



**Midlands and Lancashire**  
Commissioning Support Unit

## **Agreement**

**Provision: Clinical Advisory Team Web Services**



**2022/23**



**Between**

1. Midlands and Lancashire Commissioning Support Unit
2. Health Education England

For the Provision: Clinical Advisory Team Web Services

**DATED: 1<sup>st</sup> April 2022**

**THIS AGREEMENT is** made the First day of April 2022

**BETWEEN:**

- a) Midlands and Lancashire Commissioning Support Unit, an arm's length service organisation of NHS England ("the Service Provider") whose principal and/or registered office is at Heron House, 120 Grove Rd, Stoke-on-Trent ST4 4LX; and
  - b) Health Education England, whose registered address is, Blenheim House, Duncombe Street, Leeds, LS1 4PL, where the services will be received specifically by the Clinical Advisory Team, which is based at Health Education England, 3<sup>rd</sup> Floor, 3 Piccadilly Place, Manchester, M1 3BN, ("the Client"),
- together "the Parties" and each a "Party".

**WHEREAS:**

- a) Commissioning Support Units are part of NHS England and have the function of supporting the Commissioning activities of Clinical Commissioning Groups.
- b) The Service Provider is engaged in the business of providing services in relation to clinical commissioning support, and has reasonable skill, knowledge, qualifications and experience in that field.
- c) The Client wishes to engage the Service Provider to provide the Services detailed in Schedule 1, subject to, and in accordance with, the terms and conditions of this Agreement.
- d) The Service Provider has agreed to accept such engagement and shall provide the Services to the Client, subject to, and in accordance with, the terms and conditions of this Agreement.

**IT IS AGREED** as follows:

**1. Definitions and Interpretation**

1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

<b>"Actual Performance"</b>	means the Service Level actually achieved, over a given period, for a Service provided by the Service Provider when measured in accordance with Schedule 2;
<b>"Agreement Review"</b>	means a review of this Agreement which will be conducted in accordance with Clause 9 at the intervals specified in that Clause;
<b>"Best Practice IPR"</b>	means any Intellectual Property Rights developed by the Service Provider in connection with, or as a result of, the Services, that the Client might reasonably be able to use within its organisation for teaching and training of NHS best practice;
<b>"Business Day"</b>	means any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business;

<b>“Change of Law”</b>	means the coming into effect after the date of this Agreement of:  a) Legislation, other than any Legislation which on the date of this Contract has been published:  i. in a draft Bill as part of a Government Departmental Consultation Paper; ii. in a Bill; iii. in a draft statutory instrument; or iv. as a proposal in the Official Journal of the European Communities, or  b) any applicable judgment of a relevant court of law which changes a binding precedent;
<b>“Change in Control”</b>	any change in the ability to control a Health Service Body by virtue of the entering into of any franchise, management, transfer or other agreement or arrangement, under the terms of which the control over the management of the relevant Health Service Body is conferred on another person;
<b>“Client’s Representative”</b>	means, as at the date of this agreement, the Client’s representative who shall be responsible for liaising with the Service Provider’s Key Account Manager in accordance with Clause 9, or such other person who the Client may from time to time nominate;
<b>“Client’s Management Representative”</b>	means the Client’s representative who shall be responsible for liaising with the Service Provider’s Management Representative in accordance with Clause 9, or such other person who the Client may from time to time nominate;
<b>“Client’s Performance Representative”</b>	means the Client’s performance representative who shall be responsible for liaising with the Service Provider’s Management Representative in accordance with Clause 10, or such other person who the Client may from time to time nominate;
<b>“Commencement Date”</b>	means 1 <sup>st</sup> April 2022 which is the date on which this Agreement comes into force pursuant to Clause 3;



<b>“Confidential Information”</b>	<p>means, in relation to either Party, information of a confidential nature which is disclosed to that Party by the other Party pursuant to or in connection with this Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such), and including (without limitation):</p> <ul style="list-style-type: none"> <li>a) the terms of this Agreement;</li> <li>b) any information that would be regarded as confidential by a reasonable business person relating to: <ul style="list-style-type: none"> <li>i. the business, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the disclosing Party; and</li> <li>ii. the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing Party; and</li> </ul> </li> <li>c) any information developed by the Parties in the course of carrying out this Agreement;</li> </ul>
<b>“Contract Variation”</b>	<p>means an amendment or variation to the terms of this Agreement that may be requested, from time to time, by either Party and whose consideration and implementation is governed in accordance with Clause 17;</p>
<b>“Contract Variation Notice”</b>	<p>means a notice issued by the Party proposing a Contract Variation, setting out sufficient information to enable the Party in receipt of the notice to assess the extent of the Contract Variation and consider whether any change to the Services, as set out in Schedule 1, or the Service Prices is required in order to implement the Contract Variation;</p>
<b>“Dispute”</b>	<p>means a dispute, conflict or other disagreement between the Service Provider and the Client arising out of or in connection with this Agreement and whose resolution is governed in accordance with Clause 14;</p>
<b>“Expiry”</b>	<p>means the expiry of this Agreement on the Expiry Date in accordance with Sub-clause 3.1;</p>
<b>“Expiry Date”</b>	<p>means 31<sup>st</sup> March 2023 which is the date on which this Agreement comes to an end pursuant to Clause 3;</p>
<b>“Exit Management Plan”</b>	<p>means the exit management plan as set out in Clause 19.4;</p>
<b>“Force Majeure Event”</b>	<p>means any failure or delay in carrying out either Party’s obligations where such failure or delay results from one or more causes that are beyond the reasonable control of that Party and which are set out in Clause 21;</p>

<b>“Health Service Body”</b>	has the meaning given to it in Section 9 of the National Health Service Act 2006;
<b>“Intellectual Property Rights”</b>	means any and all patents, rights in inventions, rights in designs, trade-marks, trade and business names and all associated goodwill, rights to sue for passing off or for unfair competition, copyright, moral rights and related rights, rights in databases, topography rights, domain names, rights in information (including know-how and trade secrets) and all other similar or equivalent rights (subsisting now or in the future) in any part of the world, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights for their full term;
<b>“Key Account Manager”</b>	means, as at the date of this Agreement, the customer relationship manager who shall be responsible for liaising with the Client’s Representative in accordance with Clause 9, or such other person who the Service Provider may from time to time nominate;
<b>“Legislation”</b>	means any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of Section 2 of the European Communities Act 1972, in each case in the United Kingdom;
<b>“Output Data”</b>	means any data set (for the avoidance of doubt, such data set not containing personal data as defined by the UK Data Protection Act 2018 and the EU General Data Protection Regulation) that the Service Provider makes available to the Client pursuant to this Agreement;
<b>“Performance Remedy”</b>	means the Service(s) Improvement remedy available to the Client in the event that Service Levels set out at Schedule 2 are not adhered to as set out in Clause 11 and Clause 12;
<b>“Performance Report”</b>	means a report detailing the performance of the Services in relation to the Service Levels, prepared in accordance with the provisions of Clause 10 and Schedule 2;
<b>“Premises”</b>	means the Client’s premises or such other premises as may be notified from time to time by the Client to the Service Provider;
<b>“Principles”</b>	means the set of behaviours the Parties agree to adopt in exercising their respective rights and discharging their respective obligations in this Agreement and which are set out in Clause 2;
<b>“Service(s) Improvement”</b>	means the process of Service(s) improvement and rectification to be carried out pursuant to Clause 12 in the event that Service Levels set out at Schedule 2 are not adhered to;

<b>“Service(s) Improvement Notice”</b>	means a notice issued by the Client to the Service Provider setting out the nature and extent to which the Service Provider is failing to adhere to the Service Levels set out in Schedule 2 and which obliges the Service Provider to produce and implement a Service(s) Improvement Plan as set out in Clause 12;
<b>“Service(s) Improvement Plan”</b>	means a plan of action to be implemented by the Service Provider, in response to the issuance of a Service(s) Improvement Notice by the Client, and which will lead to the Service Provider adhering to the Service Levels set out in Schedule 2 as set out in Clause 12;
<b>“Service Levels”</b>	means the agreed levels to which the Service Provider’s performance in providing the Service must adhere as set out in Schedule 2 and Clause 7;
<b>“Service(s) Prices”</b>	means the amounts payable by the Client to the Service Provider for the provision of Services in accordance with Clause 6 and Schedule 3;
<b>“Service Provider’s Management Representative”</b>	means Midlands and Lancashire CSU’s Chief Operating Officer who shall be responsible for liaising with the Client’s Management Representative in accordance with Clause 9, or such other person who the Service provider may from time to time nominate;
<b>“Services”</b>	means the services set out in Schedule 1;
<b>“Service Provider’s Performance Representative”</b>	means the Service Provider’s performance representative who shall be responsible for monitoring the provision of the Services in accordance with the Service Levels under Clause 10, or such other person who the Service Provider may from time to time nominate;
<b>“Service Provider’s Personnel”</b>	means the Service Provider’s employees and/or the employees of organisations to whom the Service Provider has, in accordance with the terms of this Agreement, sub-contracted or sub-licensed the provision of some or all of the Services, such organisations being identified, as at the date of this Agreement;
<b>“Service(s) Suspension Notice”</b>	means a notice issued by the Client to the Service Provider notifying that the Service Provider shall, following its failure to adhere to Service Levels and, further, its failure to achieve agreed Service(s) Improvement(s), suspend the provision of a relevant Service(s) to the Client, until further notification by the Client, and that the Client will procure such Service(s) from a Substitute Service Provider as set out in Clause 12;
<b>“Substitute Service Provider”</b>	means a third party provider which has been procured by the Client to provide a Service included in Schedule 1 of this Agreement Service(s) following the issue by the Client of a Service Suspension Notice to the Service Provider;
<b>“Term”</b>	means the term of this Agreement as set out in Clause 3;



<b>"Termination"</b>	means the cessation of this Agreement, either in its entirety or in respect of one or more Services, before the Expiry Date;
<b>"Termination Notice"</b>	means a notice issued by the Party seeking to effect the Termination of this Agreement.

- 1.2 Unless the context otherwise requires, each reference in this Agreement to:
- 1.2.1 "writing", and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
  - 1.2.2 a reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it;
  - 1.2.3 "this Agreement" is a reference to this agreement and each of the Schedules as amended or supplemented at the relevant time;
  - 1.2.4 a Schedule is a schedule to this Agreement; and
  - 1.2.5 a Clause or paragraph is a reference to a Clause of this Agreement (other than the Schedules) or a paragraph of the relevant Schedule.
  - 1.2.6 a "Party" or the "Parties" refer to the parties to this Agreement.
- 1.3 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.
- 1.4 Words imparting the singular number shall include the plural and vice versa.

## 2. Principles

- 2.1 The Parties agree to adopt the following Principles when carrying out this Agreement:
- 2.1.1 to collaborate and co-operate in the delivery of the Services;
  - 2.1.2 to communicate openly about major concerns or issues relating to this Agreement;
  - 2.1.3 to behave in a constructive and proactive manner;
  - 2.1.4 to comply with applicable law and standards, including EU procurement rules, data protection and freedom of information legislation;
  - 2.1.5 to act in a timely manner, recognising the time-critical nature of the Services provided under this Agreement and respond accordingly to requests for support and information;
  - 2.1.6 to manage stakeholders effectively;
  - 2.1.7 to act in good faith to support the achievement of each Party's objectives in



entering into this Agreement and compliance with these Principles;

2.1.8 to provide coherent, timely and efficient decision-making.

2.2 The Service Provider shall notify the Client in writing as soon as reasonably practicable if it becomes aware during the performance of this Agreement of any inaccuracies in any information provided to it by the Client during the due diligence undertaken by the Service Provider prior to the Commencement Date which materially and adversely affects its ability to perform the Services or meet any Service Levels.

### **3. Term of Agreement**

3.1 This Agreement will come into force on the Commencement Date and shall continue in force until the Expiry Date, subject to the provisions of this Clause 3 and Clause 18.1.

3.2 Subject to Clauses 3.4 and 3.5, the Client may, by giving written notice to the Service Provider not less than 3 months prior to the Expiry Date, seek to extend the Agreement for such further period as may be specified in the notice.

3.3 On issue of such notice the Parties will negotiate the terms of any extension to the term of the Agreement. Such negotiations will be conducted in accordance with Clause 17 (Contract Variation Procedure), save that sub-Clause 17.7.2 shall not apply.

3.4 Any extension of this Agreement shall not, in any event, exceed 12 months unless specifically agreed by the Parties to do so.

3.5 In the event that the Parties cannot agree the terms of an extension to the Term of the Agreement in accordance with Clause 3.3, then the Agreement will end, subject to the provisions of Clause 18, on the Expiry Date.

### **4. Service Provider's Obligations**

4.1 The Service Provider shall render the Services to the Client in accordance with the provisions of Clause 7 and Schedule 1 and in accordance with the required Service Levels set out in Schedule 2.

4.2 The Service Provider shall perform its obligations under this Agreement in a reasonable and timely manner in accordance with the provisions of this Agreement.

4.3 The Service Provider shall provide the Client with such information in connection with the Services and the provision thereof as the Client may, from time to time, reasonably require both before and during the provision of the Services.

4.4 The Service Provider will provide the Client with the services of a nominated Key Account Manager. The Key Account Manager will provide the Client with a single point of contact and will be responsible for the overall management of the Client relationship with the Service Provider. The Key Account Manager will be authorised and empowered, as a senior management representative of the Service Provider, to make decisions about key client service delivery. The Key Account Manager will be responsible for ensuring there is regular, timely and relevant contact with the Client and this will include arranging Client meetings as referred to in Clause 9.1.

- 4.5 Following the Commencement Date, or the date of execution of this agreement if later, the Service Provider shall make available all data due as part of the Services in relation to the period as soon as reasonably possible but in any event no later than 3 working days following the Commencement Date (“the Pre- Commencement Services”) and the Client acknowledges that all obligations in relation to the timing of the delivery of the Pre-Commencement Services shall be assessed in relation to the time for delivery set out in this Clause 4.5. For the avoidance of doubt, all other data shall be made available to the Client in accordance with Appendix C of Schedule 2 of this Agreement. In the event of any conflict between this clause 4.5 and any other part of this Agreement, this Clause 4.5 shall prevail.

## **5. Client’s Obligations**

- 5.1 The Client shall provide the Service Provider with such information in connection with the Services and the provision thereof as the Service Provider may, from time to time, reasonably require both before and during the provision of the Services.
- 5.2 The Client shall perform its obligations under this Agreement in a reasonable and timely manner in accordance with the provisions of this Agreement.
- 5.3 The Client shall allow the Service Provider and its personnel access at all reasonable times to the Premises for the purpose of providing the Services. In so doing the Client will inform the Service Provider of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Premises to which the Service Provider requires access.
- 5.4 The Client shall use all due and proper care to ensure that the manner in which it discharges its obligations under this Agreement does not have any adverse effect on the name, reputation, image or business of the Service Provider.
- 5.5 If and to the extent only that the Service Provider is unable to perform any Services in accordance with this Agreement as a direct result of any failure by the Client to perform any of the Client’s Obligations specified in this Clause 5 (unless and to the extent caused by the Service Provider) then the Service Provider shall be entitled:
- 5.5.1 to a reasonable extension of time to perform the relevant Services (but not to any extension to the Term);
  - 5.5.2 to relief from the application of Performance Remedies in respect of its failure to adhere to the relevant Service Levels in respect of relevant Services as set out in Schedule 2;
  - 5.5.3 to relief from the Client exercising any other rights under this Agreement, in its entirety or in part, for breach of any provision of this Agreement that may arise as a result of failure to adhere to the relevant Service Levels in respect of relevant Services as set out in Schedule 2.
- 5.6 Where the Service Provider becomes aware that it is unable to perform any Services in accordance with this Agreement as a direct result of any failure by the Client to perform any of the Client’s Obligations specified in this Clause 5 (unless and to the extent caused or contributed to by the Service Provider), it shall inform the Client without delay.

## **6. Service Prices, Payment and Records**

- 6.1 The Service Provider shall invoice the Client for payment of the Service Prices detailed at Schedule 3 at the end of each calendar month in respect of the Services that the Service Provider has delivered to the Client, such Services having been delivered in accordance with the provisions of Schedule 2 and the terms and conditions of this Agreement.
- 6.2 The Service Prices are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Client following delivery of a valid VAT invoice.
- 6.3 The Client shall pay the Service Prices to the Service Provider within sixty days of receipt of an undisputed invoice delivered under the provisions of Clause 6.1 in sterling in cleared funds to such bank as the Service Provider may from time to time nominate.
- 6.4 Where the Client (acting reasonably) disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid in accordance with Clause 6.3 and the dispute as to the sum that remains unpaid shall be determined in accordance with Clause 14 (Dispute Resolution Procedure).
- 6.5 Where any payment pursuant to this Agreement is required to be made on a day which is not a Business Day, it may be made on the next following Business Day.
- 6.6 The Service Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Client pursuant to this Agreement. Such records shall be retained for inspection by the Client (upon reasonable notice and in compliance with the Service Provider's Information Governance Policy) during the Term.
- 6.7 The Client shall make any payments due to the Service Provider without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

## **7. Provision of the Services**

- 7.1 The Service Provider shall, throughout the Term of this Agreement, provide the Services to the Client in accordance with the terms and conditions of this Agreement, the provisions of Schedule 1 and the Service Levels as specified in Schedule 2.
- 7.2 The Service Provider shall provide the Services in accordance with Schedule 2 unless otherwise agreed in writing by the Parties.
- 7.3 The Service Provider shall be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Services.
- 7.4 The Service Provider shall use all due and proper care to ensure that the manner in which it provides the Services does not have any adverse effect on the name, reputation, image or business of the Client.



## **8. Conflicts of Interest**

- 8.1 The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any Service Provider's Personnel is placed in a position where:
- 8.1.1 there is or may be an actual conflict or material potential conflict, between the pecuniary or personal interests of the Service Provider and the duties owed to the Client under the provisions of the Agreement; or
  - 8.1.2 the behaviour of the Service Provider or the Service Provider's Personnel is not in the Client's best interest or might materially adversely affect the Client's reputation.
- 8.2 The Service Provider will, as soon as reasonably practicable, disclose to the Client full particulars if it becomes aware of any behaviour which might give rise to the acts described in sub-Clauses 8.1.1 or 8.1.2.
- 8.3 The Client reserves the right to take such other steps it deems necessary where, in the reasonable opinion of the Client, there is or may be an actual conflict or potential conflict, between the financial or personal interests of the Service Provider or the Service Provider's Personnel and the duties owed to the Client under the provisions of the Agreement.
- 8.4 The actions of the Client pursuant to this Clause 8 shall not prejudice or affect any right of action or remedy which has accrued or will accrue to the Client or the Service Provider under this Agreement.

## **9. Services and Agreement Management**

- 9.1 The Client and the Service Provider shall arrange meetings between the Client's Representative and the Key Account Manager at quarterly intervals in order to discuss the provision of the Services in accordance with the Service Levels, where relevant, based upon Performance Reports generated in accordance with Clause 10 and Schedule 2.
- 9.2 Both Parties shall produce written reports from meetings held pursuant to sub-Clause 9.1 within seven Business Days following such meetings and shall use their reasonable endeavours to comply with any and all agreed actions to be taken with respect to the provision of the Services, the Service Levels and the performance by each Party of its respective obligations under this Agreement.
- 9.3 The Client and the Service Provider shall arrange meetings between the Client's Management Representative and the Service Provider's Management Representative at regular quarterly intervals in order to discuss matters arising out of meetings held pursuant to sub-Clause 9.1 and any other matters including, but not limited to, those relating to the provision of the Services and the Service Levels.
- 9.4 In addition to the matters set out in sub-Clause 9.3, the Client's Management Representative and the Service Provider's Management Representative shall, in their quarterly meetings conduct an Agreement Review during which the Parties may propose, discuss and agree upon any desired or necessary alterations to this Agreement including, but not limited to, its terms and conditions, scope and duration. Any such change will be treated as a Contract Variation to this Agreement and its consideration and adoption will be completed pursuant to the Clause 17 (Contract



Variations Procedure).

- 9.5 No later than 3 months prior to the end of the Term of this Agreement, the Client's Management Representative and the Service Provider's Management Representative shall conduct an Agreement Review during which an extension of this Agreement shall be considered and determined. In the event that an extension of the Agreement is to be considered, the provisions of sub-Clause 3.2 sub-Clause 3.3 and sub-Clause 3.4 shall apply.
- 9.6 Notwithstanding the provisions of sub-Clause 9.4, in the event that changes to this Agreement are required due to circumstances including, but not limited to, a material change in the level of year-on-year funding received by the Client or in year-on-year Service Provider cost pressures due to, inter alia, national pay settlements, or a Change of Law, either Party shall have the right to call for an immediate Agreement Review to discuss the necessary changes and action to be taken. Any such change will be treated as a Contract Variation to this Agreement and its consideration and adoption will be completed pursuant to the Clause 17 (Contract Variations Procedure).

## **10. Performance Management and Monitoring**

- 10.1 For the purposes of monitoring and managing performance under this Agreement the Parties shall respectively appoint the Client's Performance Representative and the Service Provider's Performance Representative (each a "Performance Representative" for the purposes of this Clause 10). It shall be the responsibility of the Performance Representatives to ensure that the Services are provided in accordance with the Service Levels and the terms and conditions of this Agreement.
- 10.2 The provision of the Services in accordance with the Service Levels shall be monitored by the Client's Performance Representative and the Service Provider's Performance Representative in accordance with the provisions of Schedule 2.
- 10.3 All data collected by the Performance Representative(s) pursuant to this Clause 10 and to Schedule 2 shall be presented in monthly Performance Reports by the Client and the Service Provider.
- 10.4 Performance Reports shall be submitted, within the time period specified in Schedule 2, to the Client's Representative and the Key Account Manager for consideration and agreement upon appropriate action to be taken (where relevant) during meetings to be held in accordance with sub-Clause 9.1.

## **11. Service(s) Failure**

- 11.1 In the event that, in respect of any of the Services provided, the Service Provider fails to adhere to the Service Levels set out in Schedule 2, the following Performance Remedies shall be available to the Client:
- a) a requirement for Services Improvement, in accordance with the provisions in Clause 12.

## **12. Service(s) Improvement**

- 12.1 In the event that the Service Provider fails to adhere to the Service Levels set out in Schedule 2, the following provisions shall apply:

12.1.1 if the Service Provider fails to meet the Service Levels then the Client may, acting reasonably, issue a Service(s) Improvement Notice.

12.1.2 a Service(s) Improvement Notice shall state:

- a) the relevant Service Level agreed, and the Actual Performance achieved;
- b) the date on which the relevant Actual Performance achieved was recorded;
- c) an account of any relevant circumstances, including any remedial steps already undertaken by the Service Provider, so far as known to the Client;
- d) any other supporting information which the Client considers

relevant. 12.1.3 the Service Provider shall, within ten Business Days either:

- a) confirm acceptance of the Service(s) Improvement Notice and prepare and submit to the Client a Service(s) Improvement Plan within twenty-five Business Days of issue of the Service(s) Improvement Notice; or
- b) invite the Client to withdraw the Service(s) Improvement Notice on the basis that either:
  - i. the Actual Performance of the Service(s) does not meet the agreed threshold for a Service(s) Improvement Notice; or
  - ii. whilst the Actual Performance of the Service(s) does not meet the agreed Service Level set out in Schedule 2, the issue of a Service(s) Improvement Notice is disproportionate in the context of the level achieved or the duration of the Actual Performance when compared to the agreed Service Level; or
  - iii. the Service Level achieved has met the agreed threshold for a Service(s) Improvement Notice, but the Client has breached obligations set out under Clause 5 and that such breach has had a direct and material effect on the Service Provider's ability to meet the agreed Service Level for the relevant Service(s).

12.1.4 in the event that the Client fails to withdraw the Service Improvement Notice, then the matter as to whether the issue of a Service(s) Improvement Notice accords with this Agreement shall be resolved in accordance with Clause 14 (Dispute Resolution Procedure).

12.1.5 the Service(s) Improvement Plan shall:

- a) provide a detailed statement of the reasons for the Actual Performance;
- b) identify the remedial action needed to rectify the circumstances so the Service Level set out in Schedule 2 is adhered to;
- c) set out the Service Provider's key proposals for carrying out the remedial actions, a programme for undertaking such actions and the dates by which this programme will be completed, such dates being

reasonable in relation to the importance or urgency of the particular Service(s) subject to the Service(s) Improvement Plan to the proper discharge of the Client's own functions;

- a) identify any actions or consents required from the Client and/or any other body to facilitate the Service Provider's programme of remedial actions;
- b) specify proposed criteria for the purpose of auditing completion of the remedial actions and resolution of the Service(s) failure;
- c) achieve a permanent resolution to such Actual Performance and prevent its re-occurrence.

12.1.6 for the avoidance of doubt, the formulation and implementation of a Service Improvement Plan does not relieve the Service Provider of its obligations under this Agreement. The Service Provider will, at all times, expedite ways by which the Actual Performance of the Service subject to Service(s) Improvement achieves the agreed Service Levels.

12.1.7 following receipt of a Service(s) Improvement Plan, the Client may, acting reasonably and within ten Business Days:

- (a) agree it; or
- (b) reject it and require the Service Provider to submit a revised Service(s) Improvement Plan within ten Business Days of such rejection.

12.1.8 where the Service Provider fails to submit a revised Service(s) Improvement Plan in accordance with sub-Clause 12.1.7(b) or the revised Service(s) Improvement Plan is, in the Client's reasonable opinion, unacceptable, the matter shall be resolved in accordance with Clause 14 (Dispute Resolution Procedure).

12.1.9 the Service Provider shall implement all the remedial actions set out in a Service(s) Improvement Plan by the date specified in the Service(s) Improvement Plan and at the Service Provider's own cost.

12.1.10 the Client's Performance Representative shall be authorised to act on behalf of the Client for the purposes of measuring progress against a Service(s) Improvement Plan, completion of the audit and closure of the Service(s) Improvement Plan following completion.

12.1.11 a Service(s) Improvement Plan shall remain open until the remedial actions to be carried out under it by the Service Provider have been audited by the Client, and the Client's Performance Representative has confirmed in writing that all such remedial actions have been completed in accordance with the agreed Service(s) Improvement Plan and to the Client's relevant audit standards, whereupon the Service(s) Improvement Plan shall be closed.

12.1.12 where the remedial actions required under a Service(s) Improvement Plan are carried out and completed but do not succeed in rectifying the circumstances which have resulted in the Actual Performance being below the agreed Service Level or in achieving a permanent resolution of such



Actual Performance being below the agreed Service Level and preventing its re- occurrence, then the Client may, at its sole discretion:

- a) agree an extension to the time for carrying out and completing the Service(s) Improvement Plan; or
- b) agree a revised Service(s) Improvement Plan; or
- c) issue a Service(s) Suspension Notice; or
- d) issue a Termination Notice in accordance with Clause 18.4 for that service to which the service improvement plan relates.

12.1.13 where relevant, the Client shall endeavor to procure any actions or consents identified in a Service(s) Improvement Plan as required from the Client or any other body. Where the Client is unable to procure such compliance, it shall:

- a) agree that the Service Provider is no longer required to complete the remedial actions identified in the Service(s) Improvement Plan for which such actions or consents are needed and close the relevant Service(s) Improvement Plan; or
- b) agree with the Service Provider a revised date for completion of the Service(s) Improvement Plan.

12.1.14 where the Parties agree that the Service Provider is no longer required to complete the remedial actions identified in the Service(s) Improvement Plan and it is thereby, not possible for the Service Provider to meet the Service Levels set out in Schedule 2, the Parties will execute a Contract Variation in accordance with the provisions of Clause 17 (Contract Variations Procedure).

12.1.15 a report on progress against each open Service(s) Improvement Plan shall be provided and considered either:

- a) at the quarterly meetings between the Client's Representative and the Key Account Manager; or
- b) where an open Service(s) Improvement Plan requires such a report to be provided and considered more frequently, at meetings of the Client's Representative and the Key Account Manager to be arranged as required by the open Service Improvement Plan.

12.1.16 a Service(s) Improvement Plan may relate to one or more failures to achieve agreed Service Levels.

12.1.17 where the Client issues a Service(s) Suspension Notice or a Termination Notice:

- a) the Client will be entitled to obtain any of the relevant Services affected from a Substitute Service Provider until such time as it is satisfied that the breach has been remedied or, in the event of Termination or Expiry of this Agreement, until such time as the Service Provider's obligations cease.



- b) In respect of a suspended service(s) the Service Provider shall credit to the Client the service price of the suspended service(s).

**13. Clause not used.**

**14. Dispute Resolution Procedure**

- 14.1 If any Dispute arises out of or in connection with this Agreement, either Party may give notice to the other Party in writing ("Dispute Notice") that a Dispute has arisen. The Parties shall first attempt to settle the Dispute, in good faith, through negotiation between the Key Account Manager and the Client's Performance Representative.
- 14.2 If the Dispute cannot be resolved by the Key Account Manager and the Client's Performance Representative within five Business Days of the issue of the Dispute Notice, each party shall refer the Dispute to the Client's Management Representative and the Service Provider's Management Representative for resolution.
- 14.3 If the Client's Management Representative and the Service Provider's Management Representative are unable, or fail, to resolve the Dispute within 15 Business Days of the date of issue of the Dispute Notice, the Parties shall resolve the Dispute by mediation in accordance with sub-Clause 14.4.
- 14.4 The following provisions shall apply to any such reference to mediation:
  - 14.4.1 the mediator shall be an agreed joint appointment and the Service Provider will be represented by a Board Director;
  - 14.4.2 both Parties shall, immediately on such referral, co-operate fully, promptly and in good faith with the agreed mediator and shall do all such acts and sign all such documents as the agreed mediator may reasonably require to give effect to such mediation;
  - 14.4.3 such mediation shall be conducted in accordance with good mediation practice, shall commence by either Party serving on the other written notice setting out, in summary form, the issues in dispute and shall take place within ten Business Days of such notice being served;
  - 14.4.4 if the Parties fail to reach agreement within 10 Business Days of the mediation commencing, then any Dispute will be referred to arbitration pursuant to the procedures set out in sub-Clause 14.5.
- 14.5 Following the Dispute being referred to arbitration, such arbitration shall:
  - 14.5.1 be conducted by an independent arbitrator;
  - 14.5.2 take place within ten Business Days of such arbitration commencing; and
  - 14.5.3 be binding on the Parties.
- 14.6 The costs of any mediation or arbitration under the provisions of this Clause 14 shall be shared equally by the Parties.
- 14.7 Neither party shall be prevented from, or delayed in, terminating this Agreement pursuant to the provisions of Clause 18 or seeking orders for specific performance or interlocutory or injunctive relief as a result of the terms of this Clause 14.

## 15. Confidentiality

- 15.1 Each Party undertakes that, except as provided by sub-Clause 15.2 or as authorised in writing by the other Party, it shall, at all times during the continuance of this Agreement and for 12 months after its termination:
- 15.1.1 keep confidential all Confidential Information;
  - 15.1.2 not disclose any Confidential Information to any other person;
  - 15.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms and conditions of this Agreement;
  - 15.1.4 subject to clause 15.1.3. not make any copies of, record in any way or part with possession of any Confidential Information; and
  - 15.1.5 ensure that none of its directors, officers, employees, agents or advisers does any act which, if done by that Party, would be a breach of the provisions of sub- Clauses 15.1.1 to 15.1.4 above.
- 15.2 Either Party may:
- 15.2.1 disclose any Confidential Information to:
    - 15.2.1.1 any sub-contractor of that Party; or
    - 15.2.1.2 any governmental or other authority or regulatory body (but only if requested by such a body); or
    - 15.2.1.3 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies; or
    - 15.2.1.4 to comply with Legislation;
- to such extent only as is necessary for the purposes contemplated by this Agreement, or as required by law, and in each case subject to that Party first informing the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body as is mentioned in sub-Clause 15.2.1.2 above or any employee or officer of any such body) obtaining and submitting to the other Party a written undertaking from the person in question, as nearly as practicable in the terms of this Clause 15, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and
- 15.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of this Agreement, or at any time after that date becomes, public knowledge through no fault of that Party, provided that in doing so that Party does not disclose any part of that Confidential Information which is not public knowledge.
- 15.3 The obligations contained within Clauses 15.1 and 15.2 shall not apply to any Confidential Information which: -
- 15.3.1 is in or comes into the public domain other than by breach of this Agreement;
  - 15.3.2 the receiving party can demonstrate by its records was in its possession

before it received it from the disclosing party;

15.3.3 the receiving party can prove was obtained or that they were able to obtain from a source other than the disclosing party without breaching any obligation of confidence.

15.4 The provisions of this Clause 15 shall continue in force in accordance with their terms, notwithstanding the Termination of this Agreement for any reason.

15.5 The Parties acknowledge their respective duties and obligations under the Freedom of Information Act 2000 and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.

15.6 The Parties shall comply with the Data Protection Act 2018 ("2018 Act") and must ensure that all personal data (as defined in the 2018 Act) processed by its staff on behalf of and/or in the course of this Agreement is processed in accordance with the provisions and principles of the 2018 Act. Each Party will allow the other Party to audit compliance with the requirements of this Clause 15 on reasonable notice and/or to provide the other Party with evidence of its compliance with the obligations set out in this Clause

15.7 To the extent that the Service Provider is acting as a data processor on behalf of the Client, the Service Provider shall, in particular, but without limitation:

15.7.1 only process such personal data for and on behalf of the other Party as is necessary to perform its obligations under this Agreement and to ensure compliance with the 1998 Act and only in accordance with any instruction given by the Client under this Agreement;

15.7.2 put in place appropriate technical and organisational measures against any unauthorised or unlawful processing of such personal data, and against the accidental loss or destruction of or damage to such personal data;

15.7.3 take reasonable steps to ensure the reliability of staff who have access to such personal data.

15.8 The Service Provider and the Client shall ensure that personal data is safeguarded at all times and in accordance with the law, which shall include without limitation, obligations:

15.8.1 to ensure that the Service Provider's information governance lead will be in a position to liaise with the Client's information governance lead, who will take the lead for information governance;

15.8.2 (where transferred electronically) only to transfer data (i) where this is essential having regard to the purpose for which the transfer is conducted; and (ii) that it is encrypted to the higher of the international data encryption standards for healthcare and the National Standards (including but not limited to data transferred over wireless networks, held on laptops, CDs, memory sticks and tapes);

15.8.3 to have agreed protocols for sharing personal data with NHS organisations and, where appropriate, non-NHS organisations; and



15.8.4 upon the Client not to attempt to regenerate personal data from any pseudonymised data provided by the Service Provider, whether by use of the pseudonymisation key, by combining the pseudonymised data with other data/information or otherwise.

## **16. Intellectual Property Rights**

16.1 Except as set out expressly in this Agreement, no Party shall acquire any right or licence to the Intellectual Property Rights of the other Party.

16.2 To the extent that it is able to do so, the Service Provider hereby grants such irrevocable, worldwide, royalty free, non-transferable, sub-licensable licence for any purpose whatsoever in any Intellectual Property Rights that may subsist in the Output Data, save that the Client may not exploit (for payment or otherwise) any database right associated with the arrangement of the Output Data.

16.3 In complying with the provisions of this Clause 16, the both Parties hereby undertake to execute any such agreements and perform any such actions which may be necessary in order to give effect to this Agreement.

## **17. Contract Variations Procedure**

17.1 Save for Clause 3.4, which may not be amended or varied, this Agreement may not be amended or varied other than in accordance with this Clause 17.

17.2 The provisions of this Agreement and the Services described in Schedule 1 may be varied at any time by agreement in writing between the Service Provider and the Client. Where such amendment or variation is agreed in accordance with this Clause 17, it will be a Contract Variation.

17.3 Each Party that requests a Contract Variation shall have regard for its impact on the other Services.

17.4 Where a Client proposed Contract Variation would have the effect of increasing the cost of the Service(s), then the Service Provider will inform the Client of any increase in accordance with the Service Specification as detailed in Schedule 2.

17.4.1 Where the service provider proposes a contract variation increasing the price of the services in relation to, increases including but not limited to, increased costs in overheads from the effect of evidenced rises in RPI and material costs and evidenced rises in resource costs as a result of national and/or local pay awards, then the service provider will inform the client of any such increase in accordance with Schedule 3 – Service Prices and Payments

17.5 The Party requesting a Contract Variation pursuant to this Clause 17 will issue a Contract Variation Notice. The Contract Variation Notice shall:

17.5.1 provide sufficient information to enable the Party in receipt of the Contract Variation Notice to assess the extent of the Contract Variation and consider whether any change to the Service Prices is required in order to implement the Contract Variation.

17.5.2 specify a time limit within which the Party in receipt of the Contract Variation Notice shall respond to the request for a Contract Variation. Such time limits



shall be reasonable having regard to the nature of the Contract Variation.

17.6 If the Contract Variation is agreed, then the Parties shall confirm the same in writing and the terms of this Agreement shall be modified so that they accurately reflect the agreed Contract Variation. An agreed Contract Variation will be recorded in the Record of Agreed Contract Variations in the form set out in Schedule 4.

17.7 Where the Parties fail to agree a Contract Variation, having followed the procedure outlined in sub-Clause 17.6:

17.7.1 the Contract Variation Notice is withdrawn by the Party first issuing it; or

17.7.2 the Dispute Resolution Procedure set out at Clause 14 will be applied.

17.8 If any Change of Law directly alters the costs incurred or to be incurred by the Service Provider in meeting its obligations under the Agreement or otherwise requires any deletion, amendment or alteration of the extent of any obligation to be met by the Service Provider under the Agreement or an addition to the obligations of the Service provider under the Agreement, the Service Provider shall notify the Client accordingly and the Parties shall negotiate in good faith to agree a Contract Variation to the Agreement and, where relevant to amend the Service Prices to account for the introduction of the Change in Law.

## **18. Expiry and Termination**

18.1 Subject to the provisions for extension pursuant to Clauses 3, this Agreement will expire on the earlier of:

18.1.1 the Expiry Date; or

18.1.2 the date on which the Service Provider becomes independent of NHS England.

18.2 The Client may terminate this Agreement at any time and without liability to the Service Provider by service of not less than 6 months' written notice of expiry of the contract dated.

18.3 Either Party may forthwith terminate this Agreement by giving written notice to the other Party if:

18.3.1 any sum owing to that Party by the other Party under any of the provisions of this Agreement is not paid within 30 days of the due date for payment;

18.3.2 subject to Clause 18.4, the other Party commits any other material breach of any of the provisions of this Agreement and, if the material breach is capable of remedy, fails to remedy it within 30 days after being given written notice, giving full particulars of the material breach and requiring it to be remedied;

18.3.3 subject to Clause 18.4, the other Party commits a series of breaches of the provisions of this Agreement which, taken together, amount to a material breach which is incapable of remedy or which, in the case of a series of breaches capable of remedy, are not entirely remedied within 30 days after being given written notice, giving full particulars of the breaches and requiring them to be remedied.

- 18.3.4 an encumbrancer takes possession of any of the property or assets of that other Party;
  - 18.3.5 the other Party makes any voluntary arrangement with its creditors;
  - 18.3.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
  - 18.3.7 the other Party ceases, or threatens to cease, to carry on business;
  - 18.3.8 a Change in Control of the other Party occurs;
  - 18.3.9 any Force Majeure Event preventing the other Party from performing its obligations under this Agreement for a continuous period of thirty days, provided that, where relevant, the agreement may only be terminated in respect of the Service(s) affected by the Force Majeure Event;
  - 18.3.10 NHS England fails to authorise a Party to conduct activity in connection with this Agreement or otherwise withdraws its authorisation at any time during the Term.
- 18.4 The Client shall have the right to terminate this Agreement with immediate effect, either in its entirety or in respect of the relevant Service(s), by giving written notice to the Service Provider in the event that the Service Provider fails to provide the Service(s) in compliance with the Service Levels and further fails to comply with the Service(s) Improvement provisions as set out in Clause 12 (provided that the Client has complied with said provisions).
- 18.5 The Client shall be entitled to terminate this Agreement, either in its entirety or in respect of one or more Service(s):
- 18.5.1 with immediate effect, if NHS England exercises its right to substitute the Service Provider;
  - 18.5.2 with immediate effect, if NHS England instructs the Client to conduct a competition for some or all of the Services set out in Schedule 1; or
  - 18.5.3 by giving no less than three months' notice in writing to the Service Provider, providing that such notice shall be given on a date at least 6 months after the Commencement Date.
- 18.6 The Service Provider shall be entitled to terminate this Agreement immediately:
- 18.6.1 in respect of a Service(s) subject to a Service Suspension Notice which is not withdrawn by the Client within 4 weeks of its issue by the Client; or
  - 18.6.2 either in its entirety or in respect of one or more Service(s), by giving no less than three months' notice in writing to the Client, provided that such notice shall be given on a date at least 6 months after the Commencement Date.
- 18.7 The right to terminate this Agreement given by this Clause 18 shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

## **19. Obligations on Expiry or Termination of this Agreement**

- 19.1 This Clause 19 shall apply on Expiry or Termination of this Agreement (howsoever arising) and on the Termination of any individual Service(s) (howsoever arising). References in this Clause to the Services shall where applicable be read as a reference to the relevant individual Service(s) which are subject to Termination.
- 19.2 Arrangements shall be made by the Service Provider to ensure an effective and efficient transition of responsibility for the provision of the Service(s) from it to the Client or to a third party nominated by the Client, in the event of the Termination or Expiry of this Agreement or the Termination of a Service.
- 19.3 The Service Provider shall provide such assistance as the Client may reasonably require to effect a full and orderly transfer of the Services either to the Client or to a third party nominated by the Client. The Service Provider shall furnish the Client or the third party with all reasonable information or documents reasonably required to perform the Services (including staffing details). All such assistance shall be provided within a reasonable time having regard to the circumstances of the transfer.
- 19.4 Pursuant to Clause 19.3, the Service Provider shall produce an Exit Management Plan. This Exit Management Plan will comprehensively cover all activities and the associated liaison and assistance which should be provided by the Service Provider for the successful transfer of the Services to the Client and/or a third party nominated by the Client.
- 19.5 The Exit Management Plan(s) shall be delivered to and agreed by the Client (if appropriate) no later than 3 months prior to the end of the Term of this Agreement or the date of Termination of this Agreement or any part thereof.
- 19.6 The Exit Management Plan shall include the following information to the extent that such information is required to enable the Client, or a third party nominated by the Client to provide the Services, such information to be provided by the Service Provider within the Exit Management Plan:
- 19.6.1 a description of the tasks to be performed in order to achieve an orderly transfer of the Services;
  - 19.6.2 an indication of the Service Provider resources used;
  - 19.6.3 estimates of the timescales necessary for the orderly execution of the Exit Management Plan;
  - 19.6.4 not used;
  - 19.6.5 a process for disclosure of any documentation used by the Service Provider in provision of the Services and which the Service Provider has agreed to disclose;
  - 19.6.6 a process for disclosure of details of any relevant processes and procedures used in respect of the Services;
  - 19.6.7 a process for disclosure of details of any training materials used in connection with the performance and delivery of the Services and which the Service Provider has agreed to disclose;



19.6.8 not used;

19.6.9 proposals for the supply of any other information or assistance reasonably required by the Client or a third party nominated by the Client in order to effect an orderly hand over of the provision of the Services.

19.7 The Client shall be responsible for reasonable costs incurred by the Service Provider in discharging its obligations under this Clause 19, except where the Agreement has been terminated by reason of:

19.7.1 a material breach of this Agreement by the Service Provider;

19.7.2 the Service Provider terminating this Agreement, either in full or in part, under the provisions of Clause 18.6;

19.7.3 a Force Majeure Event as set out in sub-Clause 21.2, in which case the Service Provider shall be responsible for such costs.

The amount of costs incurred by the Service Provider in discharging its obligations and which will be reimbursed by the Client under this Clause 19 shall be agreed with both Parties acting reasonably.

19.8 Upon the Expiry or Termination (for any reason) of this Agreement:

19.8.1 any sum owing by either Party to the other Party under any of the provisions of this Agreement shall become immediately due and payable;

19.8.2 any rights or obligations to which any of the Parties to this Agreement may be entitled or be subject before its Expiry or Termination shall remain in full force and effect where they are expressly stated to survive such termination;

19.8.3 Expiry or Termination shall not affect or prejudice any right to damages or other remedy which any Party may have in respect of any breach of this Agreement which existed at or before the date of Expiry or Termination;

19.8.4 subject as provided in this Clause 19, and except in respect of any accrued rights, neither Party shall be under any further obligation to the other;

19.8.5 Upon Expiry or Termination of this Agreement, each Party shall, to the extent permissible by law, promptly:

- a) return to the other Party all equipment, materials and property belonging to the other Party in connection with the provision of the Services under this Agreement;
- b) except to the extent referred to in sub-Clause 15.3, forthwith cease to use, either directly or indirectly, any Confidential Information, and shall forthwith return to the other Party any documents in its possession or control which contain or record any Confidential Information;
- c) erase all Confidential Information from their respective computer systems (to the extent possible); and

)  
n request, certify in writing to the other Party that it has complied with



- 19.9 If the Client suspends or terminates a Service(s), and that Service(s) Suspension or Termination has a material adverse effect on the Service Provider, the Key Account Manager will notify the Client's Representative of the actions being taken to manage this adverse effect. The Key Account Manager will inform the Client's Representative of progress in completing these actions at their quarterly meetings until such time that such adverse effect is eliminated.
- 19.10 On receipt of a Suspension Notice or Termination Notice, the Parties will determine and agree the Service(s) Price of the suspended or terminated Service(s) to be extracted by the Client from the Service Price(s) and the reasonable costs of implementing that Service(s) Suspension or Termination. Where the Parties fail to agree:
- 19.10.1 the Service Price(s) to be extracted; and/or
- 19.10.2 the reasonable costs to be incurred in effecting the Service(s) Suspension or Termination (such costs to include additional or unforeseen costs resulting directly from the Service(s) Suspension or Termination) then the Dispute Resolution Procedure set out at Clause 14 will be applied.
- 19.11 In the event that any client of the Service Provider, save for the Client, suspends or terminates a service(s) and that service suspension or termination has a material adverse effect on the Service Provider, the Key Account Manager will notify the Client's Representative of the actions being taken to manage this adverse effect. The Key Account Manager will inform the Client's Representative of progress in completing these actions at their quarterly meetings until such time that such adverse effect is eliminated.

## **20. Indemnity, Liability and Limits on Liability**

- 20.1 The Service Provider shall indemnify and hold harmless the Client, its subcontractors, agents and employees from and against any and all claims, costs and liabilities howsoever arising and of whatsoever nature and whether in contract or in tort, including injury to or death of any person or persons or loss of or damage to any property arising out of or in respect of the performance or failure to perform its obligations under this Agreement if and to the extent that such losses, costs, damages and expenses are caused or contributed to by the negligent acts or omissions of the Service Provider or any persons for which the Service Provider is otherwise legally liable.
- 20.2 The Client shall indemnify and hold harmless the Service Provider, its subcontractors, agents and employees from and against any and all claims, costs and liabilities howsoever arising and of whatsoever nature and whether in contract or in tort, including injury to or death of any person or persons or loss of or damage to any property arising out of or in respect of the performance by the Client of its obligations under this Agreement if and to the extent that such losses, costs, damages and expenses are caused or contributed to by the negligent acts or omissions of the Client or any persons for which the client is otherwise legally liable.
- 20.3 Each Party 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 this Agreement.

- 20.4 Notwithstanding any other provision of this Agreement neither Party limits or excludes its liability for:
- 20.4.1 fraud or fraudulent misrepresentation;
  - 20.4.2 death or personal injury caused by its negligence; or
  - 20.4.3 any other act or omission, liability for which may not be limited under any applicable law.
- 20.5 Subject always to Clauses 20.3, 20.4 and 20.7, either Party's total liability to the other Party in respect of any losses, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall not, under any circumstances exceed, in the aggregate, the total amount of the charges payable in respect of the Services.
- 20.6 Both Parties agree to take out and maintain in force adequate insurance throughout the Term, whether under the NHSLA Schemes or otherwise, in respect of their obligations under this Agreement.
- 20.7 Except as expressly provided in this Agreement, neither Party shall be liable or responsible to the other in contract, tort or otherwise (including any liability for negligence) for:
- 20.7.1 any loss of revenue, business, contracts, anticipated savings or profits, or any loss of use of facilities; or
  - 20.7.2 any special, indirect or consequential loss howsoever arising.
  - 20.7.3 For the purposes of sub-Clause 20.7.1 "anticipated savings" means any expense which either Party expects to avoid incurring or to incur in a lesser amount than would otherwise have been the case by reason of the use of the Services provided by the Service Provider under this Agreement.

## **21. Force Majeure**

- 21.1 Neither Party to this Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party (a "Force Majeure Event") provided that this Party:
- 21.1.1 promptly notifies the other Party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;
  - 21.1.2 uses all reasonable endeavours to mitigate the effect of the Force Majeure Event to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 21.2 For the purposes of this Agreement causes of Force Majeure Events include but are limited to:
- 21.2.1 flood, earthquake, windstorm or other natural disaster;

- 21.2.2 war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
- 21.2.3 terrorist attack, civil war, civil commotion or riots, sabotage;
- 21.2.4 nuclear, chemical or biological contamination or sonic boom;
- 21.2.5 fire, explosion or accidental damage;
- 21.2.6 loss at sea;
- 21.2.7 extreme adverse weather conditions;
- 21.2.8 enduring or repercussive interruption or failure of utility services, including but not limited to electric power, gas or water;
- 21.2.9 (a) any operating failure of the secondary user service (SUS”) or  
(b) any failure by any third party to provide the information to be added to the SUS, where the Service Provider has no legal right to compel the third party to provide the information and/or the Service Provider has been unable to persuade the third party to deliver the information having used reasonable endeavors to procure that the third party does so, if either such failure delays delivery in accordance with Clause 21.1.

## **22. Nature of the Agreement**

- 22.1 This Agreement is personal to the Parties and neither Party may assign, mortgage, or charge (otherwise than by floating charge) or sub-license any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder, except with the written consent of the other Party, such consent not to be unreasonably withheld.
- 22.2 This Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.
- 22.3 Each Party acknowledges that, in entering into this Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in this Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 22.4 No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.
- 22.5 Each Party shall, at the request and cost of the other Party, execute or procure the execution of such documents and do or procure the doing of such acts and things as the Party so requiring may reasonably require for the purpose of giving effect to the provisions of this Agreement.
- 22.6 The Parties declare that they each have the right, power and authority and have taken all action necessary to execute and deliver and to exercise their rights and perform their obligations under this Agreement.



## **23. Severance**

The Parties agree that, in the event that one or more of the provisions of this Agreement is found to be unlawful, invalid or otherwise unenforceable, that/those provisions shall be deemed severed from the remainder of this Agreement. The remainder of this Agreement shall be valid and enforceable.

## **24. Relationship of the Parties**

24.1 Nothing in this Agreement shall constitute, or be deemed to constitute, a partnership between the Parties nor, except as expressly provided, shall it constitute, or be deemed to constitute an agency of any other Party for any purpose.

24.2 Subject to any express provisions to the contrary in this Agreement, the Service Provider shall have no right or authority to, and shall not do any act, enter into any contract, make any representation, give any warranty, incur any liability, assume any obligation, whether express or implied, of any kind on behalf of the Client or bind the Client in any way.

## **25. Notices**

25.1 All notices under this Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

25.2 Notices shall be deemed to have been duly given:

25.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

25.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or

25.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

25.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid, in each case addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

## **26. Law and Jurisdiction**

This Agreement shall be governed by and construed in accordance with English law and each Party (subject to Clause 14) hereby irrevocably submits to the exclusive jurisdiction of the English Courts.

## **27. General**

27.1 Except as set out in clause 27.2, the Contracts (Rights of Third Parties) Act 1999 as amended and in force from time to time shall not apply to this Agreement and nothing in this Agreement shall confer or purport to confer on or operate to give any third party any benefit or any right to enforce any term of this Agreement except as expressly provided in this Agreement.

27.2 NHS Digital or its successor in title ( "the Beneficiary") shall be entitled to enforce any obligations on either the Service Provider or the Client to the extent necessary to ensure that the Beneficiary complies with its own duties to ensure that all data processing carried out under this Agreement is carried out in a legally compliant



manner and the Beneficiary shall be entitled to recover its own losses arising in the event of any breach of this Agreement by the Client or the Service Provider, including any monetary penalties or fines suffered by the Beneficiaries.

27.3 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement.

27.3.1 Each Party shall be responsible for its own costs incurred in connection with the negotiation, preparation and execution of this Agreement.

**IN WITNESS WHEREOF** this Agreement has been duly executed the day and year first before  
written

SIGNED by

[Redacted Signature]

.....  
**Authorised Signatory**

[Redacted Name], Chief Information Officer  
for and on behalf of Midlands and Lancashire Commissioning Support Unit

**Date: 11 January 2023**

SIGNED by

[Redacted Signature]

**Authorised Signatory**.....

[Redacted Name], Psychological Professions Network Programme Manager  
for and on behalf of Health Education England

**Date: 24<sup>th</sup> January 2023**

# SCHEDULES TO THE AGREEMENT

- Schedule 1    The Services
- Schedule 2    Service Specification
- Schedule 3    Service Prices and Payments
- Schedule 4    Record of Agreed Contract Variations

## Schedule 1 – The Services

Service Line	MLCSU Service lead and deputy	Clinical Advisory Team lead and deputy
Web Services	<p>██████████</p> <p>Application Development Business Manager</p> <p>tel: ██████████</p> <p>e-mail: ██████████</p>	<p>██████████</p> <p>Psychological Professions Network Programme Manager</p> <p>tel: ██████████</p> <p>e-mail: ██████████</p>
	<p>██████████</p> <p>Application Development Team Manager</p> <p>tel: ██████████</p> <p>e-mail: ██████████</p>	<p>██████████</p> <p>Programme Support Officer – Allied Health Professions &amp; Physician Associates</p> <p>tel: ██████████</p> <p>e-mail: ██████████</p>



# Schedule 2 – Service Specification

## 1. Scope

This document covers web site services provided by **Midlands and Lancashire CSU (MLCSU)** to the **Clinical Advisory Team (CAT)**, hosted by **Health Education England (HEE)**. The support services and service levels relate to access and normal operation of the technology. The services provided relate to support of web sites and associated software.

Note that MLCSU's ability to respond may be constrained by:

- The need to call upon third party support (e.g. hardware maintenance, third party software support).
- Hardware availability/procurement.
- Resource availability.

## 2. Service Framework

MLCSU has adopted the industry best practice ITIL support framework to underpin its service support and delivery. A number of ITIL elements are used, including incident management, problem management, configuration, change and release management and service level management.

### 2.1 Objectives

- To meet the needs of CAT in line with the procured services outlined within this document.
- To provide high service availability and resilience.
- To ensure that all staff managing the web sites and associated software are supported and assisted in their day to day activities to the levels outlined in this document.
- To ensure that CAT clearly understands what level of service to expect and its own obligations to provision of these services.
- To respect and safeguard confidentiality of data and equipment.

### 2.2 MLCSU Responsibilities

MLCSU will:

- Take responsibility for the hosting of the web sites, ensuring availability to the required standard.
- Ensure that infrastructure is set up where possible in a resilient manner so that it is available in line with the Key Performance Indicators (KPI's) outlined in this document.
- Ensure access to the IT Service Desk is possible within advertised hours.
- Reserve the right to perform systems maintenance according to a schedule that offers minimal end user impact and where possible publicise the proposed downtimes for all services.
- Provide two weeks' advance notice of planned outages outside a regular system maintenance period, where third party notice period allows.
- Inform CAT managers and other key leads who are likely to be impacted of any serious faults affecting services.
- Ensure that significant changes go through the appropriate IT change management processes.
- Provide notification to the customer of withdrawal of services six months prior to termination.

## 2.3 Customer Responsibilities

CAT will:

- Adhere to the appropriate procedures for contacting the Service Desk in order to receive the levels of service specified in this document.
- Provide reasonable access to support staff in order for them to complete their work to meet service level targets. Inability to give reasonable access may result in requests being delayed or closed.
- Not divulge their individual login details to other people except for the purposes of fault resolution by authorised MLCSU support personnel.
- Provide reasonable resources to help with testing of changes to relevant services when requested.
- Notify MLCSU in advance of events or requirements that might require a higher than normal level of support.

## 2.4 Outline of Support Process

All requests for assistance should first be logged at the Service Desk, via telephone, email, or web forms which will manage the calls to resolution. Calls will be categorised as either Incidents or Service Requests (Tasks).

- **Incidents.** An incident is where an error or disruption to an existing service has occurred that requires resolution to enable normal working to continue, e.g. an error on or interruption to the web sites. Incidents are allocated priorities according to the business impact and urgency of the situation.
- **Service Requests (Tasks).** These are requests for a service such as development of an upgrade.

## 2.5 Service Availability

### 2.5.1 Normal Service Hours

Normal business hours are **08.00 to 17:30 Monday – Thursday** and **08:00 to 17:00 on Friday**. Support is available at these times via the IT Service Desk.

### 2.5.2 System Maintenance Schedule

It is necessary to take systems out of service from time to time to allow upgrade of hardware and software. It is also necessary from time to time to apply urgent fixes for security, operational or business reasons. In general, MLCSU will endeavour to do this work during agreed, regular maintenance sessions. Occasionally the need based on impact and risk may be of a level that the system will need to be taken out of service at other times. In such cases MLCSU will endeavour to give as much notice as possible to customers of service unavailability.

### 2.5.3 Out of Hours Cover

Out of hours support is not provided as part of this SLA.

## 3. Service Provision

### 3.1 Service Desk

Based on ITIL best practice the Service Desk manages the progress of all calls and therefore should always be the first point of contact with queries about call progress, priority or quality of resolution.

The Service Desk Hours of service are:

Level of Cover	Period
Normal *	08:00 – 17:30 Monday to Thursday 08:00 – 17:00 Friday

***\*Excluding public holidays***

Messages can be left outside these times for action the next working day

The Service Desk can be contacted as follows:

- **Telephone: 0300 555 0212**
- **Email: [mlcsu.servicedesk@nhs.net](mailto:mlcsu.servicedesk@nhs.net)**

All incidents and Service Requests will be allocated a unique reference number and acknowledged by email.

### 3.2 Incident Management

The primary goal of the Incident Management process is to restore normal service as quickly as possible, to minimise the adverse impact. Incidents are defined as an unplanned interruption to the service or a reduction in the quality of the service. Incidents are given a priority to help MLCSU plan and allocate work, especially during busy periods. Each priority has target times relating to response (i.e. confirmation to the customer that action is being taken) and resolution.

#### 3.2.1 Priority Allocation

The priority given to an incident is determined by a combination of its impact and urgency. The priority and impact definitions are outlined in section 5.

#### 3.2.2 Incident Response and Resolution

Response and resolution times are defined according to the assigned priority of the incident. It is important to note that these are maximum times rather than standard or normal times and that all incidents will be resolved as quickly as possible. Section 5 of this document defines the priority and impact.

#### 3.2.3 Escalation

The escalation process is invoked when there is a possibility that the service target for a particular incident is likely to be exceeded. Escalation will expedite support activity so that incidents receive the necessary attention.

### 3.2.4 Problem Management

A problem is the underlying cause of one or more incidents, the exact nature of which has not yet been diagnosed. Restoring normal service to the users should normally take priority over investigating and diagnosing problems, although this may not always be possible.

A known problem is a problem which has been diagnosed and for which a resolution or circumvention exists. There may be good reasons for leaving a problem outstanding even though a resolution is possible, for example if the problem is minor and the resolution will impact on normal service provision.

### 3.2.5 Complaints Procedure

If there is still an outstanding issue or concern over the level of service received, the IT Services complaints procedure should be followed. This will ensure that the issue or concern can be discussed with the customer to agree the appropriate action.

## 3.3 Service Request (Task) Management

In addition to incidents, CAT should contact the Service Desk with requests for work such as upgrades and technical changes or advice.

All requests will require the appropriate level of CAT authorisation before they can be progressed. Once authorisation has been received, MLCSU will agree with the requesting customer an estimated time for completion. If the request falls outside of the procured scope of services and/or requires the involvement of a named third party, there may be a charge applied for processing. If this is the case this will be discussed with the customer and the relevant quote/invoice will be provided. Occasionally a request will be significant enough to become managed as a project following the standard IT Project Management Procedures.

## 3.4 Reporting

### 3.4.1 Call Progress

All calls are managed through the Service Desk and customers will be informed by email of the assigned call priority and throughout the progression of the call.

### 3.4.2 Service Level Performance

MLCSU employs a number of Key Performance Indicators (KPIs) to help ensure services provided are performing well. One of these is its performance against this SLA.

## 3.5 Third Party Suppliers

Provision of the web services includes some services supplied by third parties, e.g. data centre estate and internet circuit. Where a resolution to a fault or service request is dependent upon a third party supplier MLCSU will endeavour to log the call within the agreed target timescales. The provision of a response from the third party supplier will be dependent on service levels established within their contractual arrangements.



## 4. Service Catalogue

Within this Service Level Agreement, the CAT has procured the following services:

- Web site hosting.
- Technical support for the web sites and Content Management System (CMS).
- Mailchimp support.
- Consultancy/Advisory Service.

It should also be noted that this agreement does not include development services by default. When the CAT requires any development work to be carried out it should contact either of the Service Leads named in Schedule 1, who will provide a quote for that work.

### Additional Services

If there is a requirement from the CAT to reduce or increase the scope of services procured and provisioned by Midlands and Lancashire CSU, the required business request process will be initiated and the relevant notice provided.

#### 4.1 Web site hosting

##### 4.1.1 Summary

Hosting of the three web sites: Allied Health Professions Network, Population Health and Prevention Network and Psychological Professions Network.

##### 4.1.2 Description

MLCSU will provide:

- Physical hosting within MLCSU's web hosting estate.
- Presentation at the URLs: [www.ahpnw.nhs.uk](http://www.ahpnw.nhs.uk), [www.nwpopulationhealth.nhs.uk](http://www.nwpopulationhealth.nhs.uk) and [www.nwppn.nhs.uk](http://www.nwppn.nhs.uk).
- System backups.
- Registration and management of domain name/s.
- Anti-malware protection.
- 256/2048/SHA2 SSL encryption of each web site.
- 99.5% uptime availability.

CAT will:

Advise MLCSU of any variations required to availability.

## 4.2 Technical Support

### 4.2.1 Summary

MLCSU will provide technical assistance to officers of the CAT in order to resolve any problems or answer any questions relating to the technical function of the web sites.

### 4.2.2 Description

MLCSU will:

- Make available its Service Desk to CAT officers.
- Provide assistance with the web sites, the Content Management Systems – both Joomla and Umbraco - and any other tasks relating to management, correct functioning and availability of the sites.
- Assign each request an incident number and priority and provide those details to the caller.
- Where calls can be resolved by Service Desk staff during the initial contact, will open, log and close the call such that it is recorded.
- Where calls cannot be resolved by Service Desk staff, will allocate the call to the Application Development Team for attention.
- Answer any requests for status update on a call.

CAT will:

- Make all requests for assistance through the MLCSU Service Desk, either by telephone or by e-mail, or direct to the Development Team.
- Request a status update on any call either through the Service Desk or, if the call has been assigned to the Development Team, by contacting the Development Team directly.

For clarification, this SLA as it stands does not include an allowance of development work to be carried out on the sites. Should the CAT require any development work to be carried out, MLCSU will be pleased to provide a quote for that work, based on the day rates shown in Schedule 3. The scope of the Technical Support service above is to fix faults and to advise on, explain or demonstrate technique – particularly within the Joomla CMS and the Umbraco CMS. On occasions where a small adjustment or technical change is required which the CAT editor cannot technically carry out, and where the MLCSU Development Team Manager considers it feasible to do so, MLCSU will carry out that adjustment or technical change within the Technical Support service and therefore at no additional charge.

## 4.3 Mailchimp Support

### 4.3.1 Summary

MLCSU will provide support for the use of Mailchimp relating to the PPN web site account.

#### 4.3.2 Description

MLCSU will:

- Provide assistance with any issues arising in the PPN use of the Mailchimp e-mail system.
- Up to the sum of one day (7.5 hours) of MLCSU Senior Developer time in total.

CAT will:

- Where necessary, allow authorised MLCSU staff to sign in to the PPN Mailchimp account in order to provide assistance.

### 4.4 Consultancy/Advisory service

#### 4.4.1 Summary

MLCSU will provide a senior officer to assist with various matters relating to web service provision which may occur during the SLA year.

#### 4.4.2 Description

MLCSU will:

- Represent CAT in discussions, correspondence and/or negotiations relating to matters such as (but not limited to):
  - Information Governance assessments.
  - National or organisation-wide planning of the web services.
  - Contractual/account dealings with third party services relating to the web services, e.g. Mailchimp.
  - Assistance with submissions to Corestream.
  - Advice to other Health Education England parties as requested.
- Up to the sum of 1.5 days (11.25 hours) of senior officer time.

CAT will:

- Provide any necessary contact details to MLCSU.

## 5. Priority and Definitions

Category/ Priority	Priority 1			Priority 2			Priority 3			Priority 4			Priority 5		
Incident	>= 90%	>= 85%	< 85%	>= 90%	>= 85%	< 85%	>= 90%	>= 85%	< 85%	>= 90%	>= 85%	< 85%	>= 90%	>= 85%	< 85%
	Resolved within 4 hours			Resolved within 8 hours			Resolved within 16 hours			Resolved within 24 hours			Resolved within 80 hours		
Service Request	>= 90%	>= 85%	< 85%	>= 90%	>= 85%	< 85%	>= 90%	>= 85%	< 85%	>= 90%	>= 85%	< 85%	Not Applicable		
	Resolved within 24 hours			Resolved within 40 hours			Resolved within 80 hours			Resolved within 160 hours					
Purchase Request	>= 75%	>= 65%	< 65%	>= 75%	>= 65%	< 65%	Not Applicable			Not Applicable			Not Applicable		
	Quote within 16 hours Resolved within 80 hours			Quote within 40 hours Resolved within 160 hours											

**NB:** All timings shown are applicable to core service hours:  
Monday to Thursday: 8:00am to 5:30pm  
Friday: 8:00am to 5:00pm



In the table below, where the standard wording refers to impacts on 'patient care', MLCSU applies this to mean availability of the CAT web sites and their business functionality.

Type	Priority	Definition
Incident	P1	Whole critical system is unavailable to everyone Significant impact on patient care Business function is halted completely, and interim restoration is not possible
	P2	Whole system is unavailable for a site or group of users Moderate impact on patient care Part of the system functionality is not available, but a workaround is available
	P3	Minor impact to the business or patient care Single user or component affected, workaround available
	P4	Minor impact to the business, not affecting patient care
	P5	No business impact, not affecting patient care
Service Request	P1	Routine account administration Simple web content updates Simple network configuration Routine data recovery
	P2	Routine mailing list administration Hardware installations Configuration of IP telephones
	P3	Data migration Complex network configuration Complex web content updates IP telephone installation
	P4	Software installation Major software updates
Purchase Request	P1	Standard catalogue items
	P2	Non catalogued items

## Schedule 3 – Service Prices and Payments

Breakdown of the price associated with the different elements of activity:

The following schedule outlines the cost associated for providing the detailed MLCSU managed services from 01/04/2022 to 31/03/2023.

### A. AHP Network

Description/Service	Value (£)
Web site hosting	
Technical support	
Consultancy/Advisory service (0.5 days)	
12 month Organisation SSL certificate	
<b>TOTAL:</b>	

### B. Psychological Professions Network

Description/Service	Value (£)
Web site hosting	
Technical support	
Mailchimp support (1 day Senior Developer @ £420/day)	
Consultancy/Advisory service (0.5 days)	
12 month Organisation SSL certificate	
<b>TOTAL:</b>	

### C. Population Health and Prevention Network

Description/Service	Value (£)
Web site hosting	
Technical support	
Consultancy/Advisory service (0.5 days)	
12 month Organisation SSL certificate	
<b>TOTAL:</b>	

### Merged totals (A + B + C):

Description/Service	Value (£)
Web site hosting x 3 sites @ £1024 per site	
Technical support x 3 sites @ £787 per site	
Mailchimp support (1 day)	
Consultancy/Advisory service (1.5 days)	
3 x GlobalSign 12 month Organisation SSL certificates	
<b>TOTAL:</b>	<b>7,371.00</b>

### Optional services

Development is provided either by MLCSU's Developers or Senior Developers, depending upon the nature of the work requested. For the term of this agreement 01/04/2022 - 31/03/2023, the daily charge for each grade is:

Developer: [REDACTED] per day

Senior Developer: [REDACTED] per day

MLCSU will provide a written quote for any development request, which will indicate the number of days or part days required and the associated price.

Any extension to the contract period will be subject to review with the Clinical Advisory Team/ Health Education England and will take account of NHS pay awards in accordance with the HR policy of MLCSU.

MLCSU will issue one order form and one invoice to HEE for the sum of **£7,371.00**, to cover all three networks.

This will be issued during the SLA term and HEE may use its non-PO process if required.

## **Schedule 4 – Record of Agreed Contract Variations**

To be completed in year following agreement of any variation.