

Call-Off Schedule 23 (Health Additional Call-Off Terms)

Call-Off Ref: C30669

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- 10.1 The Supplier recognises that the Buyer (where controller) will have obligations to meet in Law in relation to any breach and communication to subjects and the ICO, as well as government obligations as to conduct and transparency. Clause 26.2 to 26.5 inclusive of the Core Terms shall not apply in relation to any confidentiality or data protection indemnity provided by the Supplier including but not limited to Clause 14.8(e) of the Core Terms.

11. Confidentiality

- 11.1 It is recognised that the Health public sector is subject to National Health Service Act 2006 section 9, and in accordance with that statute does not put in place binding legal contracts.
- 11.2 In relation to Clause 15.5 of the Core Terms, the Buyer shall only be required to notify any public sector recipient that any confidential information is classed as confidential.

12. Premises

- 12.1 Where either Party uses the other Party's premises, such Party is liable for all Losses arising from any damage it causes to the premises. Such Party is responsible for repairing any damage to the premises or any objects on the premises, other than fair wear and tear.
- 12.2 The Supplier will use the Buyer Premises solely for the Call-Off Contract.
- 12.3 This clause does not create a tenancy or exclusive right of occupation.
- 12.4 While on the Buyer Premises, the Supplier will:
- 12.4.1 ensure the security of the premises;
 - 12.4.2 comply with Buyer requirements for the conduct of personnel;
 - 12.4.3 comply with any health and safety measures implemented by the Buyer;
 - 12.4.4 comply with any instructions from the Buyer on any necessary associated safety measures ; and
 - 12.4.5 notify the Buyer immediately in the event of any incident occurring on the premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

Call-Off Schedule 23 (Health Additional Call-Off Terms)

Call-Off Ref: C30669

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12.5 The Supplier will ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Buyer on request.

12.6 All Supplier Equipment brought onto the Buyer Premises will be at the Supplier's risk. Upon termination or expiry of the Call-Off Contract, the Supplier will remove such Supplier Equipment.

13. Audit

13.1 The Buyer may Audit the Supplier at any time by giving notice in writing, such notice to set out details of the scope of such Audit and the details of the relevant Auditor.

13.2 Further to Clause 6.6, the Supplier must provide a copy of its Self Audit Certificate supported by an audit report to the Buyer at the end of each Contract Year.

14. Non-Solicitation of Employees or Contractors

14.1 The Supplier recognises that the Buyer invests a considerable amount of time, cost and effort in the recruitment and training of staff in the niche area of ICT health services in the public sector. Furthermore, the necessary recruitment governance activity and security checks result in a long lead time in onboarding new staff. Consequently, the Buyer has a legitimate business interest to prevent the unauthorised solicitation or employment or engagement of Restricted Staff.

14.2 In order to protect the legitimate business interests of the Buyer (and in particular the Confidential Information, goodwill and the stable trained workforce of each Party), the Supplier agrees that it shall not for the duration of the Call-Off Contract and for a period of 3 months after termination or expiry of this Call-Off Contract solicit or entice away from the employment or service or engagement of the Buyer any Restricted Staff, other than by means of a national advertising campaign open to all-comers and not specifically targeted at the Restricted Staff. The Supplier shall not be deemed to be in breach of this paragraph 14 where Restricted Staff are engaged in response to applying to a general advertising campaign.

15. Further consequences of Call-Off Contract Expiry or Termination

15.1 In addition to the provisions of Clause 10.5, at the end of the Call-Off Contract (howsoever arising), the Supplier must:

15.1.1 immediately return to the Buyer:

15.1.1.1 all copies of Buyer Software and any other software licensed by the Buyer to the Supplier under this Call-Off Contract;

Call-Off Schedule 23 (Health Additional Call-Off Terms)

Call-Off Ref: C30669

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- 15.1.1.2 any materials created by the Supplier under this Call-Off Contract or work in progress where the IPRs are or will be owned by the Buyer; and
 - 15.1.1.3 all Buyer Assets provided to the Supplier by the Buyer in good working order.
 - 15.1.2 immediately upload any items that are or were due to be uploaded to the repository in accordance with paragraph 4 of this Schedule when this Call-Off Contract was terminated;
 - 15.1.3 ensure that any Government Data returned under Clause 10.6.1(d) is, at the direction of the Buyer, provided to the Buyer and any Replacement Supplier with a complete and uncorrupted version of the Government Data in electronic form in the formats and on media agreed with the Buyer and any Replacement Supplier;
 - 15.1.4 work with the Buyer on any work in progress and ensure an orderly transition of the Services to the Replacement Supplier;
 - 15.1.5 provide all information requested by the Buyer on the provision of the Services so that:
 - 15.1.5.1 the Buyer is able to understand how the Services have been provided; and
 - 15.1.5.2 the Buyer and any Replacement Supplier can conduct due diligence.
- 15.2 Each Party will return all of the other Party's Confidential Information. Each Party will confirm that it does not retain the other Party's Confidential Information except where the information must be retained by the Party as a legal requirement or where this Call-Off Contract states otherwise.

Call-Off Schedule 24 (Health Probity)

1 Definitions

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

“Account Management Team”	has the meaning given to it in paragraph 1.1.1.1(e);
“Bid Team”	means the group of individuals tasked with compiling a formal proposal for Deliverables under the Contract in response to procurement activity and any supporting personnel;
“Operational Team”	means the technical and operational team assigned to supplying Deliverables under the Contract and any supporting personnel;
“Probity Policy”	means the probity policy set out in paragraph 3 of this schedule; and
“Probity Policy Agreement”	means the agreement to be signed by the Supplier to confirm that the Supplier will comply with the Probity Policy in respect of a Further Competition Procedure and which is set out at Annex 1 to this Schedule.
“Wider Bidder Organisation”	means the organisation, as a legal entity as part of a wider parent group, supplying Deliverables under the Contract or bidding in a future Further Competition Procedure(s).

2 Background

- 2.1 Where the Supplier is providing Deliverables under the Call-Off Contract and intends to be involved in a Further Competition Procedure under the Framework Contract which has any connection with those Deliverables, the Supplier shall put in place steps to ensure due probity including the erection of ethical walls, obligations to protect and, if required, provide as appropriate specific information to the Buyer.
- 2.2 Notwithstanding paragraph 2.1, if the Buyer determines the Supplier is in a position of potential competitive advantage compared with other suppliers as a result of performing related activities, the Buyer shall notify the Supplier. In such circumstances, the Supplier shall comply with any such probity measures reasonably proposed by the Buyer.
- 2.3 Where probity measures are to be put in place, the Supplier shall complete, sign and return a copy of the Probity Policy Agreement found at Annex 1 to this Schedule.

Call-Off Schedule 24 (Health Probity)

Call-Off Ref: C30669

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- 2.4 The Buyer may at any point during the Framework Contract Period invoke the full provisions of the Probity Policy if the Buyer deems it possible that a Further Competition Procedure may follow.
- 2.5 Each Probity Policy Agreement signed by a Supplier shall continue in force in respect of the Supplier until the conclusion of the Further Competition Procedure in connection with which the Supplier has signed a Probity Policy Agreement. For the avoidance of doubt, from conclusion of the relevant Further Competition Procedure, members of the Operational Team shall be permitted to work on the technical and operational service for the Buyer.
- 2.6 Until the Supplier gives notice in writing to the Buyer that it does not wish to participate in a Further Competition Procedure in accordance with Framework Schedule 7 (Call-Off Award Procedure), the Supplier shall be deemed a potential bidder in respect of the relevant Further Competition Procedure and the full terms of the Probity Policy shall apply.
- 2.7 The Probity Policy shall apply to any Further Competition Procedure arising from the Framework Contract.
- 2.8 The Buyer shall nominate a single point of contact within the Buyer's organisation for the purposes of managing the processes set out herein and notify the Supplier of the same.

3 Probity Policy

3.1 Introduction

- 3.1.1 The Buyer is committed to undertaking the award of public contracts consistent with principles of transparency and fair, equal, and non-discriminatory treatment of bidders as reflected in applicable procurement rules.
- 3.1.2 This Probity Policy sets out the specific working practices the Buyer will expect a Supplier to comply with, during the course of all Further Competition Procedures where the Supplier might otherwise have an unfair competitive advantage as a result of involvement in work leading to the Further Competition Procedure.
- 3.1.3 It is a condition of participation in any of the Further Competition Procedures that each Supplier complies with the specific responsibilities set out in this Probity Policy. Failure to comply with the Probity Policy may result in exclusion from any or all Further Competition Procedures where there are no other means to ensure compliance with the Buyer's duty to treat bidders equally.

3.2 Supplier responsibility to ensure compliance

- 3.2.1 Should the Supplier wish to bid under a Further Competition Procedure for the provision of Deliverables which are the same as or similar to Deliverables provided by the Supplier under an existing Call-Off Contract, the Supplier shall ensure that:

Call-Off Schedule 24 (Health Probity)

Call-Off Ref: C30669

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- (a) it creates information barriers between their Bid Team and any of their Operational Team(s) working on existing Call-Off Contracts held by the Supplier in order to minimise unfair knowledge sharing; and
- (b) it notifies to the Buyer any material documentation and information, Deliverables or both arising from any preparatory phase that might otherwise constitute a competitive advantage and, if requested, shall provide such documentation, information or Deliverables to the Buyer.

3.2.2 The Buyer reserves the right to request that the Supplier at any time demonstrates its compliance with the requirements of the Probity Policy.

3.3 Sharing information

- 3.3.1 The Supplier shall provide such information that is relevant to the Further Competition Procedure regarding the Deliverables (if any) that the Supplier provides, or has already provided at an earlier stage, to the Buyer as an existing supplier, as may be reasonably requested by the Buyer from time to time and on the understanding that this information may be passed on by the Buyer, in full or in part, to facilitate an equal competition between bidders in relation to Further Competition Procedures (with the exception of Supplier Commercially Sensitive Information). This information must be provided by the Supplier at its own cost in a standard electronic format (e.g. MS-Office application files) or via participation in meetings, workshops or similar at the discretion of the Buyer.
- 3.3.2 Information must not be passed by the Supplier's Operational Team to their Bid Team(s). The Bid Team must not involve members of the Operational Team. The exception to this rule, for sharing or passing of information between teams, is that prior written permission is attained from the Buyer.
- 3.3.3 Each Supplier must treat all other suppliers equally and must not discriminate against any other entity or individual, at all times, in the context of requests for information made to the Buyer pursuant to this Probity Policy. All information to be shared between bidders must be sent to the Buyer who shall thereafter share the information with other suppliers as necessary.
- 3.3.4 The Buyer reserves the right to share budget information, planned resource profiles and other cost information (excluding Commercially Sensitive Information) to bidders if such information would otherwise confer an advantage to the Supplier.
- 3.3.5 Suppliers shall be aware that the provisions of FOIA may apply to information that forms the subject matter of this Probity Policy and understand that the provisions of FOIA shall take precedence over any term of this Probity Policy. The Buyer acknowledges that pursuant to the Code of Practice on the Discharge of the Functions of Public Authorities

Call-Off Schedule 24 (Health Probity)

Call-Off Ref: C30669

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under Part I of FOIA, where it receives a request under FOIA which relates to information whose disclosure may cause adverse impact on a Supplier, it is under a duty to:

- (a) seek the views of the Supplier prior to making any disclosure, in particular to assist in determining whether the information falls within the exemptions at Section 41 or 43 under FOIA; and
- (b) take due account of any views of the Supplier when determining whether such information falls within the Section 41 or 43 exemptions and thereby whether disclosure of such information should occur under FOIA.

3.4 Suppliers to control flow of information

3.4.1 Where a Supplier, or any Subcontractor, agent or member of that Supplier or an Affiliate is directly involved in the provision or management or delivery of Deliverables under the Contract with the Buyer, the Supplier shall establish internal communications barriers providing separation between different teams within the Supplier organisation compliant with the procedures set out below. Where the Supplier believes that it is not possible to comply with all of the procedures set out below the Supplier shall notify the Buyer and the Buyer shall work with the Supplier to ensure that the procedures below are implemented to the fullest extent practicable.

(a) Physical and Organisational Separation

There must be appropriate barriers and a clear and regulated communications procedure consistent with the principles in this Probity Policy between individuals who are involved, directly or indirectly, in putting together a bid or proposal and any individuals in the Supplier organisation who are directly involved in the provision or management of Deliverables under a Call-Off Contract to the Buyer.

(b) Communications between the Operational Team and the Bid Team

Individuals in the Bid Team may not discuss any aspect of the Further Competition Procedure or consult with individuals in the Operational Team except under circumstances deemed appropriate by the Buyer.

(c) Communications between the Wider Bidder Organisation and the Bid Team

The Supplier shall ensure that prior to any individuals in the Bid Team receiving information relating to the Further Competition Procedure from individuals in the Wider Bidder Organisation who are indirectly involved in the provision or management of Deliverables under any Call-Off Contract with the Buyer, they shall obtain the written permission of the Buyer. After receiving each such request, the Buyer shall review the information and may, at its sole discretion, give permission for the disclosure to the Bid Team and/or may make all or any part of that

Call-Off Schedule 24 (Health Probity)

Call-Off Ref: C30669

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information available to other Suppliers in accordance with paragraph 3.3.4.

(d) Information Systems

Any information held by the Supplier in any form (including electronic) which relates to Deliverables related to the Further Competition Procedure currently or potentially to be provided by the Wider Bidder Organisation to the Buyer shall not be made available to (or otherwise be accessible by) the Bid Team other than in accordance with the provisions of this Probity Policy.

(e) Bidder Account Management Role

If a Supplier retains a team to manage its commercial relationship with the Buyer at corporate or at client group level (the “**Account Management Team**”), individuals in that Account Management Team shall be permitted to supervise the activities of the Bid Team and the Operational Team. but shall only communicate information between those teams in strict accordance with this Probity Policy. For the avoidance of doubt, this excludes sharing of cost estimates, planning information, budgets, etc. unless the Buyer has agreed to share such information with all bidders in a Further Competition Procedure.

(f) Bid Team Organisation

No single individual forming part of the Bid Team may perform any other role (full or part time) in the provision or management of Deliverables to the Buyer (as part of the Operational Team or otherwise). For the avoidance of doubt, this paragraph shall not prevent individuals within the Supplier's organisation from participating in more than one bid to the Buyer at any one time.

(g) Changes to the Bid Team

Within 7 days of receipt of the invitation to participate in the relevant Further Competition Procedure(s) the Supplier shall provide the Buyer with a list of those individuals forming the Bid Team. In accordance with the generality of the principles contained in this Probity Policy, if in exceptional circumstances the Supplier intends to make any changes to the membership of the Bid Team, it shall promptly seek the prior consent of the Buyer (such consent not to be unreasonably withheld or delayed).

(h) Compliance with the Policy

The Supplier's Compliance Officer shall be responsible for the Supplier's compliance with this Probity Policy. The Supplier's Compliance Officer shall discuss any difficulty in complying with this Probity Policy with the Compliance Officer. Each Supplier must ensure that all individuals in the Wider Bidder Organisation engaged at any time in the provision or management of Deliverables to or for the Buyer under a Call-Off Contract (including the members of the Account Management Team, the Bid

Call-Off Schedule 24 (Health Probity)

Call-Off Ref: C30669

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Team and the Operational Team) are appropriately briefed regarding this Probity Policy and agree to adhere strictly to this Probity Policy.

4 Potential or Actual Breach

- 4.1 The Operational Team and/or the Bid Team (as applicable) shall (through the Compliance Officer) notify the Buyer immediately on becoming aware of or suspecting a breach of this Probity Policy. The Buyer will then assess the potential impact of the breach and agree with the Supplier subsequent actions (such as a joint review or other step that the Buyer deems necessary) to be taken by the Supplier and/or the Buyer to mitigate the breach.
- 4.2 Where a breach of this Probity Policy has occurred the Supplier hereby acknowledges and agrees that the Buyer may take such actions as it deems necessary, which may include, subject to any other existing rights that the Buyer may have under the Further Competition Procedure and at the discretion of the Buyer, the disqualification of the Supplier from the Further Competition Procedure.
- 4.3 In addition, the Supplier acknowledges that any breach of this Probity Policy by the Operational Team and/or Bid Team may result in legal proceedings being commenced against the Supplier including a claim for the recovery of any losses or damages incurred by the Buyer as a direct consequence of that breach.