

Processor or Data Processor	has the meaning given to it in the Data Protection Laws;
Purchase Order Number	means the Customer's unique number relating to the supply of the Services;
Receipt	means the physical or electronic arrival of the invoice at the address specified above under the heading "Payment" or at any other address given by the Customer to the Supplier for the submission of invoices from time to time;
Request for Information	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term "request" shall apply);
Restricted Country	means any country which is not (i) a member of the European Economic Area; (ii) the United Kingdom; (iii) deemed adequate by the European Commission pursuant to article 25(6) of Directive 95/46/EC or article 45(3) of the General Data Protection Regulation;
Services	means the services to be supplied by the Supplier to the Customer under the Agreement as set out in the Specification;
Specification	means the specification for the Services (including as to quantity, description and quality) as specified in the Award Letter and Annex 2;
Staff	means all persons employed or engaged by a Party to perform its obligations under this Agreement, including any contractors and subcontractors and persons employed or engaged by such contractor or subcontractors;
Staff Vetting Procedures	means vetting procedures that accord with Good Industry Practice and, where specified in the Award Letter or otherwise requested by the Customer, the Customer's procedures for the vetting of personnel as provided to the Supplier from time to time, which shall always include but not be limited to a check through the Disclosure and Barring Service (DBS);
Standards	means any standards reasonably applicable given the Supplier's expertise and the Services provided, which shall always include as a minimum the DSP Toolkit or any replacement of the same;
Standard Contractual Clauses	means the standard contractual clauses for the transfer of Personal Data to Processors established in third countries which do not ensure an adequate level of protection as set out in Commission Decision C (2010) 593 and reference to the standard contractual clauses shall be to the clauses as updated, amended, replaced or superseded from time to time by the European Commission;
Sub-contract	means any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;

Sub-contractor	means any third party with whom: a) the Supplier enters into a Sub-contract; or b) a third party under limb (a) above enters into a Sub-contract, or the servants or agents of that third party;
Sub-Processor	means any third party appointed to Process Personal Data on behalf of the Processor related to this agreement;
Supervisory Body	Means any statutory or other body having authority to issue guidance, standards, or recommendations with which a party and/or its personnel must comply, or to which it must have regard including: (a) CQC (b) NHS Improvement (c) NHS England (d) The Department of Health (e) The National Institute for Health and Care Excellence (f) Healthwatch England and Local Healthwatch (g) United Kingdom Health Security Agency (h) The General Pharmaceutical Council (i) The Healthcare Safety Investigation Branch (j) Information Commissioner's Office
Supplier	means the person named as Supplier in the Award Letter;
Term	means as defined in clause 4.1;
Transparency Information	means as defined in clause 13.1;
Transparency Report	means as defined in clause 13.2;
UK GDPR	means retained Regulation (EU) 2016/679 ("GDPR") as incorporated into the United Kingdom's domestic law by the operation of section 3 of the EU (Withdrawal) Act 2018 (and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019);
VAT	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
Working Day	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

- 1.2. In this Agreement, unless the context otherwise requires:
- 1.2.1. references to numbered clauses are references to the relevant clause in these Conditions;
 - 1.2.2. any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
 - 1.2.3. the headings to the clauses of this Agreement are for information only and do not affect the interpretation of the Agreement;
 - 1.2.4. any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and

1.2.5. the word 'including' shall be understood as meaning 'including without limitation'.

2. Basis of Agreement

- 2.1. The return or submission by the Supplier of a validly executed Agreement constitutes an offer by the Supplier to provide the Services subject to and in accordance with this Agreement.
- 2.2. The offer detailed in clause 2.1 shall be deemed to be accepted by the Customer on valid execution by the Customer of the Agreement.

3. Supply of Services

- 3.1. In consideration of the Customer's agreement to pay the Charges, the Supplier shall supply the Services to the Customer for the Term subject to and in accordance with this Agreement.
- 3.2. In supplying the Services, the Supplier shall:
 - 3.2.1. co-operate with the Customer in all matters relating to the Services and comply with all the Customer's instructions;
 - 3.2.2. perform the Services with all reasonable care, skill and diligence in accordance with Good Industry Practice in the Supplier's industry, profession or trade;
 - 3.2.3. use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;
 - 3.2.4. ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
 - 3.2.5. comply with all applicable Standards, Laws and guidance;
 - 3.2.6. provide all equipment, tools and vehicles and other items as are required to provide the Services; and
 - 3.2.7. perform the Services promptly and in any event within any time limits as may be set out in the Agreement.
- 3.3. The Customer may by written notice to the Supplier at any time request a variation to the Specification of the Services. In the event that the Supplier agrees to any variation to the Specification of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Customer and the Supplier.

4. Term

- 4.1. The Agreement shall take effect on the date specified in Award Letter and shall expire on the later of:
 - 4.1.1. the Expiry Date; or
 - 4.1.2. the end date of any Extension Period applicable in accordance with clause 4.2; subject to any early termination in accordance with this Agreement (the "**Term**").
- 4.2. The Customer may, if specified in the Award Letter, extend the Term of the Agreement for one or more Extension Periods (up to a maximum Term of 36 months) by giving not less than 10 Working Days' notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.

5. Charges, Payment and Recovery of Sums Due

- 5.1. The Charges for the Services shall be as set out in Annex 3 and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

- 5.2. The Supplier shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 5.3. In consideration of the supply of the Services by the Supplier, the Customer shall pay the Supplier the invoiced amounts no later than 30 days after Receipt of a valid and undisputed invoice which includes a valid Purchase Order Number. The Customer may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 5.4. All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the Receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.
- 5.5. If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate this Agreement in accordance with clause 17.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 20.
- 5.6. If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.7. If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Customer. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

6. Premises and Equipment

- 6.1. If necessary, the Customer shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services, such access to be non-exclusive and revocable. All equipment, tools and vehicles brought onto the Customer's premises by the Supplier or the Staff shall be at the Supplier's risk.
- 6.2. If the Supplier supplies all or any of the Services at or from the Customer's premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate the Customer's premises, remove the Supplier's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Customer's premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Customer's premises or any objects contained on the Customer's premises which is caused by the Supplier or any Staff, other than fair wear and tear.
- 6.3. Any access to the Customer's premises and any labour and equipment that may be provided by the Customer in connection with provision of Services shall be provided without acceptance by the Customer of any liability in respect of any actions, claims, costs and expenses incurred by third parties for any loss or damages to the extent that such loss or damage is not attributable to the negligence or other wrongful act of the Customer or its servant or agent. The Supplier shall indemnify the Customer in respect of any actions, suits, claims, demands, losses, charges, costs and expenses, which the Customer may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of provision of Services to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of his sub-Suppliers.

- 6.4. If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Customer may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 6.5. The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer's premises the Supplier shall, and shall procure that all Staff shall, comply with all the Customer's security requirements.
- 6.6. Where all or any of the Services are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Customer in writing.
- 6.7. Without prejudice to clause 3.2.6, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.
- 6.8. The Supplier shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Customer is notified otherwise in writing within 5 Working Days.
- 6.9. Unless otherwise specifically stated to the contrary in the Customer's specification of requirement, the courses will be done via the Supplier's online platform.

7. Staff and Key Personnel

- 7.1. The Supplier shall employ sufficient Staff to ensure that it complies with its obligations under this Agreement. This will include, but not be limited to, the Supplier providing a sufficient reserve of trained and competent Staff to provide the Services during Staff holidays or absence.
- 7.2. The Supplier shall use reasonable endeavours to ensure the continuity of all Staff in the provision of the Services. The redeployment and/or replacement of any Key Personnel by the Supplier shall be subject to the prior written approval of the Customer, such approval not to be unreasonably withheld or delayed. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 7.3. If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
 - 7.3.1. refuse admission to the relevant person(s) to the Customer's premises;
 - 7.3.2. direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
 - 7.3.3. require that the Supplier promptly replaces any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,and the Supplier shall comply with any such notice.
- 7.4. The Supplier shall:
 - 7.4.1. ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
 - 7.4.2. if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and
 - 7.4.3. procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.

8. Assignment and sub-contracting

- 8.1. The Supplier shall not, without the written consent of the Customer, assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its Sub-contractors as though those acts and omissions were its own.
- 8.2. Where the Supplier enters into a Sub-contract for the purpose of performing its obligations under the Agreement, it shall ensure that provisions are included in such Sub-contract which:
- 8.2.1. contain at least equivalent obligations as set out in the Agreement in relation to the performance of the Services to the extent relevant to such Sub-contract;
 - 8.2.2. contain at least equivalent obligations as set out in the Agreement in respect of confidentiality, information security, data protection, Intellectual Property Rights and compliance with Laws;
 - 8.2.3. contain a prohibition on the Sub-contractor sub-contracting, assigning or novating any of its rights or obligations under such Sub-contract without the prior written approval of the Customer (such approval not to be unreasonably withheld or delayed);
 - 8.2.4. contain a right for the Customer to take an assignment or novation of the Sub-contract (or part of it) upon expiry or earlier termination of the Agreement; and
 - 8.2.5. require payment to be made of all sums due by the Supplier to the Sub-contractor within a specified period not exceeding 30 days from the Receipt of a valid invoice.
- 8.3. Any authority given by the Customer for the Supplier to Sub-contract any of its obligations under this Agreement shall not impose any duty on the Customer to enquire as to the competency of any authorised Sub-contractor. The Supplier shall ensure that any authorised Sub-contractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such Sub-contractor are fully in accordance with the Agreement.
- 8.4. Where the Customer has consented to the placing of Sub-contracts, the Supplier shall, at the request of the Customer, send copies of each Sub-contract, to the Customer as soon as is reasonably practicable.
- 8.5. The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

9. Intellectual Property Rights

- 9.1. All Foreground IP shall vest in the Customer absolutely, and the Supplier hereby assigns to the Customer, absolutely with full title guarantee (and free from all third party rights), any and all of its rights, title and interest in and to all the existing and future Foreground IP, to the fullest extent permitted by law.
- 9.2. The Supplier hereby grants the Customer a perpetual, royalty-free, irrevocable, worldwide, non-exclusive licence (with a right freely to sub-license to any third party) to use all the present and future Background IP that is owned by the Supplier and/or the use of which the Supplier is able to license, including any modifications to or derivative versions of any such Background IP, which the Customer reasonably requires in order to exercise its rights under and to take the full benefit of the Agreement including the Services provided, including, without limitation, to receive, use, re-use, adapt, modify, reproduce, exploit, produce derivative versions of, supply and/or publish (including as open source software) or deal in any other way with the Deliverables.
- 9.3. Each Party undertakes that it shall promptly execute all documents, make all applications, give all assistance and do or procure the doing of all acts and things as may be necessary or