

Contract for Services

OHS Data Migration (23_03_08)

This Contract includes:

Part A - Order Form

Part B – Terms and conditions

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Schedule 1 - Requirements

[Schedule 2 - Not used](#)

[Schedule 3 - Statement of Work \(SOW\), including pricing arrangements and Key Staff](#)

[Schedule 4 - Contract Change Notice \(CCN\)](#)

[Schedule 5 - Balanced Scorecard](#)

[Schedule 6 – Not used](#)

[Schedule 7 – Not used](#)

[Schedule 8 – Not used](#)

[Schedule 9 - Processing, Personal Data and Data Subjects](#)

[Schedule 10 – Not used](#)

The Order Form (Part A), the Terms and Conditions (Part B), and the Schedules (Part C) will become the binding contract. The Order Form may include:

- Buyer and Supplier details
- contract term
- Deliverables
- location
- warranties
- staffing needs
- staff vetting procedure
- notice period for termination
- standards required (including security requirements)
- charges, invoicing method, payment methods and payment terms
- additional Buyer terms and conditions
- insurances
- business continuity and disaster recovery
- security
- governance
- methodology
- Buyer and Supplier responsibilities

Order Form (Part A) and Schedules (Part C) are set out below.

Part A - Order Form

Buyer	NHS Business Services Authority ("NHSBSA")
Supplier	Mastek (UK) Limited
Contract Ref.	23_03_08
Contract title	OHS Data Migration
Contract description	<p>This Contract provides the NHSBSA with capability to deliver digital outcomes on services relating to the Overseas Healthcare Service.</p> <p>The service is required to:</p> <ul style="list-style-type: none"> • Enable a sufficient transition period between existing supplier and new supplier where outcomes will not be fully concluded on the Overseas Healthcare Service Partner Contract. • Deliver defined Buyer Requirements to support delivery of Roadmap deliverables relating to Cost Recovery Data migration and Public Beta Assessment, through Statements of Work.
<u>Contract Period</u>	29/03/2023 – 28/04/2023
Start date	29/03/2023
End date	28/04/2023
(Optional) Maximum Contract Extension Period	No option to extend
Latest Extension Period End Date	Not used
Notice period (prior to the initial Contract Period) to trigger Contract Extension	Not used
<u>Contract value</u>	<p>£80,850 ex VAT</p> <p>The Buyer makes no commitment to any particular level of spend (actual spend agreed in SOWs) nor does it grant exclusivity to the selected supplier in respect of the services described in this opportunity.</p>

Charging method	Capped Time and materials (CTM)	✓
	Price per story	
	Time and materials (T&M)	✓
	Fixed price	✓
	Other pricing method or a combination of pricing methods agreed by the Parties	✓
Notice period for termination for convenience	As per Clause 23.2 of this Contract.	
Initial SOW package	Detailed in Schedule 3	

Buyer reference:	23_03_08
Order date:	
Purchase order:	To be provided on agreement of each Statement of Works.
From:	NHS Business Services Authority Stella House Goldcrest Way Newcastle upon Tyne. NE15 8NY
To:	Mastek (UK) Ltd Pennant House, 2 Napier Court, Napier Road, Reading, RG1 8BW United Kingdom incorporated and registered in England and Wales (Company number 02731277)
Together:	the "Parties"

Principle contact details

For the Buyer:	Name:	Darren Curry
	Title:	Chief Digital Officer
	Email:	[REDACTED]
	Phone:	[REDACTED]
For the Supplier:	Name:	Paul Anderegg
	Title:	Account Director
	Email:	[REDACTED]
	Phone:	[REDACTED]

Data Protection Officers

For the Buyer:	Name:	Chris Gooday
	Title:	Information Governance Manager
	Email:	[REDACTED]
	Phone:	0191 203 5351
For the supplier:	Name:	Mahesh Juttiyavar
	Title:	Mastek CISO
	Email:	[REDACTED]
	Phone:	[REDACTED] [REDACTED]

Buyer contractual requirements	
Services required:	As detailed in Part C - The Schedules, Schedule 1 – Requirements.
Warranty period	45 days from the date of Buyer acceptance of Release. Any amendment to the Warranty Period must be specified and agreed within each Statement of Work.
Location:	Buyer sites or as agreed by the Parties.
Staff vetting procedures:	The level of clearance will be detailed in each Statement of Work. The level of clearance for this requirement is BPSS.
Standards:	Government Digital Standards, Government Technology Code of Practice, NHSBSA Security Standards.

Limit on supplier's liability:	As per Clauses 33 and 34 of this Contract.
Insurance:	As per Clause 10.1 of this Contract.
Supplier's information	
Commercially sensitive information:	Rate Card
Subcontractors / Partners:	Not used
Contract Charges and payment	
The method of payment for the Contract Charges (GPC or BACS)	BACS.
Invoice (including Electronic Invoice) details	Electronic Invoice.
Who and where to send invoices to:	Invoices to be sent to: nhsbsa.accountspayable@nhs.net
Invoice information required – eg PO, project ref, etc.	<ul style="list-style-type: none"> • Date of invoice. • Unique invoice number. • Valid Purchase Order Number as provided by the Buyer. • The period to which the charges relate. • Details of the correct agreement reference (20_07_01 and SoW X).
Invoice frequency	Monthly in arrears.
Contract value:	<p>£80,850 ex VAT.</p> <p>The Buyer makes no commitment to any particular level of spend (actual spend agreed in SOWs) nor does it grant exclusivity to the selected supplier in respect of the services described in this opportunity.</p>

Contract Charges:**Onshore Rate Card (Co-located at Buyer site)**

Technical Architect	
Data Analyst	
Data Architect	
Tester	
Developer	
Business Analyst	
Devops/Platform Engineer	

Additional Buyer terms

Warranties, representations and acceptance criteria	<p>Acceptance Criteria to be agreed by the Parties and documented in each Statement of Work.</p> <p>For the avoidance of doubt, all intellectual property rights in any data or deliverable shall be retained by or transferred to, the Buyer as appropriate.</p> <p>Expenses: to and from the Base Location in Newcastle-upon-Tyne are not eligible to claim. Any expenses outside of the Base Location must be agreed in advance with the Buyer's Delivery Manager and shall be in accordance with the NHSBSA's policy for Travel and Subsistence.</p>
Supplemental requirements in addition to the Contract terms	<p>All Statements of Work will need to be agreed by and signed by the Parties to become effective, which in the case of the Buyer will require them to be approved for signature by the Chief Digital Officer or delegated Buyer representative.</p> <p>The Supplier will be responsible for all costs for its staff engaged under this contract, including the payment of Tax and National Insurance in accordance with all HMRC taxation rules. The Buyer will be able to seek assurance from the Supplier that this is the case.</p>
Buyer specific amendments to/refinements of the Contract terms	

<p>Specific terms:</p>	<p>Special term 1 - Non-Solicitation of Staff.</p> <p>Neither Party shall (except with the prior written consent of the other Party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other Party any person employed or engaged by such other Party in the provision of the Services or (in the case of the Buyer) in the receipt of the Services at any time during such employment or engagement of that person by such other Party, or for a period of twelve (12) months after the cessation of such employment or engagement.</p> <p>1. If either the Supplier or the Buyer commits any breach of this clause, the breaching party shall, on demand, pay to the claiming party a sum equal to one year's basic salary or the annual fee that was payable by the claiming party to that employee, worker or independent contractor plus the recruitment costs incurred by the claiming party in replacing such person.</p> <p>2. Nothing in this clause shall prevent either Party from hiring any person by means of a normal advertising campaign not specifically targeted at any of the staff of the other Party.</p> <p>All Statements of Work will need to be agreed by and signed by the Parties to become effective, which in the case of the Buyer will require them to be approved for signature by the Chief Digital Officer or delegated Buyer representative.</p> <p>Special Term 2 - Overtime</p> <p>The Supplier shall not charge for any more than seven and a half (7.5) working hours in one Working Day. Where Services are required to be delivered during Overtime by the Buyer it will be agreed in writing between the authorised personnel of the respective Parties prior to the commencement of the Services to be carried out during Overtime. The Supplier will, where required, provide evidence where services to be carried out as Overtime are agreed. The following Contract Charges will apply to Overtime:</p> <p>The hourly overtime Contract Charge outside of a Working Day during the time Monday 00:01 hours to Friday 23:59 hours excluding public holiday in England and Wales is 1.25 x the Day Rate / 7.5 (hours) for the applicable role.</p> <p>The hourly overtime Contract Charge outside of a Working Day during the time Saturday 00:01hours to Sunday 23:59 hours</p>
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	<p>and public holiday in England and Wales is 1.5 x the Day Rate / 7.5 (hours) for the applicable role.</p> <p>All Overtime requests must be approved by appropriate Buyer Representative - Named Lead on the SOW or agreed senior role (Eg, Product Owner) or their line manager.</p> <p>Special Term 3 - When the Buyer can terminate the contract for financial distress, the Supplier must ensure that the Buyer has access to any Source Code, object code and Buyer artefacts.</p>
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Formation of Contract	
1.1	By signing and returning this Order Form (Part A), the Supplier agrees to enter into a Contract with the Buyer.
1.2	The Parties agree that they have read the Order Form (Part A), the Contract terms and conditions (Part B), and the Schedules (Part C), and by signing below agree to be bound by this Contract.
1.3	This Contract will be formed when the Buyer acknowledges the receipt of the signed copy of the Order Form from the Supplier.
1.4	The Contract outlines the Deliverables of the agreement. The Order Form outlines any amendment of the terms and conditions set out in Part B. The terms and conditions of the Contract Order Form will supersede those of the Contract standard terms and conditions.
2.	<p>Background to the agreement</p> <p>(A) The Supplier is a provider of digital outcomes and specialists services and undertook to provide such Services under the terms set out the Contract.</p> <p>(B) The Buyer served an Order Form for Services to the Supplier on the Order Date stated in the Order Form.</p> <p>(C) The Parties intend that this Contract will not itself oblige the Buyer to buy or the Supplier to supply the Services. Specific instructions and requirements will have contractual effect on the execution of an SOW.</p>

SIGNED:

Supplier signature:	Buyer signature:

Part B – Terms and conditions

1. Contract start date, length and methodology

1.1 The Supplier will start providing the Services in accordance with the dates specified in the Statement of Work (SOW).

1.2 Completion dates for Deliverables will be set out in the SOW.

1.3 Unless the Contract Period has been either increased in accordance with Clause 1.4 or decreased in accordance with Clause 1.5 then the term of the Contract will end when the first of these occurs:

- the Contract Period End Date listed in the Order Form is reached; or
- the final Deliverable, specified in the SOW, is completed.

1.4 The Buyer can extend the term of the Contract by amending the Contract End Date where:

- an Extension Period was specified in the Order Form; and
- written notice was given to the Supplier before the expiry of the notice period set out in the Order Form. The notice must state that the Contract term will be extended, and must specify the number of whole days of the extension.

After this, the term of the Contract will end on the last day of the Extension Period listed in the notice (the “Extension Period End Date”).

1.5 If the Contract is terminated early, either during the initial Contract Period, or during any Extension Period, the term of the Contract will end on the termination date.

1.6 The Supplier will plan on using an agile process, starting with user needs. The methodology will be outlined in the SOW. Waterfall methodology will only be used in exceptional circumstances, and where it can be shown to best meet user needs. Projects may need a combination of both waterfall and agile methods, playing to their respective strengths.

2. Supplier Staff

2.1 The Supplier Staff will:

- fulfil all reasonable requests of the Buyer;
 - apply all due skill, care and diligence to the provisions of the Services;
 - be appropriately experienced, qualified and trained to supply the Services;
 - respond to any enquiries about the Services as soon as reasonably possible;
- and
- complete any necessary vetting procedures specified by the Buyer.

2.2 The Supplier will ensure that Key Staff are assigned to provide the Services for their Working Days (agreed between Supplier and Buyer) and are not removed from the Services during the dates specified in the SOW.

2.3 The Supplier will promptly replace any Key Staff that the Buyer considers unsatisfactory at no extra charge. The Supplier will promptly replace anyone who resigns with someone who is acceptable to the Buyer. If the Supplier cannot provide an acceptable replacement, the Buyer may terminate the Contract subject to clause 23.

2.4 Supplier Staff will comply with Buyer requirements for the conduct of staff when on Buyer's premises.

2.5 The Supplier will comply with the Buyer's staff vetting procedures for all or part of the Supplier Staff.

2.6 The Supplier will, on request (and subject to any obligations under the Data Protection Legislation), provide a copy of the contract of employment or engagement (between the Supplier and the Supplier Staff) for every member of Supplier Staff made available to the Buyer.

3. Swap-out

3.1 Supplier Staff providing the Services may only be swapped out with the prior approval of the Buyer. For this approval, the Buyer will consider:

- the provisions of Clause 2.1; and
- their Statement of Requirements and the Supplier's response.

4. Staff vetting procedures

4.1 All Supplier Staff will need to be cleared to the level determined by the Buyer prior to the commencement of work.

4.2 The Buyer may stipulate differing clearance levels for different roles during the period.

4.3 The Supplier will ensure that it complies with any additional staff vetting procedures requested by the Buyer.

5. Due diligence

5.1 Both Parties acknowledge that information will be needed to provide the Services throughout the term of the Contract. Both Parties agree to share such information freely.

5.2 Further to Clause 5.1, both Parties agree that when entering into a Contract, they:

5.2.1 have made their own enquiries and are satisfied by the accuracy of any information supplied by the other Party

5.2.2 are confident that they can fulfil their obligations according to the terms of the Contract

5.2.3 have raised all due diligence questions before signing the Contract

5.2.4 have entered into the Contract relying on its own due diligence

6. Warranties, representations and acceptance criteria

6.1 The Supplier will use the best applicable and available techniques and standards and will perform the Contract with all reasonable care, skill and diligence, and according to Good Industry Practice.

6.2 The Supplier warrants that all Supplier Staff assigned to the performance of the Services have the necessary qualifications, skills and experience for the proper performance of the Services.

6.3 The Supplier represents and undertakes to the Buyer that each Deliverable will meet the Buyer's acceptance criteria, as defined in the Contract Order Form or Statement of Work.

6.4 The Supplier undertakes to maintain any interface and interoperability between third-party software or Services and software or Services developed by the Supplier.

6.5 The Supplier warrants that it has full capacity and authority and all necessary authorisations, consents, licences and permissions to perform the Contract.

7. Business continuity and disaster recovery

7.1 If required by the Buyer, the Supplier will ensure a disaster recovery approach is captured in a clear disaster recovery plan. All Supplier Staff must also adhere to the Buyer's business continuity and disaster recovery procedure as required in the delivery of the Services for this project.

8. Payment terms and VAT

8.1 The Buyer will pay the Supplier within 30 days of receipt of an Electronic Invoice subject to the provisions of Clauses 8.5 and 8.6 or a valid invoice submitted in accordance with the Contract.

8.2 The Supplier will ensure that each invoice or Electronic Invoice contains the information specified by the Buyer in the Order Form.

8.3 The Contract Charges are deemed to include all Charges for payment processing.

8.4 All payments under the Contract are inclusive of VAT.

8.5 The Buyer shall accept and process for payment an Electronic Invoice submitted for payment by the Supplier where the invoice is undisputed and where it complies with the standard on electronic invoicing.

8.6 For the purposes of Clause 8.5 an Electronic Invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.

9. Recovery of sums due and right of set-off

9.1 The Buyer may retain or set-off payment of any amount owed to it by the Supplier if notice and reasons are provided.

10. Insurance

The Supplier will maintain the insurances required by the Buyer including those set out in this Clause.

10.1 Subcontractors

10.1.1 The Supplier will ensure that, during the Contract, Subcontractors hold third-party public and products liability insurance of the same amounts that the Supplier would be legally liable to pay as damages, including claimant's costs and expenses, for accidental death or bodily injury and loss of or damage to Property, to a minimum of £5,000,000.

10.2 Agents and professional consultants

10.2.1 The Supplier will also ensure that all agents and professional consultants involved in the supply of Services hold professional indemnity insurance to a minimum indemnity of £1,000,000 for each individual claim during the Contract, and for 6 years after the termination or expiry date to the Contract to which the insurance relates.

10.3 Additional or extended insurance

10.3.1 If requested by the Buyer, the Supplier will obtain additional insurance policies, or extend existing insurance policies.

10.3.2 The Supplier will provide the Buyer, the following evidence that they have complied with Clause 10.3.1 above:

- a broker's verification of insurance; or
- receipts in respect of the insurance premium; or
- other satisfactory evidence of payment of the latest premiums due.

10.4 Supplier liabilities

10.4.1 Insurance will not relieve the Supplier of any liabilities under the Contract.

10.4.2 Without limiting the other provisions of the Contract, the Supplier will:

- take all risk control measures relating to the Services as it would be reasonable to expect of a contractor acting in accordance with Good Industry Practice, including the investigation and reports of claims to insurers;
- promptly notify the insurers in writing of any relevant material fact under any insurances of which the Supplier is, or becomes, aware; and
- hold all insurance policies and require any broker arranging the insurance to hold any insurance slips and other evidence of placing cover representing any of the insurance to which it is a Party.

10.4.3 The Supplier will not do or omit to do anything, which would entitle any insurer to refuse to pay any claim under any of the insurances.

10.5 Indemnity to principals

10.5.1 Where specifically outlined in the Contract, the Supplier will ensure that the third-party public and products liability policy will contain an 'indemnity to principals' clause under which the Buyer will be compensated for both of the following claims against the Buyer:

- death or bodily injury; and
- third-party Property damage arising from connection with the Services and for which the Supplier is legally liable.

10.6 Cancelled, suspended, terminated or unrenewed policies

10.6.1 The Supplier will notify the Buyer as soon as possible if the Supplier becomes aware that any of the insurance policies have been, or are due to be, cancelled, suspended, terminated or not renewed.

10.7 Premium, excess and deductible payments

10.7.1 Where any insurance requires payment of a premium, the Supplier will:

- be liable for the premium; and
- pay such premium promptly.

10.7.2 Where any insurance is subject to an excess or deductible below the Supplier will be liable for it. The Supplier will not be entitled to recover any sum paid for insurance excess or any deductible from the Buyer.

11. Confidentiality

11.1 Except where disclosure is clearly permitted by the Contract, neither Party will disclose the other Party's Confidential Information without the relevant Party's prior written consent.

11.2 Disclosure of Confidential Information is permitted where information:

- must be disclosed to comply with legal obligations placed on the Party making the disclosure
- belongs to the Party making the disclosure (who is not under any obligation of confidentiality) before its disclosure by the information owner
- was obtained from a third party who is not under any obligation of confidentiality, before receiving it from the disclosing Party

- is, or becomes, public knowledge, other than by breach of this Clause or the Contract
- is independently developed without access to the other Party's Confidential Information
- is disclosed to obtain confidential legal professional advice.

11.3 The Buyer may disclose the Supplier's Confidential Information:

- to any central government body on the basis that the information may only be further disclosed to central government bodies;
- to the UK Parliament, Scottish Parliament or Welsh or Northern Ireland Assemblies, including their committees;
- if the Buyer (acting reasonably) deems disclosure necessary or appropriate while carrying out its public functions;
- on a confidential basis to exercise its rights or comply with its obligations under the Contract; or
- to a proposed transferee, assignee or novatee of, or successor in title to, the Buyer.

11.4 References to disclosure on a confidential basis will mean disclosure subject to a confidentiality agreement or arrangement containing the same terms as those placed on the Buyer under this Clause.

11.5 The Supplier may only disclose the Buyer's Confidential Information to Supplier Staff who are directly involved in the provision of the Services and who need to know the information to provide the Services. The Supplier will ensure that its Supplier Staff will comply with these obligations.

11.6 Either Party may use techniques, ideas or knowledge gained during the Contract unless the use of these things results in them disclosing the other Party's Confidential Information where such disclosure is an infringement of Intellectual Property Rights.

12. Conflict of Interest

12.1 The Supplier will take all appropriate steps to ensure that Supplier Staff are not in a position where there is or may be an actual conflict between the financial or personal interests of the Supplier Staff and another Supplier where both are providing the Services to the Buyer under any Contract.

12.2 Any breach of this Clause will be deemed to be a Material Breach.

12.3 A conflict of interest may arise in situations including where a member of the Supplier Staff:

- is providing, or has provided, Services to the Buyer for the discovery phase; or
- has been provided with, or had access to, information which would give the Supplier or an affiliated company an unfair advantage in a further competition procedure.

12.4 Where the Supplier identifies a risk of a conflict or potential conflict, they will (before starting work under the Contract, unless otherwise agreed with the Buyer) inform the

Buyer of such conflicts of interest and how they plan to mitigate the risk. Details of such mitigation arrangements are to be sent to the Buyer as soon as possible. On receiving this notification, the Buyer will, at its sole discretion, notify the Supplier if the mitigation arrangements are acceptable or whether the risk or conflict remains a Material Breach.

13. Intellectual Property Rights

13.1 Unless otherwise specified in the Contract:

- the Buyer will not have any right to the Intellectual Property Rights (IPRs) of the Supplier or its licensors, including the Supplier Background IPRs and any IPRs in the Supplier Software.
- the Buyer may publish any Deliverable that is software as open source.
- the Supplier will not, without prior written approval from the Buyer, include any Supplier Background IPR or third party IPR in any Deliverable in such a way to prevent its publication and failure to seek prior approval gives the Buyer the right to use all Deliverables.
- the Supplier assigns (by present assignment of future rights to take effect immediately on it coming into existence) to the Buyer with full guarantee (or shall procure assignment to the Buyer), title to and all rights and interest in the Project-Specific IPRs together with and including any documentation, source code and object code comprising the Project-Specific IPRs and all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Project-Specific IPRs.
- the Supplier will not have any right to the Intellectual Property Rights of the Buyer or its licensors, including:
 - the Buyer Background IPRs;
 - the Project-Specific IPRs;
 - IPRs in the Buyer Data.

13.2 Where either Party acquires, by operation of Law, rights to IPRs that are inconsistent with the allocation of rights set out above, it will assign in writing such IPRs as it has acquired to the other Party.

13.3 Except where necessary for the performance of the Contract (and only where the Buyer has given its prior approval), the Supplier will not use or disclose any of the Buyer Background IPRs, Buyer Data or the Project-Specific IPRs to or for the benefit of any third party.

13.4 The Supplier will not include any Supplier Background IPRs or third-party IPRs in any Release or Deliverable that is to be assigned to the Buyer under the Contract, without approval from the Buyer.

13.5 The Supplier will grant the Buyer (and any replacement Supplier) a perpetual, transferable, sub-licensable, non-exclusive, royalty-free licence to copy, modify, disclose and use the Supplier Background IPRs for any purpose connected with the receipt of the Services that is additional to the rights granted to the Buyer under the Contract and to enable the Buyer:

- to receive the Services;
- to make use of the Services provided by the replacement Supplier; and
- to use any Deliverables

and where the Supplier is unable to provide such a licence it must meet the requirement by creating new Project-Specific IPR at no additional cost to the Buyer.

13.6 The Buyer grants the Supplier a non-exclusive, non-assignable, royalty-free licence to use the Buyer Background IPRs, the Buyer Data and the Project-Specific IPRs during the term of the Contract for the sole purpose of enabling the Supplier to provide the Services.

13.7 The Buyer gives no warranty as to the suitability of any IPRs licensed to the Supplier hereunder. Any such licence:

- may include the right to grant sub-licences to Subcontractors engaged in providing any of the Services (or part thereof) provided that any such Subcontractor has entered into a confidentiality undertaking with the Supplier on the same terms as in clause 11 (Confidentiality) and that any such subcontracts will be non-transferable and personal to the relevant Subcontractor; and
- is granted solely to the extent necessary for the provision of the Services in accordance with the Contract. The Supplier will ensure that the Subcontractors do not use the licensed materials for any other purpose.

13.8 The Supplier will ensure that no unlicensed software or open source software (other than the open source software specified by the Buyer) is interfaced with or embedded within any Buyer Software or Deliverable.

13.9 Before using any third-party IPRs related to the supply of the Services, the Supplier will submit to the Buyer for approval, all details of any third-party IPRs.

13.10 Where the Supplier is granted permission to use third-party IPRs in a request for approval, the Supplier will ensure that the owner of such third-party IPRs grants to the Buyer a licence on the terms informed to the Buyer in the request for approval.

13.11 If the third-party IPR is made available on terms equivalent to the Open Government Licence v3.0, the request for approval will be agreed and the Supplier will buy licences under these terms. If not, the Supplier shall notify the Buyer in writing giving details of what licence terms can be obtained and other alternatives and no third-party IPRs may be used without Buyer approval in writing.

13.12 The Supplier will, on written demand, fully indemnify the Buyer and the Crown for all losses which it may incur at any time as a result of any claim (whether actual alleged asserted and/or substantiated and including third party claims) that the rights granted to the Buyer in accordance with the Contract or the performance by the Supplier of the provision of the Services or the possession or use by the Buyer of the Services or Deliverables delivered by the Supplier, including the publication of any Deliverable that is software as open source, infringes or allegedly infringes a third party's Intellectual Property Rights (an 'IPR Claim').

13.13 Clause 13.12 will not apply if the IPR Claim arises from:

- designs supplied by the Buyer;
- the use of data supplied by the Buyer which is not required to be verified by the Supplier under any provision of the Contract; or
- other material provided by the Buyer necessary for the provision of the Services.

13.14 The indemnity given in Clause 13.12 will be uncapped.

13.15 The Buyer will notify the Supplier in writing of the IPR Claim made against the Buyer and the Buyer will not make any admissions which may be prejudicial to the defence or settlement of the IPR Claim. The Supplier will at its own expense conduct all negotiations and any litigation arising in connection with the IPR Claim provided always that the Supplier:

- consults the Buyer on all substantive issues which arise during the conduct of such litigation and negotiations;
- takes due and proper account of the interests of the Buyer;
- considers and defends the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Buyer into disrepute; and
- does not settle or compromise the IPR Claim without the prior approval of the Buyer (such decision not to be unreasonably withheld or delayed).

13.16 If an IPR Claim is made (or in the reasonable opinion of the Supplier is likely to be made) in connection with the Contract, the Supplier will, at the Supplier's own expense and subject to the prompt approval of the Buyer, use its best endeavours to:

- modify the relevant part of the Services or Deliverables without reducing their functionality or performance, or substitute Services or Deliverables of equivalent functionality or performance, to avoid the infringement or the alleged infringement, provided that there is no additional cost or burden to the Buyer;
- buy a licence to use and supply the Services or Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Buyer; and
- promptly perform any responsibilities and obligations to do with the Contract.

13.17 If an IPR Claim is made (or in the reasonable opinion of the Supplier is likely to be made) against the Supplier, the Supplier will immediately notify the Buyer in writing.

13.18 If the Supplier does not comply with provisions of this Clause within 20 Working Days of receipt of notification by the Supplier from the Buyer under clause 13.15 or receipt of the notification by the Buyer from the Supplier under clause 13.17 (as appropriate), the Buyer may terminate the Contract for Material Breach and the Supplier will, on demand, refund the Buyer with all monies paid for the Service or Deliverable that is subject to the IPR Claim.

13.19 The Supplier will have no rights to use any of the Buyer's names, logos or trademarks without the Buyer's prior written approval.

13.20 The Supplier will, as an enduring obligation throughout the term of the Contract where any software is used in the provision of the Services or information uploaded, interfaced or exchanged with the Buyer systems, use software and the most up-to-date antivirus definitions from an industry-accepted antivirus software vendor. It will use the software to check for, contain the spread of, and minimise the impact of Malicious Software (or as otherwise agreed between the Buyer, and the Supplier).

13.21 If Malicious Software is found, the Supplier will co-operate with the Buyer to reduce the effect of the Malicious Software. If Malicious Software causes loss of operational efficiency or loss or corruption of Buyer Data, the Supplier will use all reasonable endeavours to help the Buyer to mitigate any losses and restore the provision of the Services to the desired operating efficiency as soon as possible.

13.22 Any costs arising from the actions of the Buyer or Supplier taken in compliance with the provisions of the above clause, and clause 20.3, will be dealt with by the Buyer and the Supplier as follows:

- by the Supplier, where the Malicious Software originates from the Supplier Software or the Buyer Data while the Buyer Data was under the control of the Supplier, unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to the Supplier.
- by the Buyer if the Malicious Software originates from the Buyer Software or the Buyer Data, while the Buyer Data was under the control of the Buyer.

13.23 All Deliverables that are software shall be created in a format, or able to be converted into a format, which is suitable for publication by the Buyer as open source software, unless otherwise agreed by the Buyer, and shall be based on open standards where applicable. The Supplier warrants that the Deliverables:

- are suitable for release as open source;
- have been developed using reasonable endeavours to ensure that their publication by the Buyer shall not cause any harm or damage to any party using them;
- do not contain any material which would bring the Buyer into disrepute;
- can be published as open source without breaching the rights of any third party; and
- do not contain any Malicious Software.

13.24 Where Deliverables that are software are written in a format that requires conversion before publication as open source software, the Supplier shall also provide the converted format to the Buyer unless the Buyer agrees in advance in writing that the converted format is not required.

13.25 Where the Buyer has authorised a Supplier request not to make an aspect of the Deliverable open source, the Supplier shall as soon as reasonably practicable provide written details of what will not be made open source and what impact that exclusion will have on the ability of the Buyer to use the Deliverable and Project Specific IPRs going forward as open source.

13.26 The Buyer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to this clause to:

- a Central Government Body; or
- to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Buyer.

If the Buyer ceases to be a Central Government Body, the successor body to the Buyer shall still be entitled to the benefit of the licences granted in this clause.

14. Data Protection and Disclosure

14.1 The Parties will comply with the Data Protection Legislation and agree that the Buyer is the Controller and the Supplier is the Processor. The only processing the Supplier is authorised to do is listed at Schedule 9 unless Law requires otherwise (in which case the Supplier will promptly notify the Buyer of any additional processing if permitted by Law).

14.2 The Supplier will provide all reasonable assistance to the Buyer to prepare any Data Protection Impact Assessment before commencing any processing (including provision of detailed information and assessments in relation to processing operations, risks and measures) and must notify the Buyer immediately if it considers that the Buyer's instructions infringe the Data Protection Legislation.

14.3 The Supplier must have in place Protective Measures, which have been reviewed and approved by the Buyer as appropriate, to guard against a Data Loss Event, which take into account the nature of the data, the harm that might result, the state of technology and the cost of implementing the measures.

14.4 The Supplier will ensure that the Supplier Personnel only process Personal Data in accordance with this Contract and take all reasonable steps to ensure the reliability and integrity of Supplier Personnel with access to Personal Data, including by ensuring they:

- i) are aware of and comply with the Supplier's obligations under this Clause;^{[L]_{SEP}}
- ii) are subject to appropriate confidentiality undertakings with the Supplier or relevant Subprocessor ^{[L]_{SEP}}
- iii) are informed of the confidential nature of the Personal Data and don't publish, disclose or divulge it to any third party unless directed by the Buyer or in accordance with this Contract^{[L]_{SEP}}
- iv) are given training in the use, protection and handling of Personal Data

14.5 The Supplier will not transfer Personal Data outside of the European Economic Area unless the prior written consent of the Buyer has been obtained and the following conditions are met:

- i) the Buyer or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Buyer;
- ii) the Data Subject has enforceable rights and effective legal remedies;
- iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Buyer in meeting its obligations); and
- iv) the Supplier complies with any reasonable instructions notified to it in advance by the Buyer with respect to the processing of the Personal Data

14.6 The Supplier will delete or return the Buyer's Personal Data (including copies) if requested in writing by the Buyer at the termination or expiry of this Contract, unless required to retain the Personal Data by Law.

14.7 The Supplier will notify the Buyer immediately if it receives any communication from a third party relating to the Parties' obligations under the Data Protection Legislation, or it becomes aware of a Data Loss Event, and will provide the Buyer with full and ongoing assistance in relation to each Party's obligations under the Data Protection Legislation in accordance with any timescales reasonably required by the Buyer.

14.8 The Supplier will maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:

- i) the Buyer determines that the processing is not occasional;
- ii) the Buyer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- ii) the Buyer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

14.9 Before allowing any Subprocessor to process any Personal Data related to this, the Supplier must obtain the prior written consent of the Buyer, and shall remain fully liable for the acts and omissions of any Subprocessor.

14.10 The Buyer may amend this Contract on not less than 30 Working Days' notice to the Supplier to ensure that it complies with any guidance issued by the Information Commissioner's Office.

15. Buyer Data

15.1 The Supplier will not remove any proprietary notices relating to the Buyer Data.

15.2 The Supplier will not store or use Buyer Data except where necessary to fulfil its obligations.

15.3 If Buyer Data is processed by the Supplier, the Supplier will supply the data to the Buyer as requested and in the format specified by the Buyer.

15.4 The Supplier will preserve the integrity of Buyer Data processed by the Supplier and prevent its corruption and loss.

15.5 The Supplier will ensure that any system which holds any Buyer Data complies with the security requirements prescribed by the Buyer.

15.6 The Supplier will ensure that any system on which the Supplier holds any protectively marked Buyer Data will be accredited as specific to the Buyer and will comply with:

- the government security policy framework and information assurance policy;

- guidance issued by the Centre for Protection of National Infrastructure on Risk Management and Accreditation of Information Systems; and
- the relevant government information assurance standard(s).

15.7 Where the duration of the Contract exceeds one year, the Supplier will review the accreditation status at least once a year to assess whether material changes have occurred which could alter the original accreditation decision in relation to Buyer Data. If any changes have occurred, the Supplier will re-submit such system for accreditation.

15.8 If at any time the Supplier suspects that the Buyer Data that the Supplier has held, used, or accessed has or may become corrupted, lost, breached or significantly degraded in any way for any reason, then the Supplier will notify the Buyer immediately and will at its own cost comply with any remedial action proposed by the Buyer.

15.9 The Supplier will provide, at the request of the Buyer, any information relating to the Supplier's compliance with its obligations under the Data Protection Legislation. The Supplier will also ensure that it does not knowingly or negligently fail to do something that places any Buyer in breach of its obligations of the Data Protection Legislation. This is an absolute obligation and is not qualified by any other provision of the Contract.

15.10 The Supplier agrees to use the appropriate organisational, operational and technological processes and procedures to keep the Buyer Data safe from unauthorised use or access, loss, destruction, theft or disclosure.

16. Document and source code management repository

16.1 The Supplier will comply with any reasonable instructions given by the Buyer as to where it will store documents and source code, both finished and in progress, during the term of the Contract.

16.2 The Supplier will ensure that all items that are uploaded to any repository contain sufficient detail, code annotations and instructions so that a third-party developer with the relevant technical abilities within the applicable role would be able to understand how the item was created and how it works together with the other items in the repository within a reasonable timeframe.

17. Records and audit access

17.1 The Supplier will allow the Buyer (and the Buyer's external auditor) to access its information and conduct audits of the Services provided under the Contract (subject to reasonable and appropriate confidentiality undertakings).

18. Freedom of Information (FOI) requests

18.1 The Supplier will transfer any Request for Information to the Buyer within 2 Working Days of receipt.

18.2 The Supplier will provide all necessary help reasonably requested by the Buyer to enable the Buyer to respond to the Request for Information within the time for compliance set out in section 10 of the Freedom of Information Act or Regulation 5 of the Environmental Information Regulations.

18.3 To the extent it is permissible and reasonably practical for it to do so, the Buyer will make reasonable efforts to notify the Supplier when it receives a relevant FOIA or EIR request so that the Supplier may make appropriate representations.

19. Standards and quality

19.1 The Supplier will comply with any standards in the Contract and with Good Industry Practice.

20. Security

20.1 If requested to do so by the Buyer, the Supplier will, within 30 Calendar Days of the date of the Contract, develop, obtain Buyer's approval of, maintain and observe a Security Management Plan and an Information Security Management System (ISMS) which, after Buyer approval, will apply during the term of the Contract. Both the ISMS and the Security Management Plan will comply with the security policy of the Buyer and protect all aspects of the Services, and all processes associated with the delivery of the Services.

20.2 The Supplier will use software and the most up-to-date antivirus definitions available from an industry accepted antivirus software vendor to minimise the impact of Malicious Software.

20.3 If Malicious Software causes loss of operational efficiency or loss or corruption of Buyer Data, the Supplier will help the Buyer to mitigate any losses and will restore the Services to their desired operating efficiency as soon as possible.

20.4 The Supplier will immediately notify the Buyer of any breach of security in relation to the Buyer's Confidential Information. The Supplier will recover such Buyer Confidential Information however it may be recorded.

20.5 Any system development by the Supplier must also comply with the government's '10 Steps to Cyber Security' guidance, as amended from time to time and currently available at: <https://www.ncsc.gov.uk/guidance/10-steps-cyber-security>

20.6 The Buyer will specify any security requirements for this project in the Order Form.

21. Incorporation of terms

21.1 Upon the execution of the SOW, the terms and conditions agreed in the SOW will be incorporated into the Contract that the terms of the SOW are agreed under.

22. Managing disputes

22.1 When either Party notifies the other of a dispute, both Parties will attempt in good faith to negotiate a settlement as soon as possible.

22.2 Nothing in this prevents a Party from seeking any interim order restraining the other Party from doing any act or compelling the other Party to do any act.

22.3 If the dispute cannot be resolved, either Party will be entitled to refer it to mediation in accordance with the procedures below, unless:

- the Buyer considers that the dispute is not suitable for resolution by mediation;
- the Supplier does not agree to mediation.

22.4 The procedure for mediation is as follows:

- A neutral adviser or mediator will be chosen by agreement between the Parties. If the Parties cannot agree on a mediator within 10 Working Days after a request by one Party to the other, either Party will as soon as possible, apply to the mediation provider or to the Centre for Effective Dispute Resolution (CEDR) to appoint a mediator. This application to CEDR must take place within 12 Working Days from the date of the proposal to appoint a mediator, or within 3 Working Days of notice from the mediator to either Party that they are unable or unwilling to act.
- The Parties will meet with the mediator within 10 Working Days of the mediator's appointment to agree a programme for the exchange of all relevant information and the structure for negotiations to be held. The Parties may at any stage seek help from the mediation provider specified in this clause to provide guidance on a suitable procedure.
- Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it will be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- If the Parties reach agreement on the resolution of the dispute, the agreement will be recorded in writing and will be binding on the Parties once it is signed by their duly authorised representatives.
- Failing agreement, either Party may invite the mediator to provide a non-binding but informative opinion in writing. Such an opinion will be provided without prejudice and will not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
- If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

22.5 Either Party may request by written notice that the dispute is referred to expert determination if the dispute relates to:

- any technical aspect of the delivery of the digital services;
- the underlying technology; or
- is otherwise of a financial or technical nature.

22.6 An expert will be appointed by written agreement between the Parties, but if there's a failure to agree within 10 Working Days, or if the person appointed is unable or unwilling to act, the expert will be appointed on the instructions of the President of the British

Computer Society (or any other association that has replaced the British Computer Society).

22.7 The expert will act on the following basis:

- they will act as an expert and not as an arbitrator and will act fairly and impartially;
- the expert's determination will (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
- the expert will decide the procedure to be followed in the determination and will be requested to make their determination within 30 Working Days of their appointment or as soon as reasonably practicable and the Parties will help and provide the documentation that the expert needs for the determination;
- any amount payable by one Party to another as a result of the expert's determination will be due and payable within 20 Working Days of the expert's determination being notified to the Parties
- the process will be conducted in private and will be confidential;
- the expert will determine how and by whom the costs of the determination, including their fees and expenses, are to be paid.

22.8 Without prejudice to any other rights of the Buyer under the Contract, the obligations of the Parties under the Contract will not be suspended, ceased or delayed by the reference of a dispute submitted to mediation or expert determination and the Supplier and the Supplier Staff will comply fully with the Requirements of the Contract at all times.

23. Termination

23.1 The Buyer will have the right to terminate the Contract at any time by giving the notice to the Supplier specified in the Order Form, subject to clause 23.2 and 23.3 below. The Supplier's obligation to provide the Services will end on the date set out in the Buyer's notice.

23.2 The minimum notice period (expressed in Working Days) to be given by the Buyer to terminate under this Clause will be the number of whole days that represent 20% of the total duration of the SOW to be performed under the Contract, up to a maximum of 30 Working Days.

23.3 Partial days will be discounted in the calculation and the duration of the SOW will be calculated in full Working Days.

23.4 The Parties acknowledge and agree that:

- the Buyer's right to terminate under this Clause is reasonable in view of the subject matter of the Contract and the nature of the Service being provided.
- the Contract Charges paid during the notice period given by the Buyer in accordance with this Clause are a reasonable form of compensation and are deemed to fully cover any avoidable costs or losses incurred by the Supplier which may arise either directly or indirectly as a result of the Buyer exercising the right to terminate under this Clause without cause.
- Subject to clause 34 (Liability), if the Buyer terminates the Contract without cause, they will indemnify the Supplier against any commitments, liabilities or

expenditure which result in any unavoidable Loss by the Supplier, provided that the Supplier takes all reasonable steps to mitigate such Loss. If the Supplier holds insurance, the Supplier will reduce its unavoidable costs by any insurance sums available. The Supplier will submit a fully itemised and costed list of such Loss, with supporting evidence of unavoidable Losses incurred by the Supplier as a result of termination.

23.5 The Buyer will have the right to terminate the Contract at any time with immediate effect by written notice to the Supplier if:

- the Supplier commits a Supplier Default and if the Supplier Default cannot, in the opinion of the Buyer, be remedied; or
- the Supplier commits any fraud.

23.6 Either Party may terminate the Contract at any time with immediate effect by written notice to the other if:

- the other Party commits a Material Breach of any term of the Contract (other than failure to pay any amounts due under the Contract) and, if such breach is remediable, fails to remedy that breach within a period of 15 Working Days of being notified in writing to do so;
- an Insolvency Event of the other Party occurs, or the other Party ceases or threatens to cease to carry on the whole or any material part of its business
- a Force Majeure Event occurs for a period of more than 15 consecutive calendar days.

23.7 If a Supplier Insolvency Event occurs, the Buyer is entitled to terminate the Contract.

24. Consequences of termination

24.1 If the Buyer contracts with a replacement supplier, the Supplier will comply with Clause 29.

24.2 The rights and obligations of the Parties in respect of the Contract (including any executed SOWs) will automatically terminate upon the expiry or termination of the relevant Contract, except those rights and obligations set out in clause 24.6.

24.3 At the end of the Contract Period (howsoever arising), the Supplier must:

- immediately return to the Buyer:
 - all Buyer Data including all copies of Buyer Software and any other software licensed by the Buyer to the Supplier under the Contract;
 - any materials created by the Supplier under the Contract where the IPRs are owned by the Buyer;
 - any items that have been on-charged to the Buyer, such as consumables; and
 - all equipment provided to the Supplier. This equipment must be handed back to the Buyer in good working order (allowance will be made for reasonable wear and tear).
- immediately upload any items that are or were due to be uploaded to the repository when the Contract was terminated (as specified in Clause 27);

- cease to use the Buyer Data and, at the direction of the Buyer, provide the Buyer and the replacement Supplier with a complete and uncorrupted version of the Buyer Data in electronic form in the formats and on media agreed with the Buyer and the replacement Supplier;
- destroy all copies of the Buyer Data when they receive the Buyer's written instructions to do so or 12 months after the date of expiry or termination (whichever is the earlier), and provide written confirmation to the Buyer that the data has been destroyed, except where the retention of Buyer Data is required by Law;
- vacate the Buyer premises;
- work with the Buyer on any work in progress and ensure an orderly transition of the Services to the replacement supplier;
- return any sums prepaid for Services which have not been delivered to the Buyer by the date of expiry or termination;
- provide all information requested by the Buyer on the provision of the Services so that:
 - the Buyer is able to understand how the Services have been provided; and
 - the Buyer and the replacement supplier can conduct due diligence.

24.4 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 the Contract states otherwise.

24.5 All licences, leases and authorisations granted by the Buyer to the Supplier in relation to the Services will be terminated at the end of the Contract Period (howsoever arising) without the need for the Buyer to serve notice except where the Contract states otherwise.

24.6 Termination or expiry of the Contract will not affect:

- any rights, remedies or obligations accrued under the Contract prior to termination or expiration;
- the right of either Party to recover any amount outstanding at the time of such termination or expiry;
- the continuing rights, remedies or obligations of the Buyer or the Supplier under clauses:
 - 8 - Payment Terms and VAT
 - 9 - Recovery of Sums Due and Right of Set-Off
 - 11 - Confidentiality
 - 12 - Conflict of Interest
 - 13 - Intellectual Property Rights
 - 24 - Consequences of Termination
 - 28 - Staff Transfer
 - 34 - Liability
 - 35 - Waiver and cumulative remedies
- any other provision of the Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry will survive the termination or expiry of the Contract.

25. Supplier's status

25.1 The Supplier is an independent contractor and no contract of employment or partnership is created between the Supplier and the Buyer. Neither Party is authorised to act in the name of, or on behalf of, the other Party.

26. Notices

26.1 Any notices sent must be in writing. For the purpose of this Clause, an email is accepted as being in writing.

26.2 The following table sets out the method by which notices may be served under the Contract and the respective deemed time and proof of Service:

Delivery type	Deemed delivery time	Proof of Service
Email	9am on the first Working Day after sending	Dispatched in a pdf form to the correct email address without any error message

26.3 The address and email address of each Party will be the address and email address in the Order Form.

27. Exit plan

27.1 The Buyer and the Supplier will agree an exit plan during the Contract Period to enable the Supplier Deliverables to be transferred to the Buyer ensuring that the Buyer has all the code and documentation required to support and continuously develop the Service with Buyer resource or any third party as the Buyer requires. The Supplier will update this plan whenever there are material changes to the Services. A Statement of Work may be agreed between the Buyer and the Supplier to specifically cover the exit plan.

28. Staff Transfer

28.1 The Parties agree that nothing in the Contract or the provision of the Services is expected to give rise to a transfer of employment to which the Employment Regulations apply.

28.2 The Supplier will fully indemnify the Buyer against all Supplier Staff Liabilities which arise as a result of any claims brought against the Buyer due to any act or omission of the Supplier or any Supplier Staff.

28.3 The indemnity given in Clause 28.2 will be uncapped.

29. Help at retendering and handover to replacement supplier

29.1 When requested, the Supplier will (at its own expense where the Contract has been terminated before end of term due to Supplier cause) help the Buyer to migrate the Services to a replacement Supplier in line with the exit plan (Clause 27) to ensure continuity of the Services. Such help may include Supplier demonstrations of the existing

code and development documents, software licences used and Buyer approval documents. The Supplier will also answer Service and development-related clarification questions.

29.2 Within 10 Working Days of a request by the Buyer, the Supplier will provide any information needed by the Buyer to prepare for any procurement exercise or to facilitate any potential replacement Supplier undertaking due diligence. The exception to this is where such information is deemed to be Commercially Sensitive Information, in which case the Supplier will provide the information in a redacted form.

30. Changes to services

30.1 It is likely that there will be changes to the scope of the Services during the Contract Period. Agile projects have a scope that will change over time. The detailed scope (eg as defined in user stories) can evolve and change during the Contract Period. These changes do not require formal contract changes but do require the Buyer and Supplier to agree these changes.

30.2 Any changes to the high-level scope of the Services must be agreed between the Buyer and Supplier. The Supplier will consider any request by the Buyer to change the scope of the Services, and may agree to such request.

31. Contract changes

31.1 All changes to the Contract which cannot be accommodated informally as described in Clause 30 will require a Contract Change Note.

31.2 Either Party may request a contract change by completing and sending a draft Contract Change Note in the form in Schedule 4 of Part C - The Schedules ('the **Contract Change Notice**') to the other Party giving sufficient information to enable the other Party to assess the extent of the change and any additional cost that may be incurred. The Party requesting the contract change will bear the costs of preparation of the Contract Change Notice. Neither Party will unreasonably withhold nor delay consent to the other Party's proposed changes to the Contract.

31.3 Due to the agile-based delivery methodology of this Contract, it may not be possible to exactly define the consumption of Services over the duration of the Contract in a static Order Form. The Supplier should state the initial value of all Services that are likely to be consumed under the Contract.

32. Force Majeure

32.1 Neither Party will be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of a Force Majeure event. Each Party will use all reasonable endeavours to continue to perform its obligations under the Contract for the length of a Force Majeure event. If a Force Majeure event prevents a Party from performing its obligations under the Contract for more than 15 consecutive calendar days, the other Party may terminate the Contract with immediate effect by notice in writing.

33. Entire agreement

33.1 The Contract constitutes the entire agreement between the Parties relating to the matters dealt within it. It supersedes any previous agreement between the Parties relating to such matters.

33.2 Each of the Parties agrees that in entering into the Contract it does not rely on, and will have no remedy relating to, any agreement, statement, representation, warranty, understanding or undertaking (whether negligently or innocently made) other than as described in the Contract.

33.3 Nothing in this Clause or Clause 34 will exclude any liability for (or remedy relating to) fraudulent misrepresentation or fraud.

34. Liability

34.1 Neither Party excludes or limits its liability for:

- death or personal injury;
- bribery or fraud by it or its employees;
- breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- any liability to the extent it cannot be excluded or limited by Law.

34.2 In respect of the indemnities in Clause 13 (Intellectual Property Rights) and Clause 28 (Staff Transfer) and a breach of Clause 14 (Data Protection and Disclosure) the Supplier's total liability will be unlimited. The Buyer is not limited in the number of times it can call on this indemnity.

34.3 Subject to the above, each Party's total aggregate liability relating to all Losses due to a Default in connection with this agreement will be limited to the greater of the sum of £500,000 or a sum equal to 200% of the Contract Charges paid, due or which would have been payable under the Contract in the 6 months immediately preceding the event giving rise to the liability.

- Losses covered by this clause 34.3 that occur in the first 6 months of a Contract, will be limited to the greater of the sum of £500,000 or a sum equal to 200% of the estimated Contract Charges for the first 6 months of the Contract.

34.4 Subject to clause 34.1, in no event will either Party be liable to the other for any:

- loss of profits;
- loss of business;
- loss of revenue;
- loss of or damage to goodwill;
- loss of savings (whether anticipated or otherwise); or
- any indirect, special or consequential loss or damage.

34.5 The Supplier will be liable for the following types of loss which will be regarded as direct and will be recoverable by the Buyer:

- the additional operational or administrative costs and expenses arising from any Material Breach; and/or
- any regulatory losses, fines, expenses or other losses arising from a breach by the Supplier of any Law.

34.6 No enquiry, inspection, approval, sanction, comment, consent, or decision at any time made or given by, or on behalf of, the Buyer to any document or information provided by the Supplier in its provision of the Services, and no failure of the Buyer to discern any defect in, or omission from, any such document or information will exclude or limit the obligation of the Supplier to carry out all the obligations of a professional Supplier employed in a client and Buyer relationship.

34.7 Unless otherwise expressly provided, the obligations of the Buyer under the Contract are obligations of the Buyer in its capacity as a contracting counterparty and nothing in the Contract will be an obligation on, or in any other way constrain the Buyer in any other capacity, nor will the exercise by the Buyer of its duties and powers in any other capacity lead to any liability under the Contract on the part of the Buyer to the Supplier.

34.8 Any liabilities which are unlimited will not be taken into account for the purposes of establishing whether any limits relating to direct loss or damage to physical Property within this Clause have been reached.

34.9 Each Party must use all reasonable endeavours to mitigate any Loss or damage which it suffers under or in connection with this Contract, including any indemnities.

35. Waiver and cumulative remedies

35.1 The rights and remedies provided by this agreement may be waived only in writing by the Buyer or the Supplier representatives in a way that expressly states that a waiver is intended, and such waiver will only be operative regarding the specific circumstances referred to.

35.2 Unless a right or remedy of the Buyer is expressed to be exclusive, the exercise of it by the Buyer is without prejudice to the Buyer's other rights and remedies. Any failure to exercise, or any delay in exercising, a right or remedy by either Party will not constitute a waiver of that right or remedy, or of any other rights or remedies.

36. Fraud

36.1 The Supplier will notify the Buyer if it suspects that any fraud has occurred, or is likely to occur. The exception to this is if while complying with this, it would cause the Supplier or its employees to commit an offence.

36.2 If the Supplier commits any fraud relating to the Contract or any other Contract with the government:

- the Buyer may terminate the Contract
- the Buyer may recover in full from the Supplier whether under Clause 36.3 below or by any other remedy available in law.

36.3 The Supplier will, on demand, compensate the Buyer, in full, for any loss sustained by the Buyer at any time (whether such loss is incurred before or after the making of a demand following the indemnity hereunder) in consequence of any breach of this Clause.

37. Prevention of bribery and corruption

37.1 The Supplier will not commit any Prohibited Act.

37.2 The Buyer will be entitled to recover in full from the Supplier and the Supplier will, on demand, compensate the Buyer in full from and against:

- the amount of value of any such gift, consideration or commission; and
- any other loss sustained by the Buyer in consequence of any breach of this Clause

38. Legislative change

38.1 The Supplier will neither be relieved of its obligations under the Contract nor be entitled to increase the Contract prices as the result of a general change in Law or a Specific Change in Law without prior written approval from the Buyer.

39. Publicity, branding, media and official enquiries

39.1 The Supplier will take all reasonable steps to not do anything which may damage the public reputation of the Buyer. The Buyer may terminate the Contract for Material Breach where the Supplier, by any act or omission, causes material adverse publicity relating to or affecting the Buyer or the Contract. This is true whether or not the act or omission in question was done in connection with the performance by the Supplier of its obligations hereunder.

40. Non Discrimination

40.1 The Supplier will notify the Buyer immediately of any legal proceedings issued against it by any Supplier Staff on the grounds of discrimination.

41. Premises

41.1 Where either Party uses the other Party's premises, such Party is liable for all Loss or 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.

41.2 The Supplier will use the Buyer's premises solely for the Contract.

41.3 The Supplier will vacate the Buyer's premises upon termination or expiry of the Contract.

41.4 This Clause does not create any tenancy or exclusive right of occupation.

41.5 While on the Buyer's premises, the Supplier will:

- ensure the security of the premises;
- comply with Buyer requirements for the conduct of personnel;
- comply with any health and safety measures implemented by the Buyer;

- comply with any instructions from the Buyer on any necessary associated safety measures; and
- 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.

41.6 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.

41.7 All Equipment brought onto the Buyer's premises will be at the Supplier's risk. Upon termination or expiry of the Contract, the Supplier will remove such Equipment.

42. Equipment

42.1 Any Equipment brought onto the premises will be at the Supplier's own risk and the Buyer will have no liability for any loss of, or damage to, any Equipment.

42.2 Upon termination or expiry of the Contract, the Supplier will remove the Equipment, and any other materials, leaving the premises in a safe and clean condition.

43. Law and jurisdiction

43.1 The Contract will be governed by the Laws of England and Wales. Each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales and for all disputes to be conducted within England and Wales.

44. Defined Terms

'Background IPRs'	Any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of the Contract (whether prior to the start date or otherwise)
'Buyer'	A UK public sector body, or Contracting Authority, as described in the OJEU Contract Notice, that can execute a competition and this Contract
'Buyer Background IPRs'	Background IPRs of the Buyer
'Buyer's Confidential Information'	<p>All Buyer Data and any information that relates to the business, affairs, developments, trade secrets, know-how, personnel, and Suppliers of the Buyer, including all Intellectual Property Rights (IPRs), together with all information derived from any of the above</p> <p>Any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked 'confidential')</p>
'Buyer Data'	Data that is owned or managed by the Buyer, including Personal Data gathered for user research, eg recordings of user research sessions and lists of user research participants

'Buyer Software'	Software owned by or licensed to the Buyer (other than under or pursuant to this Contract), which is or will be used by the Supplier for the purposes of providing the Services
'Contract'	<p>The legally binding agreement for the provision of Services made between a Buyer and the Supplier</p> <p>This may include the key information summary, Order Form, requirements, Supplier's response, Statement of Work (SOW), Contract Change Notice (CCN) and terms and conditions as set out in the Contract Order Form</p>
'Charges'	The prices (excluding any applicable VAT), payable to the Supplier by the Buyer under the Contract, as set out in the applicable SOW(s), in consideration of the full and proper performance by the Supplier of the Supplier's obligations under the Contract and the specific obligations in the applicable SOW
'Commercially Sensitive Information'	Information, which the Buyer has been notified about, (before the Contract start date) with full details of why the Information is deemed to be commercially sensitive
'Comparable Supply'	The supply of services to another customer of the Supplier that are the same or similar to any of the Services
'Confidential Information'	<p>Buyer's Confidential Information or the Supplier's Confidential Information, which may include (but is not limited to):</p> <ul style="list-style-type: none"> any information that relates to the business, affairs, developments, trade secrets, know-how, personnel, and third parties, including all Intellectual Property Rights (IPRs), together with all information derived from any of the above any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked 'confidential')
'Contracting Authority'	The Buyer and any other person as listed in the OJEU Contract Notice or Regulation 2 of the Public Contracts Regulations 2015, as amended from time to time
'Control'	Control as defined in section 1124 and 450 of the Corporation Tax Act 2010. 'Controls' and 'Controlled' will be interpreted accordingly
'Controller'	Takes the meaning given in the Data Protection Legislation.
'Crown'	The government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf
'Data Loss Event'	Any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction

	of Personal Data in breach of this Contract, including any Personal Data Breach.
'Data Protection Impact Assessment'	An assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
'Data Protection Legislation'	All applicable Law about the processing of personal data and privacy (including the GDPR, LED and DPA 2018) and including if applicable legally binding guidance and codes of practice issued by the Information Commissioner.
'Data Protection Officer'	Takes the meaning given in the Data Protection Legislation.
'Data Subject'	Takes the meaning given in the Data Protection Legislation.
'Default'	<ul style="list-style-type: none"> any breach of the obligations of the Supplier (including any fundamental breach or breach of a fundamental term) any other default, act, omission, negligence or negligent statement of the Supplier, of its Subcontractors or any Supplier Staff in connection with or in relation to this Contract <p>Unless otherwise specified in this Contract in relation to a Default of the Contract, the Supplier is liable to the Buyer</p>
'Deliverable'	A tangible work product, professional service, outcome or related material or item that is to be achieved or delivered to the Buyer by the Supplier as part of the Services as defined in the Order Form and all subsequent Statement of Work
'DPA 2018'	Data Protection Act 2018.
'Employment Regulations'	The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time
'Electronic Invoice'	An invoice which has been issued, transmitted and received in a structured electronic format which allows for its automatic and electronic processing
'Equipment'	The Supplier's hardware, computer and telecoms devices, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Buyer) in the performance of its obligations under the Contract
'Extension Period'	The period (expressed in Working Days) that the initial Contract term is extended by following notice given by the Buyer to the Supplier in accordance with Clause 1.4, such period not to exceed the number of whole days that represent 25% of the initial Contract Period.
'FoIA'	The Freedom of Information Act 2000 and any subordinate legislation made under the Act occasionally together with any guidance or codes of practice issued by the

	Information Commissioner or relevant Government department in relation to such legislation
'Force Majeure'	<p>Force Majeure means anything affecting either Party's performance of their obligations arising from any of the following:</p> <ul style="list-style-type: none"> • acts, events, omissions, happenings or non-happenings beyond the reasonable control of the affected Party • riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare • acts of government, local government or Regulatory Bodies • fire, flood, any disaster and any failure or shortage of power or fuel • an industrial dispute affecting a third party for which a substitute third party is not reasonably available <p>The following do not constitute a Force Majeure event:</p> <ul style="list-style-type: none"> • any industrial dispute relating to the Supplier, its staff, or any other failure in the Supplier's (or a Subcontractor's) supply chain • any event or occurrence which is attributable to the wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned
'Fraud'	The making of a false representation or failing to disclose relevant information, or the abuse of position, in order to make a financial gain or misappropriate assets
'GDPR'	The General Data Protection Regulation (Regulation (EU) 2016/679).
'Good Industry Practice'	Standards and procedures conforming to the Law and the application of skill, care and foresight which would be expected from a person or body who has previously been engaged in a similar type of undertaking under similar circumstances. The person or body must adhere to the technology code of practice (https://www.gov.uk/service-manual/technology/code-of-practice.html) and the government service design manual (https://www.gov.uk/service-manual)
'Group'	A company plus any subsidiary or holding company. 'Holding company' and 'Subsidiary' are defined in section 1159 of the Companies Act 2006
'Group of Economic Operators'	A partnership or consortium not (yet) operating through a separate legal entity.
'Holding Company'	As described in section 1159 and Schedule 6 of the Companies Act 2006
'Information'	As described under section 84 of the Freedom of Information Act 2000, as amended from time to time
'Insolvency Event'	<p>may be:</p> <ul style="list-style-type: none"> • a voluntary arrangement • a winding-up petition

	<ul style="list-style-type: none"> • the appointment of a receiver or administrator • an unresolved statutory demand • a Schedule A1 moratorium
'Intellectual Property Rights' or 'IPR'	<p>means:</p> <p>a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, service marks, logos, database rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registerable or otherwise), know-how, trade secrets and moral rights and other similar rights or obligations whether registerable or not;</p> <p>b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>c) all other rights whether registerable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off.</p>
'Key Staff'	Means the Supplier Staff named in the SOW as such
'KPI Target'	The acceptable performance level for a key performance indicator (KPI)
'Law'	Any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, judgment of a relevant court of law, or directives or requirements of any Regulatory Body
'LED'	Law Enforcement Direction (Directive (EU) 2016/680).
'Loss'	All losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and 'Losses' will be interpreted accordingly
'Lot'	A subdivision of the Services which are the subject of this procurement as described in the OJEU Contract Notice
'Malicious Software'	Any software program or code intended to destroy, or cause any undesired effects. It could be introduced wilfully, negligently or without the Supplier having knowledge of its existence.
'Material Breach'	A single serious breach of or persistent failure to perform as required in the Contract
'OJEU Contract Notice'	The advertisement for this procurement issued in the Official Journal of the European Union
'Order Form'	An order in the form set out in Part A of the Contract for Digital Outcome and Specialist Services placed by a Buyer with the Supplier

'Other Contracting Authorities'	All Contracting Authorities, or the Buyer
'Party'	The Supplier or the Buyer, and 'Parties' will be interpreted accordingly
'Personal Data'	Takes the meaning given in the Data Protection Legislation.
'Personal Data Breach'	Takes the meaning given in the Data Protection Legislation.
'Processing'	This has the meaning given to it under the Data Protection Legislation but, for the purposes of this Contract, it will include both manual and automatic processing. 'Process' and 'processed' will be interpreted accordingly.
'Processor'	Takes the meaning given in the Data Protection Legislation.
'Prohibited Act'	<p>To directly or indirectly offer, promise or give any person working for or engaged by a Buyer a financial or other advantage to:</p> <ul style="list-style-type: none"> • induce that person to perform improperly a relevant function or activity • reward that person for improper performance of a relevant function or activity • commit any offence: <ul style="list-style-type: none"> ○ under the Bribery Act 2010 ○ under legislation creating offences concerning Fraud ○ at common Law concerning Fraud ○ committing or attempting or conspiring to commit Fraud
'Project-Specific IPRs'	<ul style="list-style-type: none"> • Intellectual Property Rights in items, including Deliverables, created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of the Contract and updates and amendments of these items including (but not limited to) database schema; and/or • Intellectual Property Rights arising as a result of the performance of the Supplier's obligations under the Contract; <p>but not including the Supplier Background IPRs</p>
'Property'	The property, other than real property and IPR, issued or made available to the Supplier by the Buyer in connection with a Contract
'Protective Measures'	Appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it.
'Regulations'	The Public Contracts Regulations 2015 (at http://www.legislation.gov.uk/ukxi/2015/102/contents/made)

) and the Public Contracts (Scotland) Regulations 2012 (at http://www.legislation.gov.uk/ssi/2012/88/made), as amended from time to time
'Regulatory Bodies'	Government departments and other bodies which, whether under statute, codes of practice or otherwise, are entitled to investigate or influence the matters dealt with in the Contract
'Release'	The Deliverable for a particular Statement of Work. Its delivery by the Supplier and its acceptance by the Buyer completes the Statement of Work.
'Reporting Date'	The seventh day of each month following the month to which the relevant MI relates. A different date may be chosen if agreed between the Parties
'Request for Information'	A request for information or an apparent request under the Code of Practice on Access to Government Information, FoIA or the Environmental Information Regulations
'Services'	Digital outcomes to be provided by the Supplier under this Contract
'Specific Change in Law'	A change in the Law that relates specifically to the business of the Buyer and which would not affect a Comparable Supply
'Statement of Requirements'	A statement issued by any Buyer detailing its Services requirements issued in the Contract
'Statement of Work' (SOW)	The document outlining the agreed body of works to be undertaken as part of the Contract between the Buyer and the Supplier. This may include (but is not limited to) the Statement of Requirements, the Deliverable(s), the completion dates, the charging method.
'Subcontractor'	Each of the Supplier's Subcontractors or any person engaged by the Supplier in connection with the provision of the digital services as may be permitted by the Contract
'Subprocessor'	Any third party appointed to process Personal Data on behalf of the Supplier under this Contract.
'Supplier'	The Supplier of the services who was awarded the Contracts as outlined in the Contract Notice within the Official Journal of the European Union (OJEU Notice). The identifying details of the Supplier to be bound by the terms of this Contract are set out in the Order Form.
'Supplier Background IPRs'	Background IPRs of the Supplier
'Supplier Software'	Software which is proprietary to the Supplier and which is or will be used by the Supplier for the purposes of providing the Services
'Supplier Staff'	All persons employed by the Supplier including the Supplier's agents and consultants used in the performance of its obligations under the Contract
'Supplier Staff Liabilities'	Any claims, actions, proceedings, orders, demands, complaints, Losses and any awards or compensation reasonably incurred in connection with any claim or investigation related to employment

'Working Day'	Any day other than a Saturday, Sunday or public holiday in England and Wales, from 9am to 5pm unless otherwise agreed with the Buyer and the Supplier in the Contract
'VAT'	Value added tax in accordance with the provisions of the Value Added Tax Act 1994

Part C - The Schedules

Schedule 1 - Requirements

Overview

Overseas Healthcare Services (OHS) manages reciprocal healthcare on behalf of the Department for Health and Social Care, for people who are going to a country within the EU or Switzerland to visit, live, study or receive planned treatment.

The Buyer also supports Overseas Visitors Managers from NHS hospitals and Trusts to identify overseas visitors from other countries in the EEA and Switzerland and to record the information about treatment obtained to enable OHS to claim costs back for the UK from the other countries (money back into the NHS).

Services in the OHS umbrella:

- [Apply for healthcare abroad](#)
- [UK Claims](#) (reporting overseas visitor treatments or Cost Recovery)
- [Member State Claims](#)
- Direct Claims

Products included in the OHS umbrella:

- [EESSi and RINA](#)
- [MedBens](#)
- 'New' [OHS product](#)
- OVT Portal

The Buyer's OHS Digital Delivery teams are working on opportunities to significantly transform the way in which the services and products operate to better meet the needs of the users.

- Enable a sufficient transition period between existing supplier and new supplier where outcomes will not be fully concluded on the Overseas Healthcare Service Partner Contract.
- Delivery of defined Buyer Requirements to support delivery of Roadmap deliverables relating to Cost Recovery Data migration and Public Beta Assessment, through Statements of Work.

Schedule 2 – Not used

Schedule 3 - Statement of Work (SOW), including pricing arrangements and Key Staff

Sch 3.1 SOW Details – DIGITAL CAPABILITY – SOW01 OHS Data Migration and Transition

Commencement Date of SOW:	29 th March 2023
End Date of SOW:	28 th April 2023
SOW Reference:	<p>SOW01 OHS Data Migration and Transition</p> <p>This SOW is being entered into pursuant to the Contract dated 1st April 2023 entered into by NHS Business Services Authority (“Buyer”) and Mastek (UK) Limited (Supplier”) relating to the OHS – Data Migration contract as amended (the “Call-Off Contract”).</p>
Release Type(s):	N/A
Phase(s) of Development: e.g. Discovery, Alpha, Beta	Private Beta
Release Completion Date:	N/A
Duration of SOW:	21 Working Days
SOW Value:	£80,850.00 (Ex. VAT)
Charging Method(s) for this Release: Capped Time and Materials or Fixed Price	Time and Materials
Key Staff: Name Role Details	n/a
Contacts points for SOW:	<p>Buyer:</p> <p>Emma Ellison Lead Digital Delivery Manager (OHS) [REDACTED]</p> <p>Emma Harrison Head of Digital Delivery – Citizen Services [REDACTED]</p> <p>Supplier:</p> <p>Richard Saunders Mastek Account Director [REDACTED]</p> <p>Mahesh Joshi</p>

	<p>Delivery Manager</p> <p>[REDACTED]</p>
<p>Background to the Buyer's Requirements:</p>	<p>SOW required for a maximum of 1 month to support the OHS service over the period of transition to a new contracted Supplier.</p> <p>Deliverables are detailed below in the Buyer requirements, but include specific outputs to be achieved as well as handover/transition activity. Provision of knowledge transfer to suitably identified individuals including the completion of any outstanding documentation.</p> <p>The Supplier Solution to the Buyer Requirements (as detailed in the resource table) will be agreed with NHSBSA prior to commencement date. Any plan to supply replacements must be approved by the Buyer (NHSBSA) to ensure appropriateness of the solution - based upon timeframe to onboard and deliver the requirements.</p> <p>This SOW is to mitigate the following:</p> <ul style="list-style-type: none"> • Business continuity and allow for extended period for handover/transition • To enable a smooth delivery on the complex Cost Recovery Data migration and Public Beta Assessment • Reduce level of delivery disruption by replacing team members close to launch dates • Allow sufficient time for the new supplier to mobilise teams to meet all requirements and outcomes
<p>Buyer's Requirements:</p>	<p>The Buyer requires the Supplier to provide a multidisciplinary capability to work within their existing delivery team to assist in achieving the delivery outcomes listed in the Scope within the Outcome Description.</p> <p><u>Low Level Requirements to be achieved include:</u></p> <ul style="list-style-type: none"> • Support for DevOps for OHS (including release, deployment activities across dev, test, stage and production environment). • Implement a retention schedule to promote control over OHS records which will enable the disposal of records we no longer need as part of the team to understand, define and refine the business need • Lead definition and execution of Sprint plans • Lead and actively participate in all Agile ceremonies • Adopt a proactive mindset and demonstrate accountability as part of one team • Be accountable for releases, and support release process through to Production • Code and Unit Test new functionality in CRA and OHS applications and integration with other components • Lead on set-up and running of automation testing, including accessibility tests (ensuring compliance with public sector legislation) • Create and Maintain AWS Instances, configure CI / CD tools as per the Buyer's procedures and standards. • Support performance testing to ensure applications can handle peak anticipated traffic – Dependency on environment availability • Execute successful migration of the data in line with security standards • Analyse and fix bugs from migration on Dev environment • Identify any areas for improvement that could lead to improve efficiency and productivity

- Update documentation
- Data dictionary up to date and shared with the data warehouse team
- Implement data architecture design
- Complete a knowledge transfer to relevant stakeholders to ensure the project requirements workflows and processes are handed over
- Support NHSX assessment preparations

The required supplier's solution is expected to include the following capability and skills as outlined in the skills/roles of the playbook: Development, testing, delivery management, and business analysis.

The Supplier Solution to the Buyer Requirements (as detailed in the resource table) will be agreed with NHSBSA prior to commencement date.

Any plan to supply replacements must be approved by the Buyer (NHSBSA) to ensure appropriateness of the solution - based upon timeframe to onboard and deliver the requirements.

To do so, the Supplier will:

- Work within the Buyer's digital delivery team to assist in delivering digital outcomes for this service.
- Work as part of the Cost Recovery digital delivery team on the scopes set out (which will be prioritised by the Product Owner and under the direction of the Buyer's Delivery Lead).
- Take active participation in Agile ceremonies.
- Participate in the Buyer's Communities of Practice, to ensure they are integrated into the role group.
- Update JIRA and Confluence (and any other tools used by the Buyer's team as directed by the Buyer's Delivery Lead)
- Follow BSA standards and procedures and GDS service manual
- Performance and Quality review of all roles, working with the Buyer, to ensure completion of work to required standard. Provide solution to address Buyer concerns, including but not limited to replacement of individuals with suitable alternatives if required.

Performance of individuals working under this SOW to be managed between the Supplier and Buyer and any escalations are made in scheduled Delivery Review meetings (held fortnightly) detailing risks, issues, any concerns as to individual's performance and contingency planning. The Buyer may request additional detail/reports as required.

Where there is underperformance or other issues highlighted which, the Buyer deems not to have been addressed, then the Buyer can request an alternative solution.

The Supplier staff display appropriate behaviour and capability pertaining to the roles outlined above.

The Supplier comply with the Buyer's policies, governance and acceptable standards.

The Supplier staff will ensure the project adheres to the Buyer's project governance guidelines and policies, taking guidance from the Buyer PMO on all governance matters.

All technical artefacts developed by the supplier such as Custom Code, Application Screens etc. will be accepted via existing Guidelines and Standards, Agile process and methodology i.e. via testing processes and subsequent end of Sprint showcase or

	<p>retrospectives etc. Upon the start of subsequent sprint phases the previous artefacts are deemed accepted by the Buyer.</p> <p>The Buyer will have title and ownership of any Project-Specific IPR that is created through this SoW.</p> <p>ACCEPTANCE CRITERIA Outputs/Deliverables of each sprint will be reviewed through each Sprint and at each Sprint Review against the Definition of Done and Definition of Ready (to be defined during onboarding process) for acceptance by the Buyers' Product Owner or Service Owner.</p> <p>The 5-3-2 Acceptance process for Deliverables is detailed below:</p> <ul style="list-style-type: none"> (i) Each deliverable will be issued to Buyer for the initial review on "Day 0". (ii) the Buyer will complete a review within 5 working days. (iii) If accepted, the Buyer issue a form of acceptance such as an email. (iv) If rejected, the supplier will review comments within 3 working days and resubmit the Deliverable to the Buyer for 2nd review. (v) If no response is received, the supplier will notify the Buyer. Where the Buyer responds, the review will be completed within one additional day. Where the Buyer does not respond, the Deliverable shall be deemed to have been accepted. (vi) If a second review is required, the Buyer will complete the review within 2 Days. (vii) If subsequent reviews are required, this should first be escalated to the Delivery Manager. <p>The Buyer and Supplier will meet on a weekly basis to review progress against the Deliverables and the Supplier will present the Buyer with supporting evidence of time expended.</p> <p>The Supplier will ensure the Buyer has visibility of progress through the regular ceremonies and through being part of one multi-disciplinary Delivery Team.</p> <p>The Supplier ensures Deliverables are met in an effective and timely manner as agreed with the Buyer's Lead Digital Delivery Manager and Product Owner.</p> <p>The Supplier staff display appropriate behaviour and capability pertaining to the role outlined above.</p> <p>The Supplier comply with the Buyer's policies, governance and acceptable standards. The Supplier staff will ensure the project adheres to the Buyer's project governance guidelines and policies, taking guidance from the Buyer PMO on all governance matters.</p>
Acceptance Criteria:	<p>All artefacts developed by the Supplier such as Custom Code, Application Screens etc. will be accepted via existing Buyer's development and testing guidelines and standards.</p> <p>The version of the Buyer Acceptance Criteria to be applied on this SOW will be the version in place on the commencement date of the SOW. Any change to the Buyer Acceptance Criteria during the period of the SOW needs to be notified to the Supplier and agreed</p> <p>All designs and prototypes once completed by the Supplier will be reviewed and signed off by the Buyer Product Owner before being handed over to development.</p>

		All completed artefacts will be subject to sign-off by the Buyer Product Owner.
Supplier Required solution?	IPR for	N/A
Buyer Required solution?	IPR for	N/A
Any tools/products the Supplier will use but the Buyer to licence:		The Buyer will provide Microsoft Teams and NHS Mail access. The Programme will provide other relevant tooling, still being determined, such as Miro, Jira and Confluence, google drive and slack.
Personal Identifiable Data to be accessed to complete requirements?		<p>The Supplier will need to:</p> <ul style="list-style-type: none"> • Ensure the solution has completed and passed all required Information Governance training, completion of which has been signed off by the Buyer. Achievement within the last 12 months. • Enact the clauses in the contract related to Personal Identifiable Data. <p>There will be no requirement for the Supplier resources to view Production Data / personal data as part of the Services provided, and any exposure to such data will only be incidental as part of provision of the Services, in which event the Buyer shall determine and instruct the Supplier in writing as to the manner in which the Supplier shall process the data and what technical and organisational measures shall be put in place.</p> <p>For any Buyer workstations or Buyer provided environments, the Buyer is responsible for ensuring the following security standards are met 1) full disk encryption with AES-256-bit encryption, 2) Anti-Virus, anti-malware and a workstation firewall are required to be on current versions and the Buyer must ensure all patches and updates are deployed correctly and in a timely manner. Supplier is not liable to the Buyer for direct damages, and the Buyer must indemnify Supplier against third party claims, arising from any security incidents resulting from the Buyer's failure to meet these requirements.</p>
Does the Buyer require a Security Management Plan and ISMS:		Not for SOW
Does the Buyer require a disaster recovery plan for this SOW?		Not for SOW
GDPR Implications (not covered by call off contract):		None
Supplier security clearance	staff	Baseline

required and level:							
Suppliers Solution:	Supplier will staff roles as listed in the commercial table below to work alongside Buyer's team. The work and activities to be performed by Supplier are as mentioned in Buyer's requirements. The work will be planned by Buyer's Delivery Manager based on priorities to be set by Buyer's Product Owner.						
	Role	Location	Rate (£)	Start Date	End Date	Days	Amount (£)
	Technical Architect	Onshore	■	29/03/2023	28/04/2023	■	£13,650.00
	Data Analyst	Onshore	■	29/03/2023	28/04/2023	■	£11,025.00
	Data Architect	Onshore	■	29/03/2023	28/04/2023	■	£11,025.00
	Automation Tester	Onshore	■	29/03/2023	28/04/2023	■	£ 9,450.00
	Developer	Onshore	■	29/03/2023	28/04/2023	■	£11,025.00
	Business Analyst	Onshore	■	29/03/2023	28/04/2023	■	£11,550.00
	DevOps Engineer	Onshore	■	29/03/2023	28/04/2023	■	£13,125.00
	Total (Ex VAT)						£80,850.00
<p>Note: Planned leave or sickness related unbillable days will be used as the budget to flexibly adjust the excess onshore and/or offshore effort. Total budget of the SoW will not be exceeded due to this arrangement.</p> <p>Dependencies/Assumption</p> <ul style="list-style-type: none">Any delays in commencement / completion of handover activities due to dependency on buyer will need to be managed through change control process (specifically if it limits suppliers ability to complete the relevant tasks/deliverables within given timelines in this sow)							
Risks, Issues and Mitigations:	<p>The Supplier's Delivery lead will oversee end-to-end activities to identify, analyse and treat risks throughout delivery and use the following tools to mitigate identify and manage risks:</p> <p>Daily Standup Blockers, risks and issues are identified and treated daily through the Supplier's Scrum ceremonies and summarised in sprint reports. The Supplier team, and ultimately the Supplier's Delivery Manager, are on point to resolve blockers as they arise and to identify risks. The Buyer is expected to provide support with interdepartmental coordination for aspects such as Access to the Tools and Repositories Jira, Confluence, Amazon Workspace Space, different Development and Testing environments etc and handle escalation due to delays of such support teams.</p> <p>End Of Sprint The Supplier will provide an end of sprint report focusing on removing blockers and impediments and speeding up the delivery of user stories in scope of the Sprint. The Supplier and the Buyer will classify the ownership of these blockers and impediments and address these accordingly and the progress will be included.</p> <p>End of Sprint Report contents to include:</p> <ul style="list-style-type: none">Summary						

	<ul style="list-style-type: none"> • Breakdown of effort by teams (not all of which are covered by this SOW) • Risks/issues/dependencies/blockers • Progress against plan including specific MI and burndown charts • Sizing updates and supporting narrative • Actions <p>End of Sprint Review will be accompanied by 'Show and Tell'</p> <p>MI/Spend analysis monthly – date TBC in line with Finance Reporting</p> <p>Backlog Alignment Meeting:</p> <p>This weekly meeting will be attended by senior representatives of the supplier, the Buyer's (including Product Owner and Business Representatives).</p> <p>These artefacts will feed into this meeting:</p> <ul style="list-style-type: none"> • Risks/ Issues/ Dependencies and Blockers List identified in the Sprint Reports • User Stories Backlog <p>The outcome of this meeting will be:</p> <ul style="list-style-type: none"> • Actions required to address risks/ issues/ blockers • Prioritised stories considering the immediate milestones and the vision for the next release phase. <p>Reporting upwards and programme board (Monthly)</p> <p>Key risks and issues will be rolled upwards by the Supplier to the Buyer, for review at the Buyers Programme board. Risks and issues will be captured in a log and are assigned an owner and a manager who ensures that the ratings applied to risks are appropriate. The Risk Owner defines an action plan to mitigate the risk and monitors progress.</p> <p>Agile projects have a scope that will change over time. The detailed scope can evolve and change which may impact the timeline and the team's effort. As a mitigation, the Buyer and Supplier will meet and review the above on a regular basis and agree any required changes to deliver the scope and the team's composition.</p> <p><u>Project Specific Risks:</u></p> <p>Time estimates are inaccurate. The Supplier has ensured this is not the case by:</p> <ul style="list-style-type: none"> • Studying the available documentation and through the knowledge of existing team members on the Cost Recovery team, mainly the Sr Solution Architect and Business Analysts. • Ensuring only the roles required for this Phase are deployed and roles specific to future phases are planned to start later. <p>Failure to deliver to expected cost, time and/or quality. The Supplier will mitigate this risk by:</p> <ul style="list-style-type: none"> • Phase8 development will be based on fully groomed user stories backlog through well-defined Goals for each Sprint. • All Architecture, Coding, Testing and Development standards and best practices will be adhered to. • Every Sprint will be thoroughly analysed against its Goals and overall maturity of the solution. Corrective actions, as required, will be agreed with the Buyer and taken to ensure cost, time and quality are as planned. • The Supplier will attend Buyers Community of Practice sessions to understand BSA standards and processes.
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	<ul style="list-style-type: none"> Effective tracking and management of Assumptions (listed later in the document) on the Buyer will be key to preventing delays and increased cost. <p>Lack of access to users to meet Supplier timeline. The Buyer fulfils the recruitment of users for user research, working together, the Buyer and Supplier can ensure this risk is mitigated by:</p> <ul style="list-style-type: none"> Identifying as far in advance as possible what type of research it will be doing and the users it will need. Sharing this widely so that its networks can be used for user recruitment Updating and maintaining its database of potential users for research (including details of access needs and accommodations that must be made for them) <p>Supplier must be able to provide resources to perform the following roles within a project as defined by GDS role descriptions (https://www.gov.uk/service-manual/the-team/what-each-role-does-in-service-team)</p> <p>Buyer will ensure availability of the business representative to clarify requirement and queries of the team.</p> <p>Buyer is responsible for providing any documentation required to undertake the scope of activities described within this SOW, for example any Buyer standards.</p> <p>The supplier will be able to participate in the Buyers Communities of Practice, to ensure they are integrated into the role group.</p> <p>Overall business prioritisation and direction to be provided by Buyer Product Owner, Buyer Service Owner or nominated deputy. Specific tasks will be defined, prioritised and agreed between the Buyer and Supplier on a Sprint by Sprint basis, all of which will contribute to the Deliverables as set out herein.</p>
Any obligations specific to this SOW:	exit All outputs will be made available to the Buyer on an ongoing basis and throughout delivery The Supplier will perform a handover of the project including all artefacts and documents to a member of the Buyer's Portfolio team
Call Contract Charges:	Off The applicable charging method(s) for this SOW is: Time and Materials
SOW Maximum Value:	The maximum value of this SOW is £80,850.00 (Ex. VAT)
Rate Cards Applicable:	Refer to Call-Off Contract Rate Card.
Reimbursable Expenses:	None

Sch 3.2 Agreement of statement of works

<p>BY SIGNING this SOW, the Parties agree to be bound by the terms and conditions set out herein:</p>	
<table border="1"> <tr> <td>For and on behalf of the Supplier:</td> </tr> </table>	For and on behalf of the Supplier:
For and on behalf of the Supplier:	

Name and title	DocuSign signature in the order form of this Contract, covers this SoW
Signature and date	<u>X</u> _____

For and on behalf of the departmental Buyer:	
Name and title	DocuSign signature in the order form of this Contract, covers this SoW
Signature and date	<u>X</u> _____

If you exceed the overall Contract value and Supplier Staff are still required to deliver the services, then a contract change note (CCN) must be raised, explaining the reason(s) for the extension.

Schedule 4 - Contract Change Notice (CCN)

Order Form reference for the Contract being varied:

BETWEEN:

Buyer Full Name ("the Buyer")

and

Supplier Full Name ("the Supplier")

1. The Contract is varied as follows and shall take effect on the date signed by both Parties:

Guidance Note: Insert full details of the change including:

Reason for the change;


Full Details of the proposed change;

Likely impact, if any, of the change on other aspects of the Contract;


2. Words and expressions in this Contract Change Notice shall have the meanings given to them in the Contract.

3. The Contract, including any previous changes shall remain effective and unaltered except as amended by this change.

Signed by an authorised signatory for and on behalf of the Buyer

Signature:	
Date:	Click here to enter a date.
Name:	Click here to enter text.
Address:	Click here to enter text.

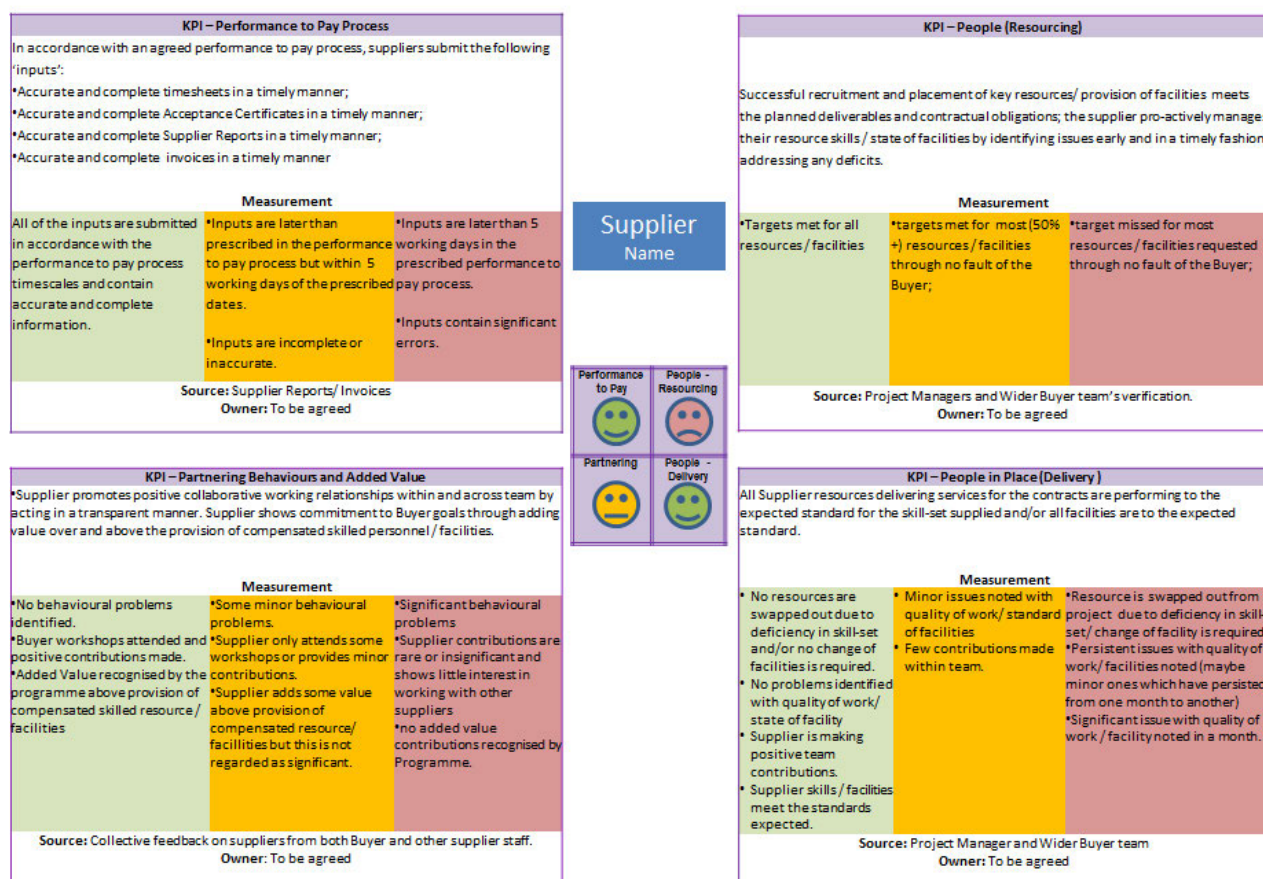
Signed by an authorised signatory to sign for and on behalf of the Supplier

Signature:	
Date:	Click here to enter a date.
Name:	Click here to enter text.
Address:	Click here to enter text.

Schedule 5 - Balanced Scorecard

In addition to the Supplier's performance management obligations Parties may agree to the following Balanced Scorecard & KPIs for this Contract (see Balanced Scorecard Model below):

Balanced Scorecard



The purpose of the Balanced Scorecard is to promote contract management activity, through measurement of a Supplier's performance against Key Performance Indicators, which the Buyer and Supplier should agree at the beginning of a Contract. The targets and measures listed in the example scorecard (above) are for guidance and should be changed to meet the agreed needs of the Buyer and Supplier.

The recommended process for using the Balanced Scorecard is as follows:

1. The Buyer and Supplier agree a templated Balanced Scorecard together with a performance management plan, which clearly outlines the responsibilities and actions that will be taken if agreed performance levels are not achieved.
2. On a pre-agreed schedule (e.g. monthly), both the Buyer and the Supplier provide a rating on the Supplier's performance
3. Following the initial rating, both Parties meet to review the scores and agree an overall final score for each Key Performance Indicator
4. Following agreement of final scores, the process is repeated as per the agreed schedule

Schedule 6 - Not used

Schedule 7 - Not used

Schedule 8 - Not used

Schedule 9 - Processing, Personal Data and Data Subjects

Subject matter of the processing:

As set out in the SOW.

Duration of the processing:

Personal Data will be held for no more than the term of the Agreement. The SOW sets out the timeline for the delivery of the services and will define the period of processing or it will be for the duration of the SOW.

Nature and purposes of the processing:

We process personal information to enable us to:

- promote our goods and services,
- maintain our accounts and records and
- support and manage our staff.
- process information provided to us by the controller to perform our obligations to them.

Specifically, in this contract that relates to areas and details as agreed in the SOW.

Type of Personal Data:

We process information relevant to the above reasons/purposes. This may include:

- personal details.
- family, lifestyle and social circumstances.
- financial details.
- employment and education details.
- goods or services provided.
- visual images, personal appearance and behaviour.
- physical or mental health details.
- case file information.

We also process sensitive classes of information that may include:

- physical or mental health details.
- racial or ethnic origin.
- religious or other beliefs of a similar nature.
- trade union membership.

Categories of Data Subject:

We process personal information about our:

- employees.
- customers and clients.
- suppliers and services providers.
- advisers, consultants and other professional experts.
- complainants and enquirers.
- individuals captured by CCTV images.
- details held in the patients record.

Plan for return or destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data:

Personal data held will be destroyed or returned at the end of the Contract.

Schedule 10 – Not used