority may require. Any assistance will be agreed by the Change Control process and the Supplier reserves their right to charge for assistance in excess of the return of Authority Data.

## SCHEDULE B9

### Security Requirements and Plan

#### 1. INTRODUCTION

##### 1.1. This schedule covers:

- 1.1.1. principles of protective security to be applied in delivering the Services;
- 1.1.2. wider aspects of security relating to the Services;
- 1.1.3. the development, implementation, operation, maintenance and continual improvement of an ISMS;
- 1.1.4. the creation, maintenance and agreement of the Security Management Plan;
- 1.1.5. audit and testing of the ISMS and its compliance with the Additional Security Requirements;
- 1.1.6. conformance to ISO/IEC 27001 (Information Security Requirements Specification) and ISO/IEC 27002 (Information Security Code of Practice);
- 1.1.7. obligations in the event of actual, potential or attempted breaches of security; and
- 1.1.8. obligations to ensure compliance with general security obligations by Supplier Personnel.

#### 2. PRINCIPLES OF SECURITY

- 2.1. The Supplier acknowledges that the Authority places great emphasis on the confidentiality, integrity and availability of information and consequently on the security provided by the ISMS and the Security Management Plan.
- 2.2. The Supplier shall be responsible for the effective performance of the ISMS in respect of the provision of the Services and shall at all times provide a level of security which:
  - 2.2.1. is in accordance with Good Industry Practice, Law and this Call off Contract;
  - 2.2.2. complies with the Security Policy;

2.2.3. complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4) except in relation to information security management where the minimum security measures and policies set out in the NHS Information Governance Standards shall apply instead;

2.2.4. meets any specific security threats to the ISMS;

2.2.5. complies with ISO/IEC 27001 and ISO/IEC 27002 (or any such equivalent standards that replaces them from time to time) in accordance with paragraph 5 of this schedule;

2.2.6. complies with any Additional Security Requirements ; and

2.2.7. complies with the Authority's ICT standards and NHS Information Governance Standards including but not limited to the participation and submission of an annual NHS Information Governance Toolkit report.

2.3. Subject to clause 48A of the Call off Contract (Cost Impact of Changes to Policies and Plans), the references to standards, guidance and policies set out in paragraph 2.2 or elsewhere in this schedule shall be deemed to be references to such items as developed and revised and/or updated and to any successor to or replacement for such standards, guidance and policies, from time to time.

2.4. In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier should notify the Authority's Representative of such inconsistency immediately upon becoming aware of the same, and the Authority's Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

### 3. ISMS AND SECURITY MANAGEMENT PLAN

#### 3.1. Introduction

3.1.1. The Supplier shall develop, implement, operate, maintain and continuously improve and maintain an ISMS which will, without prejudice to paragraph 2.2, be approved by the Authority in accordance with paragraph 3.2, tested in accordance with schedule B10 (Testing Procedures), periodically updated and

audited in accordance with ISO/IEC 27001. The scope of the ISMS will be as agreed by the parties and will directly reflect the scope of the Services;

3.1.2. The Supplier shall develop and maintain a Security Management Plan in accordance with this schedule to apply during the Term.

3.1.3. The Supplier shall comply with its obligations set out in the Security Management Plan.

3.1.4. Both the ISMS and the Security Management Plan shall, unless otherwise specified by the Authority, aim to protect all aspects of the Services and all processes associated with the delivery of the Services that are under the control of the Supplier, including the Sites, the Supplier System and any ICT, information and data (including the Authority Confidential Information and the Authority Data) to the extent used by the Authority or the Supplier in connection with this Call off Contract and which are under the control of the Supplier.

### 3.2. Development of the Security Management Plan and ISMS

3.2.1. The Supplier will prepare and deliver to the Authority for approval in accordance with the Plan Approval Process and the provisions of paragraph 3.4 (Amendment and Revision) a fully complete and up to date Security Management Plan which will be based on the Outline Security Management Plan.

3.2.2. The parties will use all reasonable endeavours to ensure that the Plan Approval Process in respect of the Security Management Plan takes as little time as possible and in any event no longer than fifteen Working Days (or such other period as the parties may agree in writing) from the date of its first submission to the Authority.

3.2.3. Any subsequent revision to the Security Management Plan in accordance with paragraph 3.4 shall be submitted for approval to the Authority in accordance with the Plan Approval Process on such dates as agreed between the parties in good faith. Any failure by the Authority to approve the Security Management Plan in accordance with clause 11A on the grounds that it does not comply with the requirements set out in paragraph 3.3.4 shall be deemed to be reasonable.

### 3.3. Content of the Security Management Plan

- 3.3.1. The Security Management Plan will set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the delivery of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this schedule (including the principles set out in paragraph 2.2);
- 3.3.2. The Security Management Plan (including the outline version) should also set out the plans for transiting all security arrangements and responsibilities from those in place at the Effective Date to those incorporated in the Supplier's ISMS at the date set out in schedule B3 (Implementation Plan) for the Supplier to meet the full obligations of its security requirements set out in this Call off Contract (including the Additional Security Requirements).
- 3.3.3. The Security Management Plan will be structured in accordance with ISO/IEC 27001 and ISO/IEC 27002, cross-referencing if necessary to other schedules of this Call off Contract which cover specific areas included within that standard.
- 3.3.4. The Security Management Plan shall be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Authority engaged in the Services and shall only reference documents which are in the possession of the Authority or whose location is otherwise specified in this schedule.

### 3.4. Amendment and Revision of the ISMS and Security Management Plan

- 3.4.1. The ISMS and Security Management Plan will be fully reviewed and updated by the Supplier annually, or from time to time, to reflect:
  - 3.4.1.1. emerging changes in Good Industry Practice;
  - 3.4.1.2. any change or proposed change to the Supplier System, the Services and/or associated processes;
  - 3.4.1.3. any new perceived or changed security threats;

- 3.4.1.4. any changes made to the guidance, policies and standards referred to in this schedule (including but not limited to ISO 27001/27002 and NHS Information Governance Standards) pursuant to paragraph 2.3; and
- 3.4.1.5. any reasonable request by the Authority.
- 3.4.2. The Supplier will provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the Authority. The results of the review should include, without limitation:
  - 3.4.2.1. suggested improvements to the effectiveness of the ISMS;
  - 3.4.2.2. updates to the risk assessments;
  - 3.4.2.3. proposed modifications to the procedures and controls that effect information security to respond to events that may impact on the ISMS; and
  - 3.4.2.4. suggested improvements in measuring the effectiveness of controls.
- 3.4.3. On receipt of the results of such reviews, the Authority will approve any amendments or revisions to the ISMS and/or Security Management Plan in accordance with the process set out at paragraph 3.2.2.
- 3.4.4. Any change or amendment which the Supplier proposes to make to the ISMS or Security Management Plan other than those required pursuant to paragraph 3.4.1 above (whether as a result of a Authority request or change to the Additional Security Requirements or otherwise) shall be subject to the Change Control Procedure and shall not be implemented until approved in writing by the Authority.

#### 4. TESTING

- 4.1. The Supplier shall conduct tests of the ISMS ("Supplier Security Tests") on an annual basis or as otherwise agreed by the parties. The date, timing, content and conduct of such Supplier Security Tests shall be agreed in advance with the Authority.

- 4.2. The Authority shall be entitled to send a representative to witness the conduct of the Supplier Security Tests. The Supplier shall provide the Authority with the results of such tests (in a form approved by the Authority in advance) as soon as practicable after completion of each Supplier Security Test.
- 4.3. Without prejudice to any other right of audit or access granted to the Authority pursuant to this Call off Contract, the Authority and/or its authorised representatives shall be entitled, at any time and without giving notice to the Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Supplier's compliance with the ISMS and the Security Management Plan ("Authority Security Tests"). The Authority may notify the Supplier of the results of such Authority Security Tests after completion of each such test. Authority Security Tests shall be designed and implemented so as to minimise the impact on the delivery of the Services and being mindful of the effect on the Supplier's business. If such tests adversely affect the Supplier's ability to deliver the Services to the agreed Service Levels, the Supplier shall be granted relief against any resultant under-performance for the period of the Authority Security Tests.
- 4.4. Where any Supplier or Authority Security Test carried out pursuant to paragraphs 4.2 or 4.3 above reveals any actual or potential Breach of Security, the Supplier shall promptly notify the Authority of any changes to the ISMS and/or to the Security Management Plan (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. Subject to the Authority's approval in accordance with paragraph 3.4.4, the Supplier shall implement such changes to the ISMS and/or the Security Management Plan in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan is to address a non-compliance with the Security Policy or Additional Security Requirements, the change to the ISMS or Security Management Plan shall be at no cost to the Authority.

## 5. COMPLIANCE WITH ISO/IEC 27001

- 5.1. The Supplier shall obtain independent certification of the ISMS to ISO/IEC 27001 within twelve months of the Effective Date and shall maintain such certification for the duration of the Call off Contract.

- 5.2. If certain parts of the ISMS do not conform to good industry practice, or controls as described in ISO/IEC 27002 are not consistent with the Security Policy, and, as a result, the Supplier reasonably believes that it is not compliant with ISO/IEC 27001, the Supplier shall promptly notify the Authority of this and the Authority in its absolute discretion may waive the requirement for certification in respect of the relevant parts.
- 5.3. The Authority shall be entitled to carry out such regular security audits as may be required, and in accordance with Good Industry Practice, in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001.
- 5.4. If, on the basis of evidence provided by such audits, it is the Authority's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 is not being achieved by the Supplier, then the Authority shall notify the Supplier of the same and give the Supplier a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO/IEC 27001. If the Supplier does not become compliant within the required time then the Authority has the right to obtain an independent audit against these standards in whole or in part.
- 5.5. If, as a result of any such independent audit as described in paragraph 5.4 the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001 then the Supplier shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Authority in obtaining such audit.

## 6. BREACH OF SECURITY

- 6.1. Either party shall notify the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.
- 6.2. Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 6.1, the Supplier shall:
- 6.2.1. immediately take all reasonable steps necessary to:
- 6.2.1.1. remedy such breach or protect the integrity of the ISMS against any such potential or attempted breach or threat; and



- 6.2.1.2. prevent an equivalent breach in the future.

Such steps shall include any action or changes reasonably required by the Authority. In the event that such action is taken in response to a breach that is determined by the Authority acting reasonably not to be covered by the obligations of the Supplier under this Call off Contract, then the Supplier shall be entitled to refer the matter to the Change Control Procedure; and

- 6.2.2. as soon as reasonably practicable provide to the Authority full details (using such reporting mechanism as defined by the ISMS) of the Breach of Security or the potential or attempted Breach of Security.

## 7. SUPPLIER PERSONNEL

7.1. Where the Supplier is required to procure awareness of, and/or compliance with, specific obligations in respect of the Supplier Personnel pursuant to clauses 42.3 (Confidentiality), 49.2 (Security Requirements), 65.1 (Official Secrets Act) and the Additional Security Requirements, it shall be required to take steps as are reasonably necessary to ensure that the Supplier Personnel are aware of and comply with the relevant obligations on an ongoing basis.

7.2. Without limitation to the generality of paragraph 7.1, the Supplier shall provide regular briefings, notices and training sessions to the relevant Supplier Personnel as is necessary to ensure compliance with paragraph 7.1.

## 8. OFF SHORING AND SUB-CONTRACTING

8.1. If the Authority has consented to the appointment of Sub-Supplier(s) pursuant to clause 23.2 and/or the Processing and/or transferring of any Authority Personal Data outside the United Kingdom pursuant to clause 40.5 (as applicable), the Supplier must ensure that these activities are separately identified, risk assessed and comprehensively detailed within the Security Management Plan (or an updated version of the Security Management Plan if such changes are proposed during the Term of the Call off Contract) and submitted to the Authority for approval before any such activities are carried out.

8.2. For the avoidance of doubt, any such consent provided by the Authority in the circumstances described in paragraph 8.1 shall not alleviate the Supplier from any of its obligations pursuant to this Call off Contract.

8.3. At the request of the Authority, the Supplier shall provide the Authority with appropriate evidence to substantiate the security aspects and assurances detailed in the Security Management Plan. The Supplier shall provide the Authority with access to any aspect of the Supplier's Security Management Plan which the Authority may inspect on request (including but not limited to Site visits).

## 9. ADDITIONAL REQUIREMENTS FOR THE UK GENERAL DATA PROTECTION REGULATION

### 9.1. INTRODUCTION

9.1.1. The EU General Data Protection Regulation (Regulation (EU) 2016/679) as enshrined in UK law by the European Union (Withdrawal) Act 2018 which was then amended by secondary legislation mainly the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019/419 ("UK GDPR") imposes specific obligations on Controllers and Processors of Personal Data. In particular, Art. 28 UK GDPR requires Controllers and Processors to enter into contracts containing specific provisions relating to the protection of the Personal Data Processed.

9.1.2. The below sets forth the requirements applicable to the Supplier as the Processor, the Authority as the Controller.

9.1.3. The details of Processing, namely the duration, subject matter and purposes of Processing, as well as the types of Personal Data Processed, categories of Data Subjects to whom the Personal Data relates ("Processing Details"), are described in Section 9.4 – Details of the Processing below.

9.1.4. This provision supplements, and does not replace, any other obligations related to the privacy and security of Personal Data set forth elsewhere in the Call off Contract. To the extent that provisions of the Call off Contract concern matters other than the Processing of Personal Data those provisions shall be unaffected by this provision in respect of those other matters.

## 9.2. DEFINITIONS

Capitalised terms used in this provision have the meaning set forth in Section 1, Article 4 of the UK GDPR, or as otherwise defined either below or in Section D (Definitions) of this Call off Contract.

## 9.3. PROCESSING OF PERSONAL DATA

9.3.1. The Authority shall, in its use of the Services, Process Personal Data in accordance with the requirements of Data Protection Legislation.

9.3.2. Related to the Services, the Parties acknowledge and agree that with regard to the Processing of Authority Personal Data, the Authority is the Controller, the Supplier is the Processor.

9.3.3. The Supplier shall Process the Authority Personal Data only (i) as needed to provide the Services and (ii) in accordance with the specific documented instructions the Supplier has received from the Authority, as set forth in the Call off Contract, unless required otherwise to comply with any applicable law, in which case the Supplier shall provide prior notice to the Authority of such legal requirement, unless that law prohibits this disclosure on important grounds of public interest. The Authority shall ensure that any such instructions to the Supplier in relation to the Processing of Authority Personal Data comply with Data Protection Legislation. The Parties acknowledge and agree that terms and conditions in the Call off Contract constitute the complete set of instructions from the Authority to the Supplier. Changes to or additional instructions shall be subject to the applicable change control procedure.

9.3.4. Supplier personnel engaged in the Processing of Authority Personal Data shall be informed of the confidential nature of the Authority Personal Data and will receive appropriate training on their responsibilities. Such personnel shall be subject to appropriate confidentiality undertakings.

9.3.5. In accordance with the Call off Contract and taking into account the nature of Processing of Personal Data in the Services provided, the Supplier shall as required by UK GDPR Article 32, maintain appropriate technical and organisational measures for protection of the security of, including protection against unauthorised or unlawful Processing, and against accidental or unlawful destruction, loss or alteration or damage, unauthorised

disclosure of, or access to, Authority Personal Data. The Parties acknowledge and agree that the security measures specified in the Call off Contract constitute appropriate technical and organisational security measures to ensure a level of security appropriate to the risk.

9.3.6. At the Authority's cost and expense, the Supplier shall, by reasonable and appropriate technical and organisational measures, assist the Authority, insofar as this is possible, in fulfilling the Authority's obligation to respond to requests for exercising Data Subjects' rights in relation to Authority Personal Data as set forth in UK GDPR Chapter III, taking into account the nature of the Processing;

9.3.7. In accordance with obligations applicable separately to each of the Supplier and the Authority under the UK GDPR and with effect from the Effective Date, upon the Authority's request and expense, the Supplier shall provide the Authority with reasonable cooperation and assistance needed to fulfil the Authority's obligation under the UK GDPR to carry out a data protection impact assessment related to the Authority's use of the Services but only to the extent that the Authority does not otherwise have access to the relevant information, and only to the extent that such information is available to the Supplier. Supplier shall provide reasonable assistance to the Authority, at the Authority's expense, in relation to consultation with a Supervisory Authority in connection with a data protection impact assessment related to the Services.

9.3.8. The Supplier shall provide the Authority with all reasonable information necessary to demonstrate compliance with the obligations set forth in the UK GDPR and allow for and contribute to audits subject to any audit clauses in the Call off Contract, including inspections, conducted by the Authority or another auditor mandated by the Authority, provided that any such auditor is not a competitor to the Supplier;

9.3.9. The Supplier shall immediately inform the Authority if, in the Supplier's reasonable opinion, an instruction issued by the Authority in respect of Authority Personal Data infringes the Data Protection Legislation.

#### 9.4. DETAILS OF THE PROCESSING

9.4.1. A high-level description of the details of Processing in respect of Authority Personal Data is provided below.

Description	Details
Subject matter of the processing	<i>To enable the Supplier to deliver the Services.</i>
Duration of the processing	<i>Duration of the Call off Contract.</i>
Nature and purposes of the processing	<i>The provision of the Services including (without limitation) the provision of support services.</i>
Type of Personal Data	<i>Patient records including health data. Name, address, date of birth, NHS number, hospital number, system number, telephone number, email address, and appointment data etc.</i>
Categories of Data Subject	<i>Patients, Service users and members of the public.</i>
Plan for return and destruction of the data  once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>In accordance with the terms of the Call off Contract.</i>

## 9.5. DATA TRANSFERS

9.5.1. The Supplier shall not, and shall not permit any Sub-processor to process or otherwise transfer any Authority Personal Data outside the United Kingdom without the Authority's prior written consent in accordance with clause 40 (Protection of Personal Data).

## 9.6. PERSONAL DATA BREACH

9.6.1. With regard to Personal Data Breach caused by the Supplier, Supplier shall:

9.6.2. In accordance with UK GDPR Article 33 and 34, (i) notify the Authority without undue delay and in accordance with related terms in the Call off Contract, in the event of any Personal Data Breach involving Authority Personal Data and (ii) provide reasonable

assistance to the Authority when the Authority is required to communicate a Personal Data Breach to a Data Subject.

9.6.3. Use reasonable efforts to identify the cause of such Personal Data Breach and take those steps as the Supplier deems reasonably practicable in order to remediate the cause of such Personal Data Breach.

9.6.4. Subject to the terms of the Call off Contract, provide reasonable assistance and cooperation as requested by the Authority, in the furtherance of any correction or remediation of any Personal Data Breach

#### 9.7. RECORDS OF PROCESSING

9.7.1. To the extent applicable to the Supplier's Processing activities for the Authority, the Supplier shall maintain all records required by Article 30(2) of the UK GDPR and shall make them available to the Authority upon request.

#### Outline Security Management Plan

To be provided within 3 months of the Effective Date where required.

## SCHEDULE B10

### Testing Procedures

## 1. INTRODUCTION

This schedule sets out the approach to Testing and the different Testing activities to be undertaken, including the preparation and agreement of the Test Strategy, Test Plans and Test Specifications.

## 2. TEST CERTIFICATES AND MILESTONES ACHIEVEMENT CERTIFICATE

2.1 The Authority will issue a Test Certificate when a Deliverable satisfies the Test Success Criteria for the Tests related to that Deliverable. The Authority will grant a Milestone Achievement Certificate when all Tests relating to a Milestone have been completed and, subject to clause 8 (Delays Due to Supplier Default), the Authority has issued Test Certificates in respect of all of the Tests relating to that Milestone.

2.2 The issue of a Test Certificate shall not operate to transfer any risk that the Deliverable will meet and/or satisfy the Authority's requirements for that Deliverable. The grant of a Milestone Achievement Certificate shall not operate to transfer any risk that the Milestone is complete or that it will satisfy the Authority's requirements for that Milestone. The grant of a Milestone Achievement Certificate in respect of Authority to Proceed shall not operate to transfer any risk that the Supplier System or the Services will meet and/or satisfy the Authority's requirements for the Services.

2.3 Consequently, the grant of a Test Certificate and/or Milestone Achievement Certificate shall not affect the Authority's right subsequently to reject:

2.3.1 all or any element of the Deliverables to which a Test Certificate relates; or

2.3.2 any Milestone to which the Milestone Achievement Certificate relates.

2.3.3 In the event that the Authority invokes its right to reject a Deliverable and/or a Milestone in accordance with Schedule B10 paragraph 2.3 then both parties will act in good faith to agree through the Change Control Procedure the impact of such decision on the Services and if applicable the Detailed Implementation Plan.

### 3. TESTING OVERVIEW

- 3.1 All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy, the Test Plans and the Test Specifications.
- 3.2 Unless otherwise agreed between the parties, the Supplier shall not submit any Deliverables for Testing:
  - 3.2.1 unless it is reasonably confident that they will satisfy successfully the relevant Test Success Criteria and until the Authority has issued a Test Certificate in respect of any prior, dependant Deliverables;
  - 3.2.2 until the parties have agreed the Test Plan and the Test Specification relating to those Deliverables; and
  - 3.2.3 unless it has provided the Authority with at least five Working Days prior written notice (or such other timescale reasonably set by the Authority) certifying that the relevant Deliverable is ready for Testing.
- 3.3 The Supplier shall use reasonable endeavours to submit a Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Milestone.
- 3.4 Prior to the issue of a Test Certificate, the Authority shall be entitled to review the relevant Test Reports and the Test Issue Management Log.
- 3.5 The provisions of clause 6 (Testing), clause 7 (Implementation Delays - General Provisions), clause 8 (Delays due to Supplier Default), clause 9 (Delays to Milestones due to Authority Cause) and clause 10 (Delays not due to one Party) shall apply to Testing.
- 3.6 Any disputes between the Authority and the Supplier regarding this Testing shall be referred to the Dispute Resolution Procedure using the Expedited Dispute Timetable.
- 3.7 The Authority shall issue Test Certificates and grant Milestone Achievement Certificates without unreasonable delay.



#### 4. TEST STRATEGY

- 4.1 Unless otherwise agreed, the Supplier shall develop the final Test Strategy for the approval of the Authority in accordance with the Plan Approval Process as soon as practicable but in any case no later than (a) five Working Days after the Effective Date, or (b) in accordance with the Implementation Plan.
- 4.2 Unless otherwise agreed, the final Test Strategy shall include (both parties acting reasonably taking into account the complexity of the relevant Tests):
  - 4.2.1 an overview of how Testing will be conducted in relation to the Implementation Plan;
  - 4.2.2 the process to be used to capture and record Test results and the categorisation of Test Issues;
  - 4.2.3 the method for mapping the expected Test results to the Test Success Criteria;
  - 4.2.4 the procedure to be followed should a Deliverable fail to satisfy the Test Success Criteria or produce unexpected results including a procedure for the resolution of Test Issues;
  - 4.2.5 the procedure to be followed to sign off each Test;
  - 4.2.6 the process for the production and maintenance of Test Reports and reporting, including templates for the Test Reports and the Test Issue Management Log, and a sample plan to resolve Test Issues;
  - 4.2.7 the names and contact details of the Authority's and the Supplier's Test representatives;
  - 4.2.8 a high level identification of the resources required for Testing, including facilities, infrastructure, personnel and Authority and/or third party involvement in the conduct of the Tests;
  - 4.2.9 the technical environments required to support the Tests; and
  - 4.2.10 the procedure for managing the configuration of the Test environments.

## 5. TEST PLANS

5.1 The Supplier shall develop Test Plans for the approval of the Authority in accordance with the Plan Approval Process as soon as practicable but in any case no later than five Working Days (or such other period as the parties may agree in the Test Strategy or otherwise) prior to the start date for the relevant Testing.

5.2 Each Test Plan shall include as a minimum:

5.2.1 the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being Tested and, for each Test, the specific Test Success Criteria to be met;

5.2.2 a detailed procedure for the Tests to be carried out, including, unless otherwise agreed (both parties acting reasonably taking into account the complexity of the relevant Tests):

5.2.2.1 the timetable for the Tests including start and end dates;

5.2.2.2 the Testing mechanism;

5.2.2.3 dates and methods by which the Authority can inspect Test results or witness the Tests in order to establish that the Test Success Criteria have been met;

5.2.2.4 the mechanism for ensuring the quality, completeness and relevance of the Tests;

5.2.2.5 the format and an example of Test progress reports and the process with which the Authority accesses daily Test schedules;

5.2.2.6 the process with which the Authority will review Test Issues and progress on a timely basis;

5.2.2.7 the Test schedule;

5.2.2.8 the re-Test procedure, the timetable and the resources which would be required for re-Testing; and

5.2.2.9 the decision making process for escalation from a re-test situation to specific remedial action to resolve the problem / Test Issue.

## 6. TEST SUCCESS CRITERIA

The Test Success Criteria for the Milestone Achievement Certificates have (where practicable) been agreed by the parties prior to the Effective Date and are set out in schedule A1 (Services Description) or this schedule B10 (Testing Procedures). Where no Test Success Criteria has been agreed as at the Effective Date, the Test Success Criteria (if any) shall be set by the Authority (acting reasonably) as part of the Formal Instruction Process (observing any rules/commitments set out in the Catalogue).

## 7. TEST SPECIFICATIONS

7.1 Following approval of a Test Plan, the Supplier shall develop the Test Specification for the relevant Deliverables for the approval of the Authority in accordance with the Plan Approval Process as soon as reasonably practicable and in any event at least two Working Days (or such other period as the parties may agree in the Test Strategy or otherwise) prior to the start of the relevant Testing as specified in the Implementation Plan.

7.2 Each Test Specification shall include as a minimum, unless otherwise agreed (both parties acting reasonably taking into account the complexity of the relevant Tests):

7.2.1 the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Authority and the extent to which it is equivalent to live operational data;

7.2.2 a plan to make the resources available for Testing;

7.2.3 Test scripts;

7.2.4 Test pre-requisites and the mechanism for measuring them; and

7.2.5 expected Test results, including:

7.2.5.1 a mechanism to be used to capture and record Test results;  
and

7.2.5.2 a method to process the Test results to establish their content.

## 8. TESTING

- 8.1 Before submitting any Deliverables for Testing the Supplier shall subject the relevant Deliverables to its own internal quality control measures.
- 8.2 The Supplier shall manage the progress of Testing in accordance with the relevant Test Plan and it shall carry out the Tests in accordance with the relevant Test Specification. Where requested by the Authority, Tests may be witnessed by the Test witnesses in accordance with paragraph 10 (Test Witnessing).
- 8.3 The Supplier shall provide the Authority with at least five Working Days (or such other period as the parties may agree) prior written notice of the date, time and location of the relevant Tests.
- 8.4 The Authority may raise and close Test Issues during the Test witnessing process.
- 8.5 On completion of the Testing the Supplier will provide the Authority with the final Test Report and where requested, not less than two Working Days (or such other period as the parties may agree) prior to the date on which any Tests are planned to end the Supplier will provide the Authority with a draft Test Report. Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:
  - 8.5.1 an overview of the Testing conducted;
  - 8.5.2 identification of the relevant Test Success Criteria that have been satisfied;
  - 8.5.3 identification of the relevant Test Success Criteria that have not been satisfied together with the Supplier's explanation of why those criteria have not been met;
  - 8.5.4 (if applicable) the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;

8.5.5 the Test Success Criteria that passed, failed or which were not tested, and any other relevant categories, in each case grouped by severity level in accordance with paragraph 9 (Test Issues); and

8.5.6 (if applicable) the specification for any hardware and software used throughout the Testing and any changes that were applied to that hardware and/or software during the Testing.

## 9. TEST ISSUES

9.1 Where a Test Report identifies a Test Issue, the parties shall agree the classification of the Test Issue using the following criteria:

9.1.1 The Test Issue Management Log shall log Test Issues to reflect the severity classifications allocated to each Test Issue pursuant to paragraph 9.1;

9.1.2 The Supplier shall be responsible for maintaining the Test Issue Management Log and for ensuring that its contents accurately represent the current status of each Test Issue at all relevant times. The Supplier shall make the Test Issue Management Log available to the Authority upon request; and

9.1.3 The Authority Representative shall confirm the classification of any Test Issue unresolved at the end of a Test in consultation with the Supplier.

9.2 If the parties are unable to agree the classification of any unresolved Test Issue, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure using the Expedited Dispute Timetable.

## 10. TEST WITNESSING

10.1 The Authority may, in its sole discretion, require the attendance at any Test of one or more witnesses. Where the Authority decides to use witnesses, paragraphs 10.2- 10.8 shall apply.

10.2 Witnesses will be selected by the Authority, each of whom will have appropriate skills to fulfil the role of a Test Witness.

- 10.3 The Supplier shall give the Test Witnesses access to any documentation, Testing environments and information reasonably requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.
- 10.4 The Test Witnesses will actively review the Test documentation and will attend and engage in the performance of the Tests on behalf of the Authority so as to enable the Authority to gain an informed view of whether a Test Issue may be closed or whether the relevant component should be re-Tested. However, the Test Witnesses will not be involved in the execution of any Test.
- 10.5 The Test Witnesses will be required to verify that the Supplier conducted the Tests in accordance with the Test Success Criteria and the relevant Test Plan and Test Specification.
- 10.6 The Test Witnesses may produce and deliver their own, independent reports on Testing, which may be used by the Authority to assess whether the Tests have been Achieved.
- 10.7 The Test Witnesses may raise Test Issues on the Test Issue Management Log in respect of any Testing.
- 10.8 The Test Witnesses may require the Supplier to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

## 11. OUTCOME OF TESTING

- 11.1 Deliverables will complete Testing and a Test Certificate shall be issued when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.
- 11.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then:
  - 11.2.1 the Supplier shall rectify the cause of the failure and re-submit the Deliverables (or the relevant part) to Testing, provided that the parties agree that there is sufficient time for that action prior to the relevant Milestone Date; or

11.2.2 the parties shall treat the failure as a Supplier Default.

11.3 When the Authority has issued Test Certificates and/or conditional Test Certificates in respect of all the Deliverables related to a Milestone it will also grant a Milestone Achievement Certificate.

11.4 The grant of a Milestone Achievement Certificate will entitle the Supplier to the receipt of a payment in respect of that Milestone to the extent that such payment is detailed in schedule B17 (Charges) in accordance with the provisions of schedules B17 (Charges) and schedule B1 (Invoicing Procedure).

## SCHEDULE B11

### Governance

#### 1. INTRODUCTION

This schedule B11 describes the governance structure and the procedures that will be used to manage the relationship between the Authority and the Supplier under this Call off Contract.

#### 2. GOVERNANCE PRINCIPLES

2.1 The parties shall work together to ensure that:

- 2.1.1 the Services are provided professionally, and in accordance with this Call off Contract;
- 2.1.2 the provision of the Services is regularly monitored to ensure compliance with the Service Levels and any applicable Performance Indicators, and that appropriate timely action is taken to deal with any problems or issues;
- 2.1.3 the Services are carried out in accordance with the Authority's regulatory, compliance, audit and risk management requirements to the extent provided for in this Call off Contract;
- 2.1.4 the Supplier undertakes its responsibilities in a timely and professional manner;
- 2.1.5 changes are recorded and this Call off Contract is kept up to date and modified as appropriate and by way of the Change Control Procedure to comply with the changing requirements of the Authority;
- 2.1.6 the Change Control Procedures are implemented correctly and monitored by both parties;
- 2.1.7 potential problems and issues are identified early and resolved promptly in a co-operative manner;



- 2.1.8 any disputes are resolved quickly, effectively and in a co-operative and business-like manner;
- 2.1.9 the Services are carried out in accordance with the Standards and the Authority's policies and procedures as required by this Call off Contract;
- 2.1.10 Exit Management is planned and implemented effectively; and
- 2.1.11 a forum for co-operative and pro-active management of this Call off Contract is established so that the objectives set out in this Call off Contract are consistently achieved.

### 3. ESTABLISHMENT OF THE GOVERNANCE BOARD

- 3.1 This Call off Contract will be managed at the day to day level through the Supplier Representative and the Authority Representative.
- 3.2 A Governance Board shall be established under this Call off Contract on which both the Supplier and the Authority shall be represented by such senior representatives as agreed between the parties. Where no parties are specified, the representatives shall be the Authority Representative and the Supplier Representative.
- 3.3 The Governance Board will:
  - 3.3.1 be responsible for the executive management of this Call off Contract;
  - 3.3.2 provide senior level guidance, leadership and strategy in respect of the provision of the Services;
  - 3.3.3 be the point of escalation from the Authority and Supplier Representatives (where appropriate); and
  - 3.3.4 carry out the specific obligations attributed to it in this Call off Contract.
- 3.4 Both parties will ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Call off Contract can be fully realised.

#### 4. GOVERNANCE BOARD MEETINGS

- 4.1 Meetings of the Governance Board will take place at least every quarter, unless otherwise agreed between the parties.
- 4.2 Each party shall ensure that its representative shall make all reasonable efforts to attend meetings of the Governance Board. If any representative is not able to attend a Governance Board meeting, that person shall use all reasonable endeavours to ensure that:
  - 4.2.1 a delegate attends the relevant Governance Board meeting in his/her place who is (wherever possible) is properly briefed and prepared; and
  - 4.2.2 that he/she is debriefed by such delegate after the Governance Board meeting.
- 4.3 Meetings of the Governance Board shall be quorate as long as at least one representative from each party is present, including for the avoidance of doubt any replacements for the representatives appointed in accordance with paragraph 4.2.
- 4.4 The parties shall ensure, as far as reasonably practicable, that all board(s) shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. Each party shall ensure that members of any boards created are empowered to make the relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

#### 5. CONTRACT MANAGEMENT MECHANISMS

- 5.1 The parties will maintain a joint business plan to log continuous improvement and all key issues relevant to this Call off Contract, including summaries of any Benchmark Reviews and Changes to this Call off Contract, in sufficient detail to allow the parties to make presentations regarding the Call off Contract, the Services and progress of the same, at the Governance Board meetings and the Annual Review (as defined below).
- 5.2 Both parties will pro-actively manage risks attributed to them under the terms of this Call off Contract.

- 5.3 The Supplier will develop, operate, maintain and amend, as agreed with the Authority, processes for the identification and management of risks, and a risk register will be completed by the Supplier and submitted for review by both parties at the Governance Board meetings.

## 6. ANNUAL REVIEW

- 6.1 An annual review meeting ("Annual Review") shall be held, on a date to be agreed between the parties, throughout the Term.
- 6.2 The Annual Review will be attended by the Authority Representative and the Supplier Representative and any other persons considered by the Authority necessary for the review. The Supplier may ask the Authority for permission to bring other relevant parties to the Annual Review. The Authority shall consider each request acting reasonably and in good faith.

## 7. FRAMEWORK AGREEMENT GOVERNANCE

- 7.1 The Supplier shall ensure that the Supplier Representative reports to the Framework Senior Representative on a regular basis regarding any matters relating to this Call off Contract that the Supplier is required to provide pursuant to the terms of the Framework Agreement.

## SCHEDULE B12

### Staff Transfer on Service Provision Change

#### 1. PURPOSE OF THIS SCHEDULE B12

This schedule B12 sets out the parties respective rights and obligations in relation to the application of the Employment Regulations.

#### 2. APPLICATION OF THE EMPLOYMENT REGULATIONS ON TERMINATION OR AT THE END OF THE TERM

2.1. The Call off Contract envisages that, subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of expiry or termination of this Call off Contract, or part, or otherwise) resulting in the Services or related services being undertaken by the Authority or a Replacement Supplier. Such change in the identity of the supplier of such services shall be a "Service Transfer". The parties acknowledge that a Service Transfer may be a Relevant Transfer and in such event, the Authority, or a Replacement Supplier, would inherit liabilities in respect of the Transferring Supplier Employees. Accordingly, the Employment Regulations and/or the Acquired Rights Directive would apply.

2.2. The parties agree that the time of transfer of the Transferring Supplier Employees, for the purposes of the Employment Regulations, shall be 00:01 on the Staff Transfer Date.

#### 3. PRE-SERVICE TRANSFER OBLIGATIONS

3.1. The Supplier agrees, subject to compliance with the Data Protection Legislation that within twenty Working Days of the earliest of:

3.1.1. receipt of a notification from the Authority of a Service Transfer or intended Service Transfer; or

3.1.2. receipt of the giving of notice of early termination of this Call off Contract or any part thereof; or

3.1.3. the date which is twelve months before the end of the Term; or

3.1.4. receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any six month period),

it will provide the Supplier's Provisional Staff List and the Staffing Information to the Authority or, at the direction of the Authority, to a Replacement Supplier and it will provide an updated Supplier's Provisional Staff List at such intervals as are reasonably requested by the Authority.

3.2. At least fourteen Working Days prior to the Service Transfer Date, the Supplier shall prepare (subject to compliance with Data Protection Legislation) and provide, or as appropriate procure that the Supplier Party shall prepare and provide, to the Authority or, at the direction of the Authority or the Replacement Supplier, the Supplier Final Staff List, which shall be complete and accurate in all material respects. The Supplier Final Staff List shall identify which of the Supplier Personnel named are Transferring Supplier Employees.

3.3. Subject to compliance with the Data Protection Legislation, the Authority shall be permitted to use and disclose the Supplier's Provisional Staff List, the Supplier Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Supplier for any services which are substantially the same type of services (or any part thereof) as the Services, provided that the Authority imposes on such third party obligations of confidence that are no less onerous than the Authority has to the Supplier in relation to that information.

3.4. Upon reasonable request by the Authority and subject to compliance with the Data Protection Legislation, the Supplier shall provide, and shall procure that each Supplier Party shall provide, the Authority or at the request of the Authority, the Replacement Supplier, with access (on reasonable notice and during normal working hours) to such employment records as the Authority reasonably requests and will allow the Authority or the Replacement Supplier to have copies of any such documents. For the avoidance of doubt, such information may be anonymised in accordance with the Information Commissioner's latest guidance.

3.5. The Supplier warrants that the Supplier's Provisional Staff List, the Supplier Final Staff List and the Staffing Information will be true and accurate in all material respects.

- 3.6. From the date of the earliest event referred to in paragraphs 3.1.1 to 3.1.3 above, the Supplier agrees that it will not, and agrees to procure that each Supplier Party will not, other than in the ordinary course of business, assign any person to the provision of the Services (or the relevant part) which is the subject of a Service Transfer who is not listed in the Supplier's Provisional Staff List and will not, other than in the ordinary course of business, without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed):
- 3.6.1. increase the total number of employees listed on the Supplier's Provisional Staff List save for fulfilling assignments and projects previously scheduled and agreed or where expressly requested by the Authority;
  - 3.6.2. make, propose or permit any material changes to the terms and conditions of employment of any employees listed on the Supplier's Provisional Staff List;
  - 3.6.3. increase the proportion of working time spent on the Services (or the relevant part) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed or where expressly requested by the Authority;
  - 3.6.4. introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Staff List;
  - 3.6.5. replace any Supplier Personnel listed on the Supplier's Provisional Staff List or deploy any other person to perform the Services (or the relevant part) or terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Staff List save for:
    - 3.6.5.1. the execution of assigned operations as detailed in 3.6.1 and 3.6.3; and/or
    - 3.6.5.2. replacing voluntary resignations or staff terminated by due disciplinary process to satisfy the fulfilment of previously agreed work streams provided that any replacement is employed on the same terms and conditions of employment as the person he/she replaces; and
  - 3.6.6. the Supplier will promptly notify or as appropriate will procure that the Supplier Party will promptly notify the Authority or, at the direction of the

Authority, the Replacement Supplier of any notice to terminate employment given by the Supplier or any Supplier Party or received from any persons listed on the Supplier's Provisional Staff List regardless of when such notice takes effect.

3.7. Within seven Working Days following the Service Transfer Date, the Supplier will provide to the Authority or any Replacement Supplier, in respect of each person on the Supplier Final Staff List who is a Transferring Supplier Employee:

- 3.7.1. the most recent month's copy pay slip data;
- 3.7.2. details of cumulative pay for tax and pension purposes;
- 3.7.3. details of cumulative tax paid;
- 3.7.4. tax code;
- 3.7.5. details of any voluntary deductions from pay; and
- 3.7.6. bank/building society account details for payroll purposes.

#### 4. THE SUPPLIER'S INDEMNITY

4.1. In connection with a Relevant Transfer under paragraph 2 of this schedule B12, the parties agree that:

4.1.1. the Supplier will, and shall procure that any Supplier Party will, perform and discharge all its obligations in respect of all the Transferring Supplier Employees and their representatives for its own account up to the Service Transfer Date. The Supplier will indemnify the Authority and any Replacement Supplier against all Employee Liabilities arising from the Supplier's, or any Supplier Party's, failure to perform and discharge any such obligation and against any Employee Liabilities in respect of the Transferring Supplier Employees arising from or as a result of:

4.1.1.1. any act or omission by the Supplier or any Supplier Party occurring before the Service Transfer Date or any other matter, event or circumstance occurring or having its origin before the Service Transfer Date save simply for accrual of service before that date;

- 4.1.1.2. all and any Employee Liabilities in respect of all emoluments and outgoings in relation to the Transferring Supplier Employees (including without limitation all wages, bonuses, PAYE, national insurance contributions, pension contributions and otherwise) payable in respect of any period before the Service Transfer Date;
- 4.1.1.3. any claim arising out of the provision of, or proposal by the Supplier or any Supplier Party to offer any change to any benefit, term or condition or working condition of any Transferring Supplier Employee arising before the Service Transfer Date;
- 4.1.1.4. any claim made by or in respect of any person employed or formerly employed by the Supplier or any Supplier Party other than a Transferring Supplier Employee for which it is alleged the Authority or any Replacement Supplier may be liable by virtue of this Call off Contract and/or the Employment Regulations;
- 4.1.2. the Supplier will indemnify the Authority and any Replacement Supplier against all Employee Liabilities arising from:
  - 4.1.2.1. any act or omission of the Supplier or any Supplier Party in relation to its obligations under Regulation 13 of the Employment Regulations, or in respect of an award of compensation under Regulation 15 of the Employment Regulations except to the extent that the liability arises from the Authority or a Replacement Supplier's failure to comply with Regulation 13(4) of the Employment Regulations; and
  - 4.1.2.2. any statement communicated to or action done by the Supplier or any Supplier Party to, or in respect of, any Transferring Supplier Employee on or before the Service Transfer Date regarding the Service Transfer which has not been agreed in advance with the Authority in writing subject to the timely availability of the Authority, the Supplier or Supplier Party to verify, amend or negotiate the content of such statements.
- 4.2. The Supplier will indemnify the Authority and any Replacement Supplier in respect of any Employee Liabilities arising from any act or omission of the Supplier or any Supplier Party in relation to any other Supplier Personnel who is not a Transferring



Supplier Employee during any period whether before, on or after the Service Transfer Date.

4.3. If any person who is not a Transferring Supplier Employee claims or it is determined that his contract of employment has been transferred from the Supplier or any Supplier Party to the Authority, or a Replacement Supplier pursuant to a Relevant Transfer, or claims that his employment would have so transferred had he not resigned, then:

4.3.1. the Authority or the Replacement Supplier will, within seven Working Days of becoming aware of that fact, give notice in writing to the Supplier;

4.3.2. the Supplier may offer (or may procure that a Supplier Party may offer) employment to such person within twenty Working Days of the notification by the Authority or the Replacement Supplier;

4.3.3. if such offer of employment is accepted, the Authority or the Replacement Supplier shall immediately release the person from his employment;

4.3.4. if after that period has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the Authority or the Replacement Supplier may within seven Working Days give notice to terminate the employment of such person;

4.3.5. subject to the Authority or the Replacement Supplier acting in this way or in such other way as may be agreed between the Supplier and the Authority or the Replacement Supplier, the Supplier will indemnify the Authority and the Replacement Supplier against:

4.3.5.1. all Employee Liabilities arising out of such termination or otherwise arising out of the employment of such person by the Authority or a Replacement Supplier; and/or

4.3.5.2. any direct employment costs (if any) associated with the employment of such person by the Authority or the Replacement Supplier up to the date of termination of such persons employment.

4.3.6. If such person is neither re-employed by the Supplier or any Supplier Party nor dismissed by the Authority or the Replacement Supplier within the time

scales set out in this paragraph 4.3, such person will be treated as a Transferring Supplier Employee.

## 5. THE AUTHORITY'S INDEMNITIES

5.1. The Authority shall indemnify the Supplier and any Supplier Party against all Employee Liabilities arising from the Authority's or the Replacement Supplier's failure to perform and discharge any obligation and against any Employee Liabilities in respect of the Transferring Supplier Employee arising from or as a result of:

5.1.1. any act or omission by the Authority or the Replacement Supplier relating to a Transferring Supplier Employee occurring on or after the Service Transfer Date;

5.1.2. all and any Employee Liabilities in respect of all emoluments and outgoings in relation to the Transferring Supplier Employees (including without limitation all wages, bonuses, PAYE, national insurance contributions, pension contribution and otherwise) payable on or after the Service Transfer Date;

5.1.3. any claim arising out of the provision of, or proposal by the Authority or any Replacement Supplier to offer any change to any benefit, term or condition or working condition of any Transferring Supplier Employee arising on or after the Service Transfer Date;

5.1.4. any failure by the Authority or any Replacement Supplier to comply with the obligations imposed on a transferee by Regulation 13(4) of the Employment Regulations in respect of the transfer of any Transferring Supplier Employees on the Service Transfer Date except to the extent such failure is caused by or related to an act or omission of the Supplier or any Supplier Party.

## 6. MUTUAL OBLIGATIONS

6.1. The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to a Relevant Transfer will be fulfilled.

6.2. The Authority will assume (or will procure that the Replacement Supplier, as the case may be, will assume) the outstanding obligations of the Supplier and any Supplier Party in relation to the Transferring Supplier Employees in respect of accrued holiday entitlements and accrued holiday remuneration to the Service

Transfer Date. In consideration, the Supplier will or will procure that any Supplier Party will pay to the Authority (or the Replacement Supplier as the case may be) within fourteen days of the Service Transfer Date the full amount necessary to enable the Authority or the Replacement Supplier to meet the cost of providing any such untaken holiday entitlements and remuneration as at the Service Transfer Date. The Authority or the Replacement Supplier, as the case may be, will reimburse the Supplier and any Supplier Party any amount paid by the Supplier or the Supplier Party before the Service Transfer Date in respect of holidays taken in excess of any Transferring Supplier Employee's entitlement to paid holiday in respect of the period ending on the Service Transfer Date.

## 7. THIRD PARTY RIGHTS

The parties agree that the Contracts (Right of Third Parties) Act 1999 ("CRiTPA") shall apply to paragraphs 4, 5, 6 and 9 of this schedule B12 to the extent necessary that any Replacement Supplier and Supplier Party shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Supplier by the Supplier or the Authority to the Supplier Party under those paragraphs 4, 5, 6 and 9 in its own right pursuant to section 1(1) of CRiTPA.

## 8. PROVISIONS WHERE TRANSFER REGULATIONS DO NOT APPLY

8.1. The following provisions shall apply in the event of a Service Transfer to which the Employment Regulations or the Acquired Rights Directive do not apply:

8.1.1. the Authority or the Replacement Supplier can, in its discretion, make to any of the employees listed on the Supplier's Provisional Staff List or any Supplier Personnel assigned to the Services an offer, in writing, to employ or engage them under a new contract of employment or contract for services (as appropriate) to take effect on the day after the termination referred to in paragraph 8.1.2 below of this schedule B12 or at the earliest reasonable opportunity;

8.1.2. when the offer has been made by the Authority or Replacement Supplier and accepted by any employee or worker, the Supplier shall, and shall procure that any Supplier Party shall, permit the employee or worker to leave its employment, as soon as practicable depending on the business needs of the Supplier, which could be without the employee or worker having worked his full

notice period, if the employee so requests and where operational obligations allow;

8.1.3. if the employee does not accept an offer of employment made by the Authority or Replacement Supplier, the employee shall remain employed by the Supplier (or the Supplier Party, as the case may be) and all Employee Liabilities in relation to the employee shall remain with the Supplier or the relevant Supplier Party; and

8.1.4. if the Authority or the Replacement Supplier does not make an offer to any employee on the Supplier's Provisional Staff List or any Supplier Personnel, then that employee and all Employee Liabilities in relation to that employee remains with the Supplier or relevant Supplier Party.

## 9. CONDUCT OF CLAIMS

9.1. This paragraph 9 shall apply to the conduct, by a party from whom an indemnity is sought under this schedule B12, of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity. The party having, or claiming to have, the benefit of the indemnity is referred to as the "Beneficiary" and the party giving the indemnity is referred to as the "Indemnifier".

9.2. If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this schedule B12 ("Claim"), the Beneficiary shall give notice to the Indemnifier as soon as reasonably practicable and in any event within ten Working Days of receipt of the same.

9.3. Subject to paragraphs 9.4 and 9.5, on the giving of a notice by the Beneficiary pursuant to paragraph 9.2 above, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable co-operation,

access and assistance for the purposes of such Claim and, subject to paragraph 9.5 below, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.

9.4. With respect to any Claim conducted by the Indemnifier pursuant to paragraph 9.3 above:

9.4.1. the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;

9.4.2. the Indemnifier shall not bring the name of the Beneficiary into disrepute;

9.4.3. the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and

9.4.4. the Indemnifier shall conduct the Claim with all due diligence.

9.5. The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Call off Contract if:

9.5.1. the Indemnifier is not entitled to take conduct of the Claim in accordance with paragraph 9.3 above;

9.5.2. the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant Claim within ten Working Days of the notice from the Beneficiary under paragraph 9.2 above or if the Indemnifier notifies the Beneficiary that it does not intend to take conduct of the Claim; or

9.5.3. the Indemnifier fails to comply in any material respect with the provisions of paragraph 9.4 above.

## 10. SENSITIVE CLAIMS

10.1. With respect to any Claim for which the Authority or the Supplier or the Supplier Party are the Beneficiary and the conduct of which the Authority or Supplier acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Authority or the Supplier or the Supplier Party ("Sensitive

Claim"), the Indemnifier shall only be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim with the Beneficiary's prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if any failure to do so results in an increase in the amount recoverable by the Beneficiary in respect of an indemnity under this Call off Contract, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.

10.2. The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which paragraph 9.3 above applies notwithstanding that it does not have the right to do so pursuant to paragraph 9.3 if, in the reasonable opinion of the Beneficiary the Claim is, or has become, a Sensitive Claim. In such cases, the provisions of paragraph 10.1 above shall apply.

## 11. RECOVERY OF SUMS

11.1. If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:

11.1.1. an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and

11.1.2. the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity,

provided that there shall be no obligation on the Beneficiary to pursue such recovery and that the Indemnifier is repaid only to the extent that the amount of such recovery aggregated with any sum recovered from the Indemnifier exceeds any loss sustained by the Beneficiary (including for this purpose any

indirect Losses sustained by the Beneficiary which may be excluded by this Call off Contract from being recovered from the Indemnifier).

## 12. INSURANCE

Any person taking any of the steps contemplated by paragraphs 9.2 to 10.1 shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Call off Contract.

## 13. MITIGATION

Each of the Authority and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant party is entitled to bring a claim against the other party pursuant to the indemnities in this schedule B12.

## 14. TAXATION

If any payment by one party under an indemnity in this Call off Contract is subject to income tax or corporation tax (or any tax replacing either or both of them) in the hands of the recipient (or a withholding made by the paying party in respect of tax), the recipient may demand in writing to the party making the payment that the payment shall be increased by such amount as would ensure that, after taking into account any such tax payable in respect of such additional amount, the recipient receives and retains a net sum equal to the amount it would have otherwise received had the payment not been subject to such tax or withholding.

## SCHEDULE B14

### Business Continuity and Disaster Recovery Plan

#### 1. PURPOSE OF THIS SCHEDULE B14

- 1.1 This schedule B14 sets out the Authority's requirements for ensuring continuity of the business processes and operations supported by the Services in circumstances of Service disruption or failure and for restoring the Services through business continuity and, as necessary, disaster recovery procedures.
- 1.2 It also includes the requirement on the Supplier to develop, review, test, change and maintain a BCDR Plan in respect of the Services. The BCDR Plan shall detail the processes and arrangements which the Supplier shall follow to recover the Services in the event of a Disaster.
- 1.3 The BCDR Plan shall be divided into three parts:
  - 1.3.1 Part A which shall set out general principles applicable to the BCDR Plan;
  - 1.3.2 Part B which shall relate to business continuity; and
  - 1.3.3 Part C which shall relate to disaster recovery.
- 1.4 The Supplier is also required to establish, maintain and review its own internal processes and procedures with respect to the identification and mitigation of any threats or risks to the provision of the Services and how the provision of the Services may be maintained in the event of any such identified threats or risks materialising.

#### 2. DEVELOPMENT OF BCDR PLAN

- 2.0A Where required the detailed BCDR Plan will be provided prior to the Service Commencement Date.
- 2.1 Not Used



- 2.2 The Supplier shall ensure that its Sub-Suppliers' disaster recovery and business continuity plans are integrated with the BCDR Plan.

### 3. CONTENT OF BCDR PLAN

#### General Principles and Requirements

- 3.1 The BCDR Plan shall, at all times, address all elements of the Services which the Supplier may be required to provide pursuant to this Call off Contract (whether or not such Services are actually provided at any given time).
- 3.2 The BCDR Plan shall:
  - 3.2.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
  - 3.2.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the Services and any services provided to the Authority by a Related Service Provider;
  - 3.2.3 contain an obligation upon the Supplier to liaise with the Authority and (at the Authority's request) any Related Service Provider with respect to issues concerning business continuity and disaster recovery where applicable;
  - 3.2.4 detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Authority and any of its other Related Service Providers as notified to the Supplier by the Authority from time to time;
  - 3.2.5 contain a risk analysis, including:
    - 3.2.5.1 failure or disruption scenarios and assessments and estimates of frequency of occurrence;
    - 3.2.5.2 identification of any single points of failure within the Services and processes for managing the risks arising there from;

- 3.2.5.3 identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider; and
- 3.2.5.4 a business impact analysis of different anticipated failures or disruptions;
- 3.2.5.5 identification of risks arising in the event of a Health Related Emergency;
- 3.2.6 provide for documentation of processes, including business processes, and procedures;
- 3.2.7 set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-Suppliers) and for the Authority;
- 3.2.8 identify the procedures for reverting to "normal service";
- 3.2.9 Not Used
- 3.2.10 identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the BCDR Plan.
- 3.3 The BCDR Plan shall be designed so as to ensure that:
  - 3.3.1 Not Used
  - 3.3.2 the adverse impact of any Disaster, service failure or disruption on the operations of the Authority is minimal as far as reasonably possible;
  - 3.3.3 it complies with the relevant provisions of ISO/IEC17799:2000, BS15000 (as amended) and all other industry standards from time to time in force. For the avoidance of doubt, the Supplier is not required to obtain any certification/accreditation to these standards. However, the Supplier warrants that it has appropriate processes in place to ensure that it complies with these industry standards.
  - 3.3.4 there is a process for the management of disaster recovery testing detailed in the BCDR Plan; and

- 3.3.5 there is a process for dealing with each of the risks identified in accordance with paragraph 3.2.5 above.
- 3.4 The BCDR Plan must be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the Services.
- 3.5 The BCDR Plan shall also clearly set out the conditions and/or circumstances under which the BCDR Plan shall be invoked.
- 3.6 The Supplier shall not be entitled to any relief from its obligations under the Service Levels or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Call off Contract.

#### Business Continuity Element

- 3.7 The BCDR Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including but not limited to (and unless the Authority expressly states otherwise in writing):
- 3.7.1 the alternative processes, (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and
- 3.7.2 the steps to be taken by the Supplier upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
- 3.8 The BCDR Plan shall address the various possible levels of failures or disruptions to the Services and the services to be provided and the steps to be taken to remedy the different levels of failure and disruption.

#### Disaster Recovery Elements

- 3.9 The BCDR Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the

Authority supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.

3.10 The disaster recovery element of the BCDR Plan shall only be invoked upon the occurrence of a Disaster.

3.11 The BCDR Plan shall include a detailed description of:

3.11.1 the technical design and build specification of the BCDR System;

3.11.2 the procedures and processes to be put in place by the Supplier and any Sub-Supplier in relation to the BCDR System and the provision of the BCDR Services and any testing of the same;

3.11.3 any applicable service levels with respect to the provision of BCDR Services and details of any agreed relaxation upon the Service Levels during any period of invocation of the BCDR Plan;

3.11.4 details of how the Supplier shall ensure compliance with security standards, ensuring that compliance is maintained for any period during which the BCDR Plan is invoked;

3.11.5 access controls (to any disaster recovery sites used by the Supplier or any Sub-Supplier in relation to its obligations pursuant to this schedule); and

3.11.6 testing and management arrangements.

#### 4. REVIEW AND AMENDMENT OF THE BCDR PLAN

4.1 The Supplier shall review part or all of the BCDR Plan (and the risk analysis on which it is based):

4.1.1 (in respect of all of the BCDR Plan) on a regular basis and as a minimum once every six calendar months;

4.1.2 upon any changes to the Services or the scope of the Services;

- 4.1.3 within three calendar months of the BCDR Plan (or any part) having been invoked pursuant to this schedule B14; and
  - 4.1.4 where the Authority requests any additional reviews (over and above those provided for in paragraphs 4.1.1 to 4.1.3 of this schedule B14) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Authority's written requirements. The reasonable and direct costs of both parties for any such additional reviews will be met by the Authority save to the extent that such review is requested to address a previous weakness in the BCDR Plan in which case the Supplier shall be responsible for its own costs.
- 4.2 Each review pursuant to paragraph 4.1 of the BCDR Plan shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to:
- 4.2.1 any change to the Services (including any increase in scope) or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan; and
  - 4.2.2 any occurrence of any event of which the Supplier is aware since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan.
- 4.3 The review conducted pursuant to paragraph 4.2 shall be completed by the Supplier within the period required by the BCDR Plan or, if no such period is required, within such period as the Authority shall reasonably require. The Supplier shall, within twenty Working Days of the conclusion of each such review of the BCDR Plan, provide to the Authority a report ("Review Report") setting out:
- 4.3.1 the findings of the review;

- 4.3.2 any material changes in the risk profile associated with the Services;  
and
- 4.3.3 the Supplier's proposals ("Supplier's BCDR Proposals") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.
- 4.4 The Authority shall approve or reject the Supplier's BCDR Proposals in accordance with the Plan Approval Process.
- 4.5 The Supplier shall, as soon as is reasonably practicable after receiving the Authority's approval of the Supplier's BCDR Proposals (acting reasonably having regard to the significance of any risks highlighted in the Review Report), update the BCDR Plan as set out in the Supplier's BCDR Proposals and/or effect any change in its practices or procedures necessary so as to give effect to the Supplier's BCDR Proposals. Any such change shall be at the Supplier's expense.
- 4.6 The Authority may additionally request, at any time, that the Supplier amends the BCDR Plan. In particular, the Authority may require the Supplier to amend the BCDR Plan to ensure that it is consistent with the disaster recovery and business continuity plans of the Authority and other third party service providers. In this regard it may therefore be necessary for the Supplier to liaise with other Related Service Providers.

## 5. TESTING OF THE BCDR PLAN

- 5.1 The Supplier shall test the BCDR Plan on a regular basis (and in any event not less than once every Contract Year). Subject to paragraph 5.2, the Authority may require the Supplier to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Authority considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.

- 5.2 If the Authority requires an additional test of the BCDR Plan it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the BCDR Plan. The Supplier's reasonable costs of the additional test shall be borne by the Authority unless the BCDR Plan fails the additional test or the test is requested to address a previous weakness or failure in the BCDR Plan in which case the Supplier's costs of that additional test shall be borne by the Supplier.
- 5.3 Following each test, the Supplier shall send to the Authority a written report summarising the results of the test and shall promptly implement any actions or remedial measures which the Authority considers to be necessary as a result of those tests.
- 5.4 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority in this regard. Unless required otherwise by the Authority, each test shall be carried out, as witnessed by the Authority or its nominee.
- 5.5 The Supplier shall ensure that any use by it or any Sub-Supplier of "live" data in such testing is first approved with the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on completion of the test.
- 5.6 The Supplier shall, within ten Working Days of the conclusion of each test, provide to the Authority a report setting out the outcome of the test and any risks or issues identified and the Supplier's proposals for remedying such failures.
- 5.7 Following each test, the Supplier shall take all measures reasonably requested by the Authority, (including requests for the re-testing of the BCDR Plan) to remedy any failures (other than minor immaterial failures) in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.

5.8 Where a significant change to the Services and/or to the methodology of providing the Services arises as a result of the Supplier's request, the Supplier shall ensure that the BCDR Plan is updated and appropriate testing is carried out to test the Services affected by such change and report its findings to the Authority in accordance with paragraphs 5.3, 5.4 and 5.7 above.

5.9 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan's procedures) shall not relieve the Supplier of any of its obligations under this schedule B14 or otherwise.

## 6. INVOCATION OF THE BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN

Where any element of the BCDR Plan requires additional consents or approvals of the Authority, the Supplier shall not test or invoke such element(s) of the BCDR Plan without the prior written consent or approval of the Authority.

## 7. SUPPLIER'S WIDER PLAN FOR BCDR

Where, in addition to the BCDR Plan, the Supplier maintains a separate internal plan relating to business continuity and disaster recovery of the Supplier and/or the Supplier's group of companies ("Corporate Wide BCDR Plan"), the Supplier shall, in addition to the Supplier's obligations in this schedule, monitor its compliance with the Corporate Wide BCDR Plan and to the extent that such plan relates to the Services, (to the extent not already provided) provide a copy of the Corporate Wide BCDR Plan to the Authority on request.



## SCHEDULE B15

### Records Provision and Monitoring

#### 1. INTRODUCTION

The objective of this schedule B15 is to set out the requirements for:

- 1.1. the retention of proper records of processes and decisions taken relating to the performance and management of the Call off Contract;
- 1.2. the detail and nature of the reports that are to be made by the parties, including the timing and process for making such reports; and
- 1.3. the scope of the Monitoring Information to be provided to the Authority and OGC.

#### 2. REPORTS

2.1. Any or all of the following reports may be required:

- 2.1.1. delay reports;
- 2.1.2. Test Reports (in accordance with the provisions of schedule B10 (Testing Procedures));
- 2.1.3. Management Information reports;
- 2.1.4. annual report on the Required Insurances that the Supplier is required to maintain pursuant to clause 54 (Insurance) of this Call off Contract;
- 2.1.5. security reports; and
- 2.1.6. Force Majeure Event reports.

#### 3. RECORDS

- 3.1. The Supplier shall retain and maintain all the records (including superseded records) referred to in Appendix One to this schedule B15:
  - 3.1.1. in accordance with Good Industry Practice;
  - 3.1.2. not used;

3.1.3. in a form that is capable of audit; and

3.1.4. at its own expense.

Subject to paragraph 3.6.2, the Supplier shall make these records available for inspection to the Authority on request subject to the Authority giving reasonable notice.

### 3.2. Not Used

3.3. Subject to paragraphs 3.4 and 3.6 below and unless otherwise specified by the Authority, the Supplier shall, during the Term and a period of at least seven years following the later of a) the expiry or termination of this Call off Contract or b) the expiry or termination of the Framework Agreement, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all records (whether in electronic format or otherwise) referred to in Appendix One to this schedule B15.

3.4. Financial records referred to in Appendix One to this schedule shall be retained and maintained in safe storage by the Supplier for a period of at least six years after the expiry or termination of this Call off Contract.

3.5. Without prejudice to the foregoing, the Supplier shall provide the Authority:

3.5.1. (to the extent that the Supplier produces such interim accounts only) as soon as they are available, and in any event within 60 Working Days after the end of the first six months of each financial year of the Call off Contract during the Term, a copy, certified as a true copy by an authorised representative of the Supplier, of its un-audited interim accounts and, if appropriate, of consolidated un-audited interim accounts of the Supplier, its subsidiaries and holding company (if any and as such terms are defined by section 1159 of the Companies Act 2006) which would (if the Supplier were listed on the London Stock Exchange whether or not it is) be required to be sent to shareholders as at the end of and for each such six month period; and

3.5.2. as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Supplier, but not later than 180 days after the end of each accounting reference period of the Supplier part or all of which falls during the Term, the Supplier's audited accounts and if appropriate,

of the consolidated audited accounts of the Supplier and, its associated companies (if any), in respect of that period, prepared in accordance with the Companies Act 2006 (or relevant applicable law in the Supplier's jurisdiction of incorporation) and generally accepted accounting principles and bases in the Supplier's jurisdiction of incorporation, consistently applied together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.

3.6. Health Related Records referred to in Appendix One to this schedule B15 shall be:

3.6.1. retained and maintained in safe storage by the Supplier in accordance with clauses 39 (Authority Data) and 40 (Protection of Personal Data) of the Call off Contract and the Authority's Records Retention Policy, whereupon they shall be dealt with in accordance with paragraph 3.7 below; and

3.6.2. made available to the Authority by the Supplier for inspection within the time periods set out in the Services Description or (if none are stipulated) upon reasonable notice.

3.7. Following the expiry of the applicable retention period detailed in the Authority's Records Retention Policy, the Supplier shall at the Authority's option:

3.7.1. retain the relevant Health Related Records, on terms agreed between the parties;

3.7.2. destroy the relevant Health Related Records; or

3.7.3. transfer the relevant Health Related Records (in a complete and uncorrupted form) in its possession or control to the Authority in a secure manner in accordance with the Security Policy, the Authority's Records Retention Policy and any additional requirements identified by the Authority ("Secure Transfer"). The Supplier shall not be permitted to destroy any Health Related Records until it has received written confirmation from the Authority that the relevant Secure Transfer has been completed satisfactorily and that the Supplier is permitted to destroy and/or erase such Health Related Records and/or related information in its possession or control.

3.8. Where the Supplier is required to destroy any Health Related Records, the Supplier shall at the Authority's request, certify that the relevant material has been destroyed.

- 3.9. The Supplier shall comply with any and all reasonable requests of the Authority made from time to time in connection with the storage, transfer and destruction of any Health Related Records.

#### 4. MONITORING INFORMATION

Appendix Two to this schedule sets out the Monitoring Information which the Supplier must provide to the Authority and OGC on request throughout the Term pursuant to clause 25 (Records and Reports and Monitoring).

## APPENDIX ONE TO SCHEDULE B15

### Records to be kept by the Supplier

In accordance with the provisions of paragraph 3 of this schedule B15 the Supplier shall maintain the following records:

1. The Call off Contract, its schedules and all amendments to such documents.
2. All other documents which this Call off Contract expressly requires to be prepared.
3. Records relating to the appointment and succession of the Supplier Representative and each member of the Key Personnel.
4. Records relating to the appointment of each Sub-Supplier under this Call off Contract including a copy of the relevant Sub-contract and a copy of the prior written consent provided by the Authority.
5. Notices, reports and other documentation submitted by an expert.
6. Not Used
7. Documents prepared by the Supplier or received by the Supplier from a third party relating to a Force Majeure Event.
8. All formal notices, reports or submissions made by the Supplier to the Authority Representative in connection with the provision of the Services.
9. All certificates, licences, registrations or warranties in each case obtained by the Supplier in relation to the provision of the Services.
10. Documents prepared by the Supplier in support of claims for the Charges.
11. Documents submitted by the Supplier pursuant to accordance with the Change Control Procedure.
12. Documents submitted by the Supplier pursuant to invocation by it or the Authority of the Dispute Resolution Procedure.
13. Notices, reports and other documentation submitted by an expert.
14. Not Used

15. Invoices and records related to VAT sought to be recovered by the Supplier.
16. Where appropriate, financial records, including audited and un-audited accounts of the Guarantor and the Supplier.
17. Records required to be retained by the Supplier by Law, including in relation to health and safety matters and health and safety files and all consents.
18. Records required to be retained by the Supplier referred to in schedule B16 (Service Levels and Performance Monitoring).
19. All documents relating to the insurances to be maintained under the Call off Contract and any claims made in respect of them.
20. All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Call off Contract.
21. All Health Related Records created by the Supplier in the provision of the Services in accordance with the Authority's Records Retention Policy or required to be retained by the Supplier by Law.

## APPENDIX TWO TO SCHEDULE B15

### Monitoring Information

Monitoring Information shall include (but shall not be limited to):

1. line item amount;
2. invoice line description;
3. invoice line number;
4. currency code;
5. order date;
6. Not Used
7. VAT rate;
8. list price;
9. number of items;
10. unit of purchase;
11. unit of purchase quantity;
12. price per unit;
13. supplier product / service code;
14. product description;
15. service levels;
16. Not Used
17. Not Used
18. Not Used
19. geographical;
20. project code;

21. project description;
22. project start date;
23. project delivery date (estimate and actual);
24. total project cost; and
25. project stage.



## SCHEDULE B16

### Service Levels and Performance Monitoring

#### 1. SCOPE

1.1 This schedule B16 (Service Levels and Performance Monitoring) records:

1.1.1 the Service Levels that are to be measured for the purpose of the Services;

1.1.2 in respect of each Service Level:

1.1.2.1 the Operating Service Levels which the Supplier is required to achieve when delivering the Services and the applicable Failure Levels;

1.1.2.2 how the Services shall be monitored against the categories of Service Level, each category having a number of Service Level ratings as 1.1.4 below

1.1.3 in respect of each Service Level for Activity Services:

1.1.3.1 the Measurement Periods that apply;

1.1.4 Service Level ratings are as follows

1.1.4.1 The expected level of service ("Operating Service Level" or "OSL")

1.1.4.2 the level at which the Supplier fails to achieve the Operating Service Level and Service Points, where relevant, begin to accrue ("Failure Service Level" or "FL1" or "FL2") (if this rating applies); or

1.1.4.3 an unacceptable level of service ("Critical Service Level" or "CSL") requiring the Supplier to produce a Correction Plan, and potentially a greater number of Service Points than for FL1 or FL2.

1.1.5 The Supplier is responsible for delivering the Services to a sufficiently high standard to ensure that the Supplier obtains or exceeds OSL against each Service Level for each reporting period.

1.1.6 (in respect of the Performance Indicators only):

1.1.6.1 the monitoring periods that apply to each Performance Indicator;

1.1.6.2 the agreed timescales and other reporting requirements for the Performance Indicators.

1.2 This schedule B16 together with the Catalogue set out the mechanism by which Service Failures will be managed and the method by which the performance of the Services by the Supplier will be monitored.

## Part A (Service Levels and Performance Monitoring)

### 1. PRINCIPAL POINTS

1.1 The objectives of the principles set out in Part A to this schedule B16 are to:

1.1.1 ensure that the Services are of a consistently high quality and meet the requirements of the Authority;

1.1.2 provide a mechanism whereby the Authority can attain meaningful recognition of any inconvenience and/or loss which may result from the Supplier's failure to deliver the level of Services for which it has contracted to deliver; and

1.1.3 incentivise the Supplier to meet the Operating Service Levels and to remedy any failure to meet the Operating Service Levels expeditiously.

### 2. PERFORMANCE INDICATORS

2.1 The Supplier shall measure the Performance Indicators and report on them in accordance with the agreed reporting requirements.

- 2.2 The Authority may, from time to time, require that additional performance indicators are included within the Supplier's reporting requirements. The Supplier shall measure such additional performance indicators and report on them following receipt of written notice by the Authority. Where the Supplier can demonstrate that the inclusion of any additional performance indicators would have a material and unavoidable cost implication, it shall raise this with the Authority as soon as reasonably practicable and such additional performance indicators shall be agreed through the Change Control Procedure.

### 3. SERVICE LEVELS

- 3.1 The Supplier shall monitor and measure its performance of the Services as against each of the Service Levels and shall send the Authority a report detailing the standard of performance which was achieved against the Service Levels in accordance with the provisions of Part B of this schedule B16.
- 3.2 The Supplier shall, at all times, provide the Services in such a manner that achieves the Operating Service Levels.
- 3.3 If the Supplier fails to achieve any of the Operating Service Levels, the following consequences may apply depending on the nature of the Service Failure :
- 3.3.1 Service Points may accrue (which will be fed into a defined formula set out in schedule B17 to calculate any Service Credit due to the Authority in the next invoicing period); and
- 3.3.2 the Supplier being required to create a Correction Plan in the event of a Critical Service Failure occurring.
- 3.4 The Authority shall be entitled to terminate or suspend this Call off Contract pursuant to clause 55 (Termination Rights) and/or seek damages in addition to any Service Credits and/or Critical Service Failures which have already been accrued by the Supplier and for which Service Credits are payable by the Supplier to the Authority.

- 3.5 The Supplier shall use all reasonable endeavours to achieve the Operating Service Levels during any period where the Supplier is entitled to performance relief.

#### 4. RIGHT OF TERMINATION FOR PERSISTENT CRITICAL SERVICE FAILURES

- 4.1 The Authority shall be entitled to terminate this Call off Contract in accordance with clause 55.1 if there are 3 Critical Service Failures in any consecutive 4 month period (the Critical Service Failures may be the same or different in nature). In that event, there is no requirement for the Authority to follow the Remedial Plan Process in clause 56 before exercising the right of termination under clause 55.1.

#### 5. EXCUSED PERFORMANCE

- 5.1 In circumstances where the Supplier is not already entitled to performance relief, the Supplier may claim relief from Service Credits and Service Failure regimes to the extent the Supplier can demonstrate to the reasonable satisfaction of the Authority that:

5.1.1 an action on the Authority's behalf caused the Supplier to fail to meet the required Operating Service Levels; or

5.1.2 an action by a third party outside the control of the Supplier caused the Supplier to fail to meet the required Operating Service Levels, provided that in such circumstance the Supplier has complied with its obligations in this Call off Contract including the BCDR Plan,

- 5.2 The Supplier may seek relief from the Service Credits and the Service Failure regimes for Permitted Maintenance and Emergency Maintenance. The Supplier may not seek relief from either Service Failure regimes due to Permitted Maintenance or Emergency Maintenance that is not carried out in accordance with the Maintenance Schedule and/or (where applicable) exceeds the agreed hours for such Permitted Maintenance or Emergency Maintenance.

## 6. SERVICE CREDITS

- 6.1 Schedule B17 (Charges) sets out the mechanism by which Service Points are converted into Service Credits.
- 6.2 The Authority shall use the performance reports provided pursuant to Part B of this schedule B16 to, among other things, verify the calculation and accuracy of the Service Credits, if any, applicable.
- 6.3 Service Credits are a reduction of the Charges for the Services and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with the provisions of schedule B1 (Invoicing Procedure).
- 6.4 In the event that the Supplier fails to achieve an OSL in respect of a Service Level in any reporting period, the Supplier shall accrue Service Points in accordance with the table at paragraph 4.4 (if Service Points are applicable to that Service Level).
- 6.5 In any Contract Year, the maximum liability of the Supplier for Service Credits shall be limited to:
- 6.5.1 10% of the annual Charges payable by the Authority in that Contract Year (except where paragraph 6.5.2 applies); and
- 6.5.2 20% of the annual Charges payable by the Authority in that Contract Year, in respect of all Critical Service Failures occurring in that Contract Year.

## 7. NATURE OF SERVICE CREDITS

The Supplier confirms that it has considered the Service Credits and the At Risk Amount in setting the level of the Charges. Both parties agree that the Service Credits and the At Risk Amount are a reasonable method of price adjustment to reflect poor performance.

## 8. SUPPLIER SYSTEM MAINTENANCE

- 8.1 The Supplier shall carry out any necessary Maintenance Releases, where:

- 8.1.1 it reasonably suspects that the Services or any part thereof has or may have developed a fault;
  - 8.1.2 upon the Authority's request or;
  - 8.1.3 To further protect the integrity, security or availability of the Service
- 8.2 Any such Maintenance Release shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the Services
- 8.3 The Supplier shall create and maintain a rolling maintenance schedule with regard to the Supplier System ("Maintenance Schedule") to be agreed with the Authority. The Maintenance Schedule shall be discussed and updated by the parties at the Governance Board meetings pursuant to schedule B11 (Governance).
- 8.4 When the Supplier wishes to carry out any maintenance to the Supplier System (other than Emergency Maintenance), it shall ensure that:
  - 8.4.1 the timing of the planned maintenance is in accordance with the requirements of the Maintenance Schedule or is as otherwise agreed in writing with the Authority Representative at least twenty Working Days in advance;
  - 8.4.2 subject to paragraph 8.7, it is carried out during Non-Core Hours;
  - 8.4.3 once agreed with the Authority's Representative the planned maintenance (which shall be known as "Permitted Maintenance") is forthwith entered onto the Maintenance Schedule; and
  - 8.4.4 the Permitted Maintenance is subsequently carried out in accordance with the Maintenance Schedule.
- 8.5 The Supplier shall carry out any necessary maintenance where it reasonably suspects that the Supplier System or the Services or any part thereof has or may have or could develop a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not

possible so as to minimise) disruption to the Supplier System and the Services.

- 8.6 The Supplier shall give as much notice as is reasonably practicable to the Authority's Representative prior to carrying out any Emergency Maintenance.
- 8.7 In the event that the Supplier is providing a 24/7 hour service, or the Authority is required, but not able to support maintenance during Non-Core Hours, the parties shall consult to determine the most appropriate time to carry out the relevance maintenance taking into account the window of time with the lowest demand for the service.

## Part B (Performance Monitoring)

This Part B is to be read in conjunction with schedule B11 (Governance).

### 1. PRINCIPAL POINTS

- 1.1 This Part B provides the methodology for monitoring the Services:
  - 1.1.1 to ensure that the Supplier is complying with the Service Levels;
  - 1.1.2 for identifying any Service Failures in the performance of the Supplier and/or delivery of the Services ("Performance Monitoring System").
- 1.2 Not Used
- 1.3 The approval process for the draft Performance Monitoring System is contained in clause 11A of the Call off Contract.
- 1.4 The Supplier shall ensure that the Performance Monitoring System shall be maintained and updated on a basis to be agreed with the Authority from time to time (both parties acting reasonably) , as may be necessary to reflect the then current state of the Services.
- 1.5 Not Used
- 1.6 Without prejudice to the obligations imposed upon the Supplier and the rights afforded to the Authority pursuant to paragraph 1.2 of this Part B of this schedule, the parties shall consider and review the Performance Monitoring

System at the Governance Board meetings pursuant to schedule B11 (Governance).

- 1.7 The Authority shall be entitled to reasonably require - and the Supplier must comply with requests for - routine changes to the Performance Monitoring System.
- 1.8 Without prejudice to the provisions of paragraphs 1.6 and 1.7 of this Part B each of the Authority and the Supplier shall have the right to propose any Changes to the Performance Monitoring System in accordance with the Change Control Procedure. For the avoidance of doubt, any requests for Changes to the Performance Monitoring System shall be dealt with via the Change Control Procedure.

## 2. SERVICE IMPACTING EVENTS

The Supplier shall notify the Authority within 30 minutes) if there is an unplanned incident and/or an event that is likely to have a significant impact on the delivery of the Services.

## 3. REPORTING OF SERVICE PERFORMANCE

- 3.1 The Supplier shall ensure that the Authority is notified of the Supplier's performance against each of the Service Levels that relate to an Activity Service in accordance with the following periods:
  - for Service Levels within a calendar month Measurement Period, within 21 days following the end of that Measurement Period;

## 4. REPORTING AND MANAGEMENT OF SERVICE FAILURES

- 4.1 The Supplier shall monitor the Service Failures in accordance with the Performance Monitoring System and the provisions of clause 12 (Service Levels) of the Call off Contract.
- 4.2 The Supplier shall ensure that all Service Failures are logged on the Service Failure Log immediately after the Supplier (including any Sub-Supplier) becomes aware of the relevant Service Failure. The Authority shall have the



right to review the Service Failure Log at any time for the purpose of checking its accuracy and completeness.

- 4.3 The Supplier shall ensure that, as a minimum, the following details are recorded by the Supplier in the Service Failure Log in respect of each Service Failure:

4.3.1 a unique report number (report numbers shall be applied sequentially);

4.3.2 the date and time the Supplier became aware of the Service Failure;

4.3.3 the nature of the Service Failure;

4.3.4 the action intended to be taken or which has been taken to rectify the Service Failure;

4.3.5 details of any communication with the Authority Representative in connection with the Service Failure;

4.3.6 notes/comments regarding any mitigating circumstances with regard to the Service Failure.

- 4.4 At the request of the Authority, the Supplier shall provide to the Authority Representative a copy of the entry in the Service Failure Log in respect of each Service Failure within such period as the Authority shall reasonably require with respect to any Service Failure.

- 4.5 Where a Service Failure is capable of being resolved, the Supplier shall, whenever requested by the Authority Representative (acting reasonably), at intervals of no more frequently than 60 minutes in respect of BAU Services provide to the Authority Representative an up-to-date status report with respect to each Service Failure.

## 5. CRITICAL SERVICE FAILURE

- 5.1 Where there has been a Critical Service Failure, the Supplier shall produce a Correction Plan within 10 Working Days of the Critical Service Failure occurring, and such Correction Plan shall contain the following information as a minimum:

- 5.1.1 the cause and impact, if known, of the Critical Service Failure;
- 5.1.2 the steps that the Supplier has taken and intends to take to rectify the situation;
- 5.1.3 the steps that will be taken to ensure the Critical Service Failure will not re-occur;
- 5.1.4 the name of the person who will be responsible for monitoring the effectiveness of the Correction Plan; and
- 5.1.5 the time that it will take to fully implement the plan.

## 6. PERFORMANCE MONITORING AND PERFORMANCE REVIEW

- 6.1 Within twenty one Working Days of the end of each Service Period, the Supplier shall provide a Performance Monitoring Report to the Authority Representative
- 6.2 The Performance Monitoring Report shall be in the format set out in the Performance Monitoring System and shall contain, as a minimum, the following information in respect of the Service Period just ended:
  - 6.2.1 the monitoring which has been performed in accordance with the Performance Monitoring System with a summary of any issues identified by such monitoring;
  - 6.2.2 for each Service Level, the actual performance achieved in each Measurement Period in the Service Period, and that achieved over the previous 3 Service Periods;
  - 6.2.3 a summary of all Service Failures that occurred during the Service Period;
  - 6.2.4 the level of each Service Failure which occurred;
  - 6.2.5 which Service Failures remain outstanding and progress in resolving them;

- 6.2.6 for any Service Failure which has resulted in the Supplier's performance of the Services falling to or below the highest applicable Failure Level (i.e. the Failure Level which has the most potential Service Credits attached) occurring in the Service Period, the cause of the fault and any action being taken to reduce the likelihood of recurrence;
  - 6.2.7 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
  - 6.2.8 the number of Service Points awarded to each Service Failure in that Service Period;
  - 6.2.9 a summary of all Service Failures that have occurred during the Service Period (and details of all Critical Service Failures that have occurred from the Effective Date);
  - 6.2.10 any outstanding Correction Plans relating to Critical Service Failures;
  - 6.2.11 the Service Credits to be applied in respect of that Service Period indicating the Service Failure(s) to which the Service Credits relate;
  - 6.2.12 a rolling total of the number of Service Failures and Service Points that have occurred and accrued over the preceding six months;
  - 6.2.13 relevant particulars of any aspects of the performance by the Supplier which fail to meet the requirements of the Call off Contract; and
  - 6.2.14 such other details as the Authority may reasonably require from time to time.
- 6.3 The draft Performance Monitoring Report shall be reviewed and its contents agreed by the parties at the meeting which immediately follows the issue of such report in accordance with paragraph 6.4 of this Part B ("Performance Review Meeting").
  - 6.4 The Supplier shall provide the Authority's Representative with a quarterly written summary of all Performance Monitoring Reports that have been prepared during that Quarter ("Quarterly Summary"). The Quarterly

Summary shall be provided by the Supplier to the Authority within five Working Days of the end of each Quarter, and shall be reviewed at the Performance Review Meeting which immediately follows its issue. The Quarterly Summary shall contain such details as the Authority shall reasonably require.

6.5 The parties shall attend Performance Review Meetings on a Quarterly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Supplier and the Authority of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):

6.5.1 take place within 10 working days of the Performance Monitoring Report being issued by the Supplier;

6.5.2 take place at such location and time (within normal business hours) as the Authority shall reasonably require unless otherwise agreed in advance;

6.5.3 be attended by the Supplier Representative and the Authority Representative; and

6.5.4 be fully minuted by the Supplier. The prepared and approved minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Supplier Representative and any other recipients agreed at the relevant meeting. The minutes of the preceding Performance Review Meeting will be agreed by both the Supplier Representative and the Authority Representative at each meeting.

6.6 The Authority shall be entitled to raise any additional questions and/or request any further information regarding any Service Failure.

6.7 The Supplier shall provide to the Authority such supporting documentation as the Authority may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified period.

6.8 Where the Authority reasonably considers that the Supplier has failed to provide a Performance Monitoring Report that materially complies with this schedule B16 (or at all), the Authority will notify the Supplier in writing of such non-compliance (which notice shall contain details of the alleged non-compliance). If the Supplier fails to remedy such failure within five Working Days after being notified in writing by the Authority of such non-compliance, the Authority may apply the maximum number of Service Points applicable to the Service Period. Such Service Points shall be converted into Service Credits and deducted from the Charges in accordance with the provisions of schedule B17 (Charges). These service deductions shall be retained by the Authority unless and until the Supplier provides a Performance Monitoring Report that meets the requirements of this schedule B16 in which case there shall be an equitable re-alignment of Service Credits reflecting the amount that the Supplier should have incurred in that Service Period. Such realignment shall take place in the next invoicing period. Any dispute regarding whether the Performance Monitoring Report materially complies with this schedule B16, shall be resolved using the Dispute Resolution Procedure.

## 7. SATISFACTION SURVEYS

7.1 In order to assess the level of performance of the Supplier, the Authority may undertake or require that the Supplier undertakes satisfaction surveys in respect of End Users or various groups of End Users ("Satisfaction Surveys"). These surveys may consider:

7.1.1 the assessment of the End Users impression of the Services

7.1.2 the assessment of the Supplier's performance against the agreed Service Levels; and/or

7.1.3 other suggestions for improvements to the Services.

7.1A For the avoidance of doubt, the Authority's right to require the Supplier to conduct Satisfaction Surveys are in addition to any obligation that the Supplier is under to conduct surveys of Authority satisfaction requirements as part of any of the Service Levels.

- 7.2 The Authority shall be entitled to notify the Supplier of any aspects of their performance of the Services which the responses to the Satisfaction Surveys reasonably suggest are not meeting the requirements of this Call off Contract.
- 7.3 The Supplier shall, as soon as reasonably practicable after notification from the Authority in accordance with paragraph 6.2 of this Part B ensure that such measures are taken by it as are appropriate to achieve such improvements as soon as is reasonably practicable.

## 8. RECORDS

- 8.1 The Supplier shall keep appropriate documents and records (e.g. call recording (only where call recording is permitted and required under this Call off Contract), help desk records, Service Failure Log, staff records, timesheets, training programmes, staff training records, goods received documentation, supplier accreditation records, complaints received etc.) in relation to the Services being delivered and the other requirements to be satisfied. The records and documents of the Supplier shall be available for inspection by the Authority and/or its nominee at any time and the Authority and/or its nominee may make copies of any such records and documents. For this purpose, the Supplier may pseudonymise any personal data having a member of its Supplier Personnel as its subject that is contained in records being inspected or otherwise provided to the Authority (provided that each member of the Supplier Personnel is allocated a fixed unique reference number).
- 8.2 In addition to the requirement in paragraph 8.1 of this Part B to maintain appropriate documents and records, the Supplier shall provide to the Authority such supporting documentation as the Authority may reasonably require in order to verify the level of the performance of the Supplier for any Service Period and the calculations of the amount of Service Credits for any specified period.
- 8.3 The Supplier shall ensure that the Performance Monitoring System and any variations or amendments thereto, the Service Level Log, any reports and summaries produced in accordance with this schedule and any other document or record reasonably required by the Authority are available to the

Authority upon request. Where access to such records are provided online, such records must be capable of being printed.

- 8.4 Such records must be retained in accordance with the requirements set out in schedule B15 (Records).

**APPENDIX A TO SCHEDULE B16****DEFINITIONS**

Application Upgrades	means upgrades to the Supplier application software
Core Hours	means Monday to Friday between the hours of 09:00 to 17:30 excluding UK public holidays
Failure Level	means the level of performance in respect of a Service Level that will trigger corrective actions and/or performance remedies.
Functional Release	means a release of the Software that contains new functionality, as well as rectifying software faults
Hours of Service	Detailed in section 1.6
Incident	means the first notification of an interruption to Service
Incident Report	means the hard copy or electronic version of the Incident created and maintained by the Supplier as part of the Services
Incident Resolution	means the Supplier has Resolved the incident. If a workaround is offered as a Resolution to an Incident, the Supplier will raise a Problem Record to progress the fault and the Incident Report will be closed.
Incident Resolution SLA	means the target time the Supplier has to Resolve the Incident for the allocated Severity Level as detailed within this Appendix A to schedule B16. If the Incident is not Resolved in accordance with the Incident Resolution SLA, then the Supplier has failed its Operating Service Level.
Incident Response	means the time from when an Incident is advised to the Supplier's Service Desk and passed to a resolver and the Incident is acknowledged.
Maintenance Release	means a release of the Software that primarily rectifies software faults
Major Incident	means an Incident that is classified as either Severity Level 1 or Severity Level 2
Major Incident Management process	means the Supplier's ITIL based management process for managing Major Incidents
Measurement Period	means the period of measurement of the Service. One (1) calendar month
Operating Service Level	means the minimum level of performance to a Service Level which is required by the Authority if the Supplier is to avoid corrective actions and/or performance remedies.
Performance	means the Supplier's report to the Authority detailing its



Monitoring Report	performance
Problem	means the (possibly unknown) underlying cause of one or more Incidents. Problem is used in this context as part of the Supplier's ITIL Problem Management Process.
Problem Record	means the log of the Problem within the Supplier's system
Problem Management Process	means the process by which the Supplier manages 'Problems'
Problem Scoring Matrix	means the process by which Problems are assessed, to determine the impact to the Authority. The Problem Scoring Matrix forms part of the Problem Management Process
Problem Priority	means the priority that the Problem is given, having been assessed via the Problem Scoring Matrix
Resolved	means that the Incident has been resolved and that the relevant Service is being provide to at least the standard required by this Call off Contract or that an acceptable work around has been agreed between the Parties acting reasonably (and "Resolve" and "Resolution" and "Unresolved" shall be interpreted accordingly).
Response Times	means the application response times, as defined in this Appendix A to schedule B16
Scheduled Downtime	means agreed scheduled downtime required for any software upgrades (Functional Release, Maintenance Release or Service Pack) under the sole control of the Supplier.
Service Call	means a call or report to the Supplier Service Desk
Service Delivery Executive	means the named Supplier contact for all Service related issues. The Service Delivery Executive acts as a point of escalation for the Authority.
Service Desk	means the Supplier's service desk
Service Pack	means a release of the Software which is not a Functional Release or Maintenance Release
Service Period	has the same meaning as the Measurement Period
Service Request	means any request that the Authority makes to the Supplier, that is not an Incident. The Supplier shall work on Service Requests in Core Hours only
Severity Level	The agreed level of severity that an Incident impacts the Service
Support Period	means the period during which the Supplier provides Support Services
Support Services	means any ongoing support of the Services to be provided by the

	Supplier including maintenance and support of Software.
Working Hour	means a 60 minute period during the Hours of Service.
WES	means the Warranted Environment Specification. This is the minimum specification of the IT infrastructure that the Supplier recommends for the efficient performance of Supplier Software.

## SCOPE OF SUPPLIER SUPPORT SERVICES

- 1.1 This sets out the support and maintenance obligations and Service Levels which the Supplier is required to achieve when delivering the Services, the mechanism by which Incidents will be managed and the method by which the Supplier's performance of the Services will be monitored by the Supplier.
- 1.2 The Supplier is responsible for the provision of a Service Desk and an online system that will be utilised by the Authority to contact the Supplier in relation to the Software Support Services
- 1.3 The Supplier is responsible for the provision of Performance Reports to an agreed schedule as defined in schedule B16.
- 1.4 The Supplier shall schedule back-ups of all Application Software and Databases as agreed with the Authority. The Authority shall ensure that up-to-date back-ups are stored in accordance with the Authority's business continuity and disaster recovery plan. The Authority shall ensure that such back-ups are available to the Supplier upon request, if a restoration of the Service is required to any environment.
- 1.5 The Supplier will perform the restoration of Application Software and Databases as defined in this Section in the event of the Authority requesting the service.
- 1.6 Hours of Service are defined as:
 

Severity Level 1 and Severity Level 2 Incidents will be responded to, managed, fixed and measured 24 hours a day, seven days a week.

Severity Level 3 & Severity Level 4 Incidents will be responded to, managed, fixed and measured inside Core Hours as defined, but for the

avoidance of doubt, Core Hours are the hours 09.00 and 17.30 Monday to Friday excluding UK Public Holidays.

## SERVICE DESK AND INCIDENT LOGGING PROCEDURE

- 1.7 The Supplier shall provide access to its Service Desk tool for the Authority to log Incidents and Service Requests during the Hours of Service.
- 1.8 The Supplier's Service Desk will only accept Incident Reports: -
- from the Authority's service desk and other approved Authority users;
- that the Authority has analysed and the Authority's service desk believe the Incident is attributable to the Supplier's Software;
- from the Authority that contain sufficient detail to allow the Supplier to progress the Incident to resolution. The Authority and Supplier will agree a minimum set of required data for the logging and ticketing of an Incident.
- 1.9 The Supplier's Service Desk shall classify Incidents as being Severity Level 1 – 4.
- 1.10 The Supplier's Service Desk will record and update the Incident log with details such as: -
- name of caller;
- role of caller;
- caller contact details including email address;
- enquiry type;
- action taken;
- incident details;
- replication steps on how the incident was observed
- free text.

- 1.11 The performance against the Service Levels for Incident - Resolution time is measured from the issue of the Incident ticket reference by the Supplier to the Resolution of the Incident.
- 1.12 The Supplier shall use reasonable endeavours to ensure that all Incidents are Resolved in accordance with the Service Level for the Severity Level allocated to the Incident.
- 1.13 The Supplier's Service Desk tool is available for the Authority to raise Incident Reports for all Severity Levels.
- 1.14 The Supplier shall ensure that all Incidents are logged immediately on receipt of notification, on the Incident log. The Authority shall be able to view the Incident Log.
- 1.15 Whenever requested by the Authority (acting reasonably), the Supplier shall, at intervals of no more than 1 hour, provide to the Authority an up-to-date status report with respect to each Incident for a Severity Level 1 or 2.
- 1.16 The Supplier's Service Desk will ensure that any Severity Level 1 or Severity Level 2 Incident is escalated and managed in accordance with the agreed Major Incident Management process.
- 1.17 If the Supplier wishes to apply a temporary solution (i.e. a work around) in order to Resolve an Incident, the Supplier will open a Problem Record in the Problem Management System and shall manage the fix of the Problem Record in accordance with the Supplier's ITIL based Problem Management Process.
- 1.18 In the event that the Authority (acting reasonably) considers that the Supplier is not using reasonable endeavours to resolve such a Problem and/or the lack of a resolution is to the detriment of the Authority's operational processes, the Authority may escalate in the Performance Management Review
- 1.19 If an Incident remains unresolved at the end of the Measurement Period in which it was reported, the Supplier shall treat the Incident as ongoing. The Incident Resolution time will be reported in the Measurement Period that the Incident is Resolved.

## PROBLEM MANAGEMENT PROCEDURE

- 1.20 The Supplier will operate a Problem Management Process to manage Problems.
- 1.21 Problem Records will be prioritised in accordance with the Supplier's Problem Management Process.
- 1.22 The Problem Management Process will ensure that all Problem records are managed through to closure.
- 1.23 A Problem will be closed when either:
  - a fix is applied to the Service; or
  - the original incident that gave rise to the resulting Problem cannot be reproduced and therefore cannot be investigated further; or
  - the Authority and the Supplier agree that a Problem can be closed as the impact has been mitigated to such an extent that no further activity is required.
- 1.24 If the Authority disagrees with the Supplier's prioritisation of a Problem Record they can raise the concern in accordance with the Problem Management Process or with the Supplier's Service Delivery Executive.

## RELEASE MANAGEMENT

- 1.25 A New Release ("N") will be made available at approximately 12 monthly intervals.
- 1.26 Between New Releases, a further service pack may be generally released ("Upgrade"). The service pack (SP1) is intended to correct any software defects discovered in the release and can also contain minor enhancements.
- 1.27 Outside of these New Releases and Upgrades, either a tactical fix or an emergency patch or "hot fix" may be released at any time in order to fix a Severity Level 1 or Severity Level 2 Incident or a Problem which is categorised as having a critical business impact which is discovered in the Supplier System.

- 1.28 The Supplier will request Scheduled Downtime through the release management process, to allow for New Releases and Upgrades to be deployed to the Authority, who shall not unreasonably reject the request.
- 1.29 The Service Level Agreement and any Service Credits are only valid if the Authority is running Supplier software at version N, or the immediately preceding version known as N-1.
- 1.30 If the N or N-1 policy is not maintained, or the hardware that the Suppliers Software is installed on is no longer in vendor support, then all Service Levels and subsequent Service Credits are invalid and the Supplier will only support the Software on a best endeavours policy

#### AUTHORITY'S SECURITY PROCEDURES

- 1.31 The Supplier will comply with the Authority's reasonable security procedures when working on the Authority's premises or remotely.

## **PART A - SERVICE LEVELS**

### **SERVICE LEVELS**

- 1.32 This Part A of this appendix sets out Service Levels for the services, the performance of which the parties have agreed to measure:
- 1.33 If the level of performance of the Supplier of any element of a Service during a Service Period:
- achieves the Operating Service Level in respect of each element of the Service, no Service Points will accrue to the Supplier in respect of that element of the Service;
- is below the Operating Service Level in respect of each element of the Service, the appropriate number of Service Points will accrue to the Supplier in respect of that element of the Service; or
- constitutes a Critical Service Failure, the Authority shall be entitled to terminate this Contract where such Critical Service Failure breaches the level detailed in paragraph 4.1 of Part A of schedule B16 and/or the limit of liability in respect of Service Credits (if any) that are payable by the Supplier to the Authority will be increased in accordance with paragraph 6.5.2 of Part A of schedule B16.

### **SUPPLIER SYSTEM MAINTENANCE**

- 1.34 The Supplier shall create and maintain a rolling Maintenance Schedule.
- 1.35 When the Supplier wishes to carry out any maintenance to the Supplier System (other than Emergency Maintenance), it shall ensure that:
- 1.36 the timing of the planned maintenance is agreed in writing with the Authority's Representative at least 20 Working Days in advance;
- 1.37 it is carried out within the hours and on the days agreed with the Authority;
- 1.38 The Supplier shall carry out any necessary maintenance where it reasonably suspects that the Supplier System or the Services or any part thereof has or

may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the Supplier System and the Services.

- 1.39 The Supplier shall give as much notice as is reasonably practicable to the Authority's Representative prior to carrying out any Emergency Maintenance.



## INCIDENT RESOLUTION SERVICE LEVELS

1.40 The applicable Severity Levels for Incidents are set out in the table below:

Severity Level	Incident Definition/Example	Incident Response Times	Incident Resolution SLA
Severity Level 1 – Critical	Software is down. End Users cannot log in or application is inoperable.	2 Working Hours	8 Working Hours
Severity Level 2 – Major	Software partially unavailable. Business-critical software function or group of functions is unusable, inaccessible or suffering a serious malfunction, or software error has left data corruptions or referential issues which require correcting	2 Working Hours	24 Working Hours
Severity Level 3 – Minor	Software inconvenient to use. Non business-critical software function or group of functions is unusable, inaccessible or not operating correctly.	2 Working Days	10 Working Days
Severity Level 4 – Routine	Software has cosmetic problem. Software function has a fault but continues to be usable.	5 Working Days	30 Working Days

## PROBLEM SCORING – MATRIX

Category	Relevance	Points	Relevance	Points	Relevance	Points
<b>Clinical safety</b>  Assessment ideally undertaken by a clinician and updated with the formal clinical risk assessment undertaken by a clinical safety engineer when available.	<b>Clinical Risk Categorisation methodology as Low</b>  Agreed clinical risk assessment indicates the issue as presenting no clinical risk.	0	<b>Items assessed under the Clinical Risk Categorisation methodology as Moderate</b>  Agreed clinical risk assessment indicates the issue as Moderate.	5	<b>Items assessed under the Clinical Risk Categorisation methodology as Significant</b> <b>Items assessed under the Clinical Risk Categorisation methodology as Significant risk.</b>  Agreed clinical risk assessment indicates the issue as presenting a Significant risk	25
<b>Security / IG</b>	<b>No risk of security / IG incident</b>	0	<b>Low risk of security / IG incident</b>  <b>Example</b> - 'Low risk' penetration test outcome. <b>Example</b> - Message error such as minor grammar problem on IG alert but the intention of message is still clear to an end user. <b>Example</b> - Administrative details for a patient cannot be viewed despite having the necessary RBAC rights.	5	<b>Medium risk of security / IG incident</b>  Supplier staff / Authority staff who are not authorised to see patient-identifiable records or data can gain access to them. Conversely a user should be able to see all elements of the patient's EPR that they are entitled to see (subject to the user having the necessary RBAC rights and legitimate relationships).  <b>Example</b> - Patient Lists containing clinical-based criteria being available across organisations with no effective information sharing agreement or access control framework. <b>Example</b> - 'Medium risk' penetration test outcome. <b>Example</b> - Unable to see Patient Lists containing clinical-based criteria when the user's RBAC controls and legitimate relationships should have allowed them to do so.	10
<b>Frequency of use</b>	Not Applicable		<b>Medium usage monthly / low usage weekly</b>  <b>Example</b> - Setting up a new clinic.	3	<b>High usage monthly / medium usage weekly / low usage daily</b>  <b>Example</b> - Production of daily operational reports.	5

Category	Relevance	Points	Relevance	Points	Relevance	Points
Frequency of occurrence within function	Not Applicable		Infrequently  <b>Example</b> - Performing search for a patient where the fault appears for patients with a surname beginning with X.	2	Frequently Occurs frequently but not all the time, including issues that only occur when a set of conditions apply.  <b>Example</b> - Confirming on-hold appointment fails to take the appointment into a booked state when performed on merged slots.	5
Financial impact  Inclusive of resource time (over average month) assuming no immediate fix is available.	No Impact	0	Additional costs are sustainable for an unspecified period A minor process change can be made which has minimal impact to the NHS.  <b>Example</b> - Minimal additional time required to complete patient facing activity. <b>Example</b> - Unable to search for patient using patient identifier - workaround is to use NHS number or demographic details. <b>Example</b> - Single page letters printing on multiple pages.	5	Additional costs are sustainable for a defined period A workaround is available, which causes minor inconvenience (low resource impact / low cost).  <b>Example</b> - Additional time involved in completing patient-facing activities requiring some additional resources to maintain patient throughput. <b>Example</b> - Excessive performance problems in creating contacts and caseload allocation requiring additional staff to be appointed to complete admin tasks.	10
Impact on patient	No impact	0	Minimal impact  <b>Example</b> - Slightly slower than expected performance in a patient-facing function, meaning that the patient has to wait a few seconds longer than expected.	5	Moderate impact  <b>Example</b> - Costs incurred to patient, no delay to care e.g. patient required to make telephone call. <b>Example</b> - Potential for clinician to order unnecessary tests because the right information is not available to them.	10

Category	Relevance	Points	Relevance	Points	Relevance	Points
Stability / operability / performance	No Impact	0	<b>System operable with minor disruption</b> Slow response times in areas that are not business critical. Small impact to availability - which can be mitigated without impact to NHS.  <b>Example</b> - Configuration team creating a new service point experiencing hanging at some points in the process.	3	<b>System operable with moderate disruption</b> Issue causes disruption, system usable but affects many users.  <b>Example</b> - When producing letters, document content roadmap step taking excessive time to load.	5
Impact on user	No impact	0	<b>Minimal impact</b>  <b>Example</b> - User has to scroll to see the information that they might expect to see without scrolling, or has to enter data to a field which they might expect to have a default value pre-entered to. Typically, 1 or 2 "unnecessary" mouse clicks or seconds required to complete the function.	2	<b>Moderate impact</b>  <b>Example</b> - User has to complete two care activities to perform a function that they might have expected to be within a single care activity, or has to repeat a full care activity when they might have expected to be able to repeat just a part of it. Typically, several "unnecessary" mouse clicks or seconds required to complete the function.	5
Distribution Multiplier			<b>Single Trust</b> Affects one single Trust - related to a specific business practice at that Trust.	<b>Category Score</b> 1	<b>Multiple Trusts</b> Impacts multiple Trusts.  <b>Examples</b> - Access Planning, Contracting, Casenote Tracking, TTO.	<b>Category Score</b> 1.25

Once a Problem Record has been scored it will be prioritised and managed in accordance with the following performance indicators

Problem Priority	Score	Description	Performance Indicator
1	>100	Critical Business Impact	< 30 Working Days for a tactical fix
2	76 - 100	High Business Impact	Next available release
3	46 - 75	Medium Business Impact	Target for a future release
4	11 - 45	Low Business Impact	Considered for immediate closure or future release
5	0 - 10	No Business Impact	Immediately closed

## SCHEDULE B17

## Charges

## 1. PURPOSE OF THE SCHEDULE

1.1 The purpose of this schedule is to set out the provisions relating to the Charges applicable to the Services. The Charges payable for the provision of the Services shall be calculated in the manner described in the paragraphs of this schedule B17 below.

## 1.2 Total Contract Price

1.2.1 Subject to the provisions of schedule B6 (Change Control Procedure) the Charges for the period up to the end of the Initial Term will be £133,953.60 excluding VAT which will be chargeable in addition at the prevailing rate and subject to any increases in Third-Party charges.

1.2.2 The Charges are in respect of the following Services:

- Licence Charges as described in section 1.3 of this Schedule B17.
- Implementation Charges as described in section 1.4 of this Schedule B17
- Hardware Charges as described in section 1.5 of this Schedule B17
- Annual Service Charges as described in section 1.6 of this schedule B17.

## 1.3 Licence Charges

Supplier Software			
Description:	Type of Licence	Period	Charges
iLAB TP applications and interfaces as detailed in the support schedule embedded below in section 1.6.	Enterprise Wide	Initial Term	Not applicable

Third-Party Software			
Description:	Type of Licence	Period	Charges
InterSystems Cache	198 concurrent End User Licenses.	Initial Term.	Included in Charges

The Supplier Services and Enterprise Wide licence for Supplier Software and Supplier's Background IPR are restricted to the Authority organisation, services and geographical locations that the Authority provides its services to that exist as at the Effective Date. The Services and the licence cover Authority Service Recipients and End Users for the same restricted scope.

In the event that:

- the Authority wishes to increase the scope of the Authority organisation, services and locations through any future organisational change such as a service transfer or merger, or
- the Authority wishes to authorise Authority Service Recipients to receive the benefit of or use the Supplier Services in connection with any increased scope of the Authority organisation, services and locations,
- the Authority or any Authority Service Recipient (as applicable) wishes to authorise any End Users to use the Supplier System and/or receive the benefit of or use the Supplier Services in connection with any increased scope of the Authority organisation, services and geographic locations supported,

then the Change Control Procedure will apply and the Authority agrees that additional Charges may be applicable including additional licence fees.

Where the Supplier grants a perpetual licence then this provides the right for the Authority to Use in perpetuity any supported version of the relevant software and is subject to the Authority having procured a current software support contract with the Supplier.

#### 1.4 Implementation Charges

There are no implementation charges applicable.

#### 1.5 Hardware Charges

The Charges in respect of Hardware support are included in the annual Service Charges.

#### 1.6 Service Charges

The annual Service Charges in respect of the Services will be £133,953.60 excluding VAT and will be subject to Third-Party increases where applicable.

Details are included in Schedule A2 and within the embedded Support Schedule



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These charges are subject to an annual review to add / delete Interfaces as applicable.

## 2 Indexation

2.1 All Charges described in this schedule B17 shall be subject to Indexation upon the first and each subsequent anniversary of the Effective Date.

“Indexation” means the differential in the UK Retail Price Index (RPI) for the 12 months period measured from the published index rate for the month, four months prior to the start of the Support Services Term and annually thereafter on the anniversary of the start of the Support Services Term.

2.2 Charges may also be increased in respect of any third party increases above Indexation that the Supplier has to incur in order to provide the Services.

#### 2.3 Service Credits

No Service Credit regime applies to this Call off Contract

## 3 Payment Terms

3.1 The Charges will be invoiced quarterly in advance.

3.2 The Authority shall pay the Supplier within thirty (30) days of receipt of a valid invoice by BACS.

3.3 The Authority shall advise the Supplier of any incorrect items included on the Supplier's invoices within 15 Working Days of receipt of the invoice.



3.4 In the event that an invoice contains an incorrect item, the Supplier may without prejudice to any claim for payment of an undisputed amount, either re-invoice for both for the correct and incorrect items on 2 separate invoices or submit a credit for the disputed amount. The Authority shall pay the undisputed invoice within 30 Days of receipt of the original invoice receipt.

3.5 Upon resolution the incorrect items shall either:

- a) be re-invoiced and/or paid within 10 Working Days of resolution of the correction be paid by the Authority or
- b) be cancelled via a credit note raised by the Supplier within ten Working Days.

#### 4 Change Control

Any reductions, increases, deletions or additions to the Charges shall be implemented in accordance with the following principles and those set out in this paragraph 2 of schedule B6 (Change Control Procedure):

- The Supplier shall use the then current labour rates to cost any Changes;
- Prices for third party products and services will be charged at cost including all discounts received by the Supplier;
- Any reasonable travel and subsistence, shall be agreed between the parties and consistent with the Authority's expenses policy;
- The Supplier may include contingency and risk costs to the Change where appropriate;
- The Supplier may include reasonable overhead and profit (including on the cost of third party products and services).

The Supplier will disclose sufficient detail including the assumptions underlying any estimates to enable the Authority to reasonably satisfy itself in respect of the reasonableness of the Charges associated with any Change.

#### 5 Termination Payment

In accordance with paragraph 2.3 of schedule B19 (Payments on Termination) the Authority confirms that the Supplier is permitted to incur liability in respect of the procurement and implementation of Third-Party software, as applicable.

In the event that the Authority exercises its rights under clause 55.4.1 to terminate for convenience on 3 months' notice this amount may not be fully recovered through the Charges and as such the Supplier will be entitled to a Termination Payment.

## SCHEDULE B18

### No Staff Transfer on Entry

"Entry Service Transfer Date"	means the date of the Entry Service Transfer;
"Entry Service Transfer"	means the application of the Acquired Rights Directive or the Employment Regulations to the transfer of employees from the Outgoing Supplier to the Supplier on commencement of the Services resulting in the Supplier inheriting the liabilities in respect of the Transferring Outgoing Supplier's Employees;
"Outgoing Supplier"	any incumbent third party supplier who at the date of this Call off Contract is providing the Services or a service similar to the Services (or any part of the Services).
"Transferring Outgoing Supplier's Employee(s)"	means the employees of the Outgoing Supplier who transfer to the Supplier in the event of an Entry Service Transfer pursuant to the Acquired Rights Directive or the Employment Regulations.

#### 1. PURPOSE OF THIS SCHEDULE B18

This schedule B18 sets out the parties' respective rights and obligations in relation to the application of the Employment Regulations at the commencement of this Call off Contract.

#### 2. APPLICATION OF THE EMPLOYMENT REGULATIONS ON THE COMMENCEMENT OF THE CALL OFF AGREEMENT

2.1. The Authority and the Supplier agree that, at the Effective Date, neither the Acquired Rights Directive nor the Employment Regulations shall apply in such a way so as to transfer the employment of any employees of the Authority to the Supplier or any Supplier Party at the Effective Date.

2.2. If any person who is an employee of the Authority claims or it is determined that his/her contract of employment has been transferred from the Authority to the Supplier or a Supplier Party pursuant to the Employment Regulations and/or the

Acquired Rights Directive, or claims that his employment would have so transferred had he not resigned, then:

- 2.2.1. the Supplier will, within 7 Working Days of becoming aware of that fact, give notice in writing to the Authority;
  - 2.2.2. the Authority may offer employment to such person within 21 Working Days of the notification by the Supplier;
  - 2.2.3. if such offer of employment is accepted, the Supplier or the relevant Supplier Party shall immediately release the person from his/her employment;
  - 2.2.4. if after that period has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the Supplier or the relevant Supplier Party may within 7 Working Days given notice to terminate the employment of such person.
- 2.3. Subject to the Supplier and each relevant Supplier Party acting in the way set out in paragraph 2.2 of this schedule B18 or in such other way as may be agreed between the Supplier and the Authority, the Authority will indemnify the Supplier and each Supplier Party against:
- 2.3.1. all Employee Liabilities arising out of such termination or otherwise arising out of the employment of such person by the Supplier or the relevant Supplier Party; and/or
  - 2.3.2. any direct employment costs (if any) associated with the employment of such person by the Supplier or the relevant Supplier Party up to the date of termination of such person's employment.
- 2.4. The indemnity in paragraph 2.3 of this schedule B18 will not apply:
- 2.4.1. to any claim by any person in respect of whom the notification given to the Authority under paragraph 2.2.1 of this schedule B18 is received by the Authority more than six calendar months after the Effective Date; and
  - 2.4.2. if such person is neither re-employed by the Authority nor dismissed by the Supplier or the relevant Supplier Party within the time scales set out in paragraph 2.2 of this schedule B18, in which case such person will be treated

as having transferred to the Supplier or the relevant Supplier Party who shall be responsible for all liabilities arising in respect of any such person.

## SCHEDULE B19

### Payments on Termination

#### 1. PURPOSE OF SCHEDULE

- 1.1 This schedule B19 sets out the calculation of the Termination Payment that may be paid by the Authority to the Supplier pursuant to clause 58 (Payments Made on Termination).
- 1.2 If the Call off Contract is terminated for any reason other than pursuant to clause 55.4 (Termination for Convenience by the Authority) or clause 55.7 (Termination by the Supplier) such as, without limit, any termination by the Authority pursuant to clause 55.1 (Termination or suspension by the Authority for Cause), 56.3A (Termination by the Authority for circumstances other than breach), 55.5 (Termination for Change of Control), 55.6 (Partial Termination) or by either party pursuant to clause 55.9 (Termination for Continuing Force Majeure Event), no Termination Payment shall be due to the Supplier and the remainder of this schedule B19 shall not be applicable.

#### 2. TERMINATION PAYMENT

- 2.1 Subject to paragraph 2.3, in the event that the Authority provides the Supplier with at least three months written notice to terminate this Call off Contract pursuant to clause 55.4 (Termination for Convenience by the Authority), no Termination Payment shall be payable to the Supplier.
- 2.2 Subject to paragraph 5 (Mitigation of the Termination Payment), where less than 3 months' notice has been provided pursuant to clause 55.4, the Termination Payment payable shall comprise:
  - 2.2.1 the Charges that would have been payable to the Supplier had the Call off Contract continued for a period of 3 months following the date of termination pursuant to clause 55.4; and
  - 2.2.2 such costs agreed pursuant to paragraph 2.3 below.
- 2.3 In circumstances where the Authority has expressly agreed in writing that the Supplier may incur a liability to pay an agreed amount of costs relating to an

item that extends beyond a three month period, subject to the remaining provisions of this schedule B19, the Supplier shall be entitled to a Termination Payment for the sole purpose of recovering such agreed costs.

2.4 The Termination Payment payable pursuant to paragraphs 2.2 and 2.3 above shall be limited to costs which:

2.4.1 would not have been incurred had this Call off Contract continued until its natural expiry; and

2.4.2 relate directly to the termination of the Services; and

2.4.3 are unavoidable, proven, reasonable, and not capable of recovery; and

2.4.4 are incurred under arrangements or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms; and

2.4.5 do not relate to contracts or subcontracts with Affiliates of the Supplier, and

2.4.6 do not exceed the Charges applicable in respect of the remainder of the Term.

2.5 The Supplier shall at any time upon reasonable request from the Authority, provide the Authority with full details about the level of any Termination Payment pursuant to paragraph 2.2 and 2.3 .

### 3. PARTIAL TERMINATION FOR CONVENIENCE

The Termination Payment payable to the Supplier pursuant to clause 55.4 (Termination for Convenience by the Authority) in accordance with this schedule represents the amount payable only where this Call off Contract is terminated in full. Where this Call off Contract is only partially terminated then the amount of compensation payable shall be calculated in accordance with the principles and assumptions detailed or referred to in this schedule B19, but only in respect of such part of this Call off Contract that has been terminated.

4. FULL AND FINAL SETTLEMENT

Any Termination Payment paid in accordance with this schedule B19 shall be in full and final settlement of any claim, demand and/or proceedings of the Supplier in relation to any termination by the Authority pursuant to clause 55.4 (Termination for Convenience by the Authority) or termination by the Supplier pursuant to clause 55.7 (Termination by the Supplier), and the Supplier shall be excluded from all other rights and remedies it would otherwise have been in respect of any such termination.

5. MITIGATION OF THE TERMINATION PAYMENT

The Supplier agrees to take all reasonable steps to minimise and mitigate the Termination Payment by:

- 5.1 the appropriation of employees and resources for other purposes. If such employees and resources can be used for other purposes then there shall be a proportionate reduction in the Termination Payment payable by the Authority or a third party to the Supplier; and
- 5.2 in relation to contracts entered into with third parties, termination by the Supplier of those contracts at the earliest possible date without breach or where contractually permitted, and, where required by the Authority, assigning such contracts to the Authority or a third party acting on behalf of the Authority.

6. INVOICING FOR THE TERMINATION PAYMENT

All sums due under this schedule shall be payable by the Authority to the Supplier in accordance with the terms set out in schedule B1 (Invoicing Procedure).

7. SET OFF

For the avoidance of doubt, the Authority shall be entitled to set off any outstanding liabilities of the Supplier against any amount it pays in compensation pursuant to this schedule B19 and in accordance with its rights set out in this Call off Contract.

8. NO DOUBLE RECOVERY

The value of the Termination Payment shall be reduced or extinguished to the extent that the Supplier has already received the Charges or the financial benefit of any other remedy given under this Call off Contract so that there is no double counting in calculating the relevant payment.

## SCHEDULE B20 -SERVICE IMPROVEMENT SAVINGS

### 8. PURPOSE OF THIS SCHEDULE B20

8.1 In the event that, pursuant to clause 16 (Service Improvement), improvements to the Services and the Future Fixed Price Services are proposed by the Supplier and agreed by the Authority, this schedule sets out the principles by which the parties may agree to share any resultant cost savings.

### 9. THE PRINCIPLES UNDERPINNING BENEFIT SHARE

9.1 It may in certain circumstances, be appropriate, and even desirable, to allow the Supplier to share in the cost benefits of any service improvement it suggests pursuant to clause 16.

9.2 The percentage benefit share accruing to the Supplier may be between 0% - 40% of such cost saving made to the Authority under this Call off Contract taking into account all the circumstances, including in particular the risk share arrangements, the remaining Term of the Call off Contract and the responsibility for the investment risk.

9.3 As part of the discussions regarding an appropriate benefit share, both parties shall enter into good faith discussions regarding which party should be responsible for the required investment that will deliver the required improvements and resultant cost savings. This should take into account all the circumstances including the remaining Term of the Call off Contract and the wider benefit of such improvements to both parties outside this Call off Contract.

9.4 Cost savings shall be construed as all savings made by the Authority under this Call off Contract during its Term after any investment costs which are agreed to be paid for by the Authority in order to achieve the benefit have been deducted.

9.5 It must be demonstrated that the savings to be delivered are genuine service improvement savings rather than secured at the cost of service quality.



## SCHEDULE B21

### Off shoring requirements

#### 1. PURPOSE OF SCHEDULE

This schedule sets out the conditions which the Supplier must comply with for the purposes of clauses 40.4 and/or 40.5.1.3 (Protection of Personal Data) of this Call off Contract.

#### 2. CONDITIONS FOR DATA TRANSFERS

2.1 The Supplier shall ensure that any transfer of Authority Personal Data outside of the United Kingdom ("Data Transfer") and any subsequent processing of Authority Personal Data outside the United Kingdom ("UK") is compliant with the Data Protection Legislation and the Authority's data security requirements.

2.2 The Supplier shall ensure that the Data Transfer and any subsequent Processing outside the UK is carried out:

2.2.1 within the European Economic Area; or

2.2.2 pursuant to standard and/or model clauses (which are approved by a relevant Authority as offering adequate safeguards under the Data Protection Legislation) ("Model Clauses") in this Call off Contract or a separate data processing agreement between the parties; or

2.2.3 pursuant to such other appropriate safeguards as are recognised by the Data Protection Legislation; and

2.2.4 that any Sub-Supplier or other third party who will be Processing and/or transferring the Authority Personal Data outside the UK enters into a direct data processing agreement with the Authority on such terms as may be required by the Authority, which the Supplier acknowledges may include the incorporation of Model Clauses.

2.3 The Supplier shall on demand indemnify and keep the Authority and each Authority Service Recipient indemnified at all times from and against all direct losses sustained by the Authority and each Authority Service Recipient, as

the case may be, in respect of any failure by the Supplier or, where relevant, Sub-Supplier, to comply with the terms and conditions of this schedule B21 and/or Data Protection Legislation in relation to Data Transfers. For the avoidance of doubt, where the Authority is the beneficiary of more than one indemnity, the Authority shall not be entitled to any double recovery.

### 3. GENERAL

3.1 The Supplier acknowledges that any breach of this schedule B21 (Off shoring requirements) or the terms of the Model Clauses or any other safeguards relied upon in accordance with paragraph 2.2.3 of this schedule B21 shall constitute material Default of this Call off Contract pursuant to clause 55.1 (Termination or suspension by the Authority for Cause) of the Call off Contract.

3.2 The Supplier undertakes to inform the Authority of the following circumstances:

3.2.1 any laws or regulations in its country of establishment or the country in respect of which the Processing of Authority Personal Data is taking place which may result in conflict with the requirements set out in this Call off Contract including any overriding laws which may constrain or compromise the confidentiality, data protection or privacy rights of the information;

3.2.2 any material change in circumstances in its country of establishment or the country in respect of which the Processing of Authority Personal Data is taking place which may compromise the confidentiality, data protection or privacy rights of the information; and

3.2.3 any changes to the matters considered as part of security risk assessments conducted by the Authority prior to the award of the Framework Agreement or prior to the award of this Call off Contract or under clause 40.5.1.3 (Protection of Personal Data) of this Call off Contract.

3.3 In the circumstances described in paragraphs 3.2.1, 3.2.2 or 3.2.3, the Authority may withdraw its consent granted to transfer Authority Personal

Data in the relevant jurisdiction for the purposes of clauses 40 (Protection of Personal Data) of this Call off Contract. In the event that such withdrawal of consent results in the Supplier being unable to provide the Services, the Authority may terminate this Call off Contract without any liability to the Supplier.

- 3.4 The Supplier shall ensure that, in the event of any withdrawal of consent pursuant to paragraph 3.3 above, the Supplier (and any Sub-Supplier or other third parties who are Processing and/or transferring Authority Personal Data outside of the UK) shall comply with the provisions of paragraph 8.1.1 of schedule B8 (Exit Management) in respect of any Authority Personal Data within the relevant jurisdiction.
- 3.5 Where the Authority exercises its rights to audit the Services pursuant to clause 24 of this Call off Contract the Supplier shall, and shall procure that any Sub-Suppliers or relevant third parties shall, provide such assistance as is required pursuant to the provisions of clause 24 in respect of any premises outside of the UK where a Data Transfer and/or the Processing of Authority Personal Data is taking (or has previously taken) place.

#### SCHEDULE C1

**Not Used**

#### SCHEDULE C2

**Not Used**

SCHEDULE C3

**Not Used**