

# HILL DICKINSON

Dated 7 March 2024

## CALL OFF TERMS AND CONDITIONS

Between

(1) NHS NORTH OF ENGLAND  
COMMISSIONING SUPPORT UNIT ACTING  
THROUGH NHS COMMISSIONING BOARD

and

(2) CAPITA BUSINESS SERVICES LIMITED

Hill Dickinson LLP  
The Broadgate Tower  
20 Primrose Street  
London  
EC2A 2EW  
[www.hilldickinson.com](http://www.hilldickinson.com)

## CONTENTS

CLAUSE	PAGE
1 RECITALS AND BACKGROUND .....	3
2 CONTRACT GENERAL CLAUSES .....	3
3 OBLIGATIONS OF THE PARTIES .....	5
4 TIME .....	8
5 COMMUNICATIONS UNDER THE CONTRACT .....	10
6 STATUTORY RESPONSIBILITIES .....	11
7 VARIATIONS TO THE CONTRACT .....	15
8 PAYMENT AND TAXES .....	17
9 REMEDIES AND INDEMNITIES .....	19
10 DISPUTE RESOLUTION .....	26
11 TERMINATION .....	28
12 CONFIDENTIALITY AND DATA PROTECTION .....	32
13 PREMISES AND SECURITY .....	40
14 SECURITY REQUIREMENTS .....	41
15 EQUIPMENT AND MATERIALS .....	42
16 PERSONNEL .....	45
17 INSURANCE .....	49
18 AUTHORITY AND APPROVAL .....	50
19 STANDARDS .....	50
20 ACCEPTANCE .....	50
21 DELIVERY OF GOODS .....	52
22 INTELLECTUAL PROPERTY RIGHTS .....	54
23 TRAINING .....	54
24 WARRANTIES .....	55
25 SERVICE PROVIDER SOFTWARE .....	56
26 ESCROW .....	56
27 SERVICE PROVIDER'S PERFORMANCE OF GOODS AND/OR MANAGED SERVICES .....	56
28 DELIVERABLES .....	59
29 TUPE ON COMMENCEMENT .....	61
30 THIRD PARTY RIGHTS .....	66
31 ENVIRONMENTAL CONSIDERATIONS .....	66
32 EQUALITY AND NON-DISCRIMINATION .....	67
33 RELATIONSHIP OF THE PARTIES .....	68
34 AGENCY .....	68
35 COUNTERPARTS .....	68
SCHEDULE 1 DEFINITIONS .....	70
SCHEDULE 2 DELIBERATELY LEFT BLANK .....	85
SCHEDULE 3 SPECIFICATION .....	86
SCHEDULE 4 DELIBERATELY LEFT BLANK .....	87
SCHEDULE 5 CONTRACT MANAGEMENT .....	88
SCHEDULE 6 IMPLEMENTATION .....	90
SCHEDULE 7 ACCEPTANCE CRITERIA AND PROCEDURES .....	93
SCHEDULE 8 DELIBERATELY LEFT BLANK .....	94
SCHEDULE 9 PRICING MATRICES .....	95

SCHEDULE 10 CALL OFF CONTRACT CHANGE CONTROL PRINCIPLES AND PROCEDURE .....98

SCHEDULE 11 ESCROW AGREEMENT ..... 102

SCHEDULE 12 PENSIONS AND STAFF TRANSFERS ..... 103

SCHEDULE 13 GUARANTEE ..... 105

SCHEDULE 14 EXIT PLAN ..... 106

SCHEDULE 15 BUSINESS CONTINUITY AND DISASTER RECOVERY ..... 111

SCHEDULE 16 APPROVED SUB-CONTRACTORS ..... 114

SCHEDULE 17 PROCESSING, PERSONAL DATA AND DATA SUBJECTS ..... 115

## 1 RECITALS AND BACKGROUND

- 1.1 London Procurement Partnership is operating on behalf of its members and the wider NHS and public sector (the “**Authority**”).
- 1.2 The Authority is hosted by Guys and St Thomas’ NHS Foundation Trust.
- 1.3 NHS North of England Commissioning Support Unit (the “**Customer**”) has been appointed by the NHS Commissioning Board under an SLA to provide the cervical screening administration service. The Customer has selected the Service Provider (referred to as the Service Recipient under the SLA) under the framework as a potential provider of IT products and services.
- 1.4 The Service Provider undertook to provide the Goods and/or Managed Services on the terms set out in a framework agreement dated 8 December 2016 (the “**Framework Agreement**”).
- 1.5 The Authority established the Framework Agreement in consultation with and for the benefit of the Customers (as defined in the Framework Agreement).
- 1.6 The Customer invited the suppliers (including the Service Provider) to participate in a costing exercise under current framework for the supply of the Goods and/or Managed Services on 7 June 2023. As a result of the mini-competition, the Customer awarded a call off agreement to the Service Provider under the Framework Agreement (the “**Call Off Contract**”).
- 1.7 The Customer has documented the terms of the sub-contracting arrangements that were the subject of the award under the Framework Agreement using this Call Off Contract, which is based on an amended version of the call off contract which accompanied the Framework Agreement. These amendments have been included to address (i) clarification queries made by the Service Provider; and (ii) to ensure that appropriate rights and obligations are flowed down from the terms of the SLA.
- 1.8 the Parties agree that no goods, materials or articles are to be supplied by the Service Provider (or by the Service Provider’s Sub-Contractors) to the Customer under this Call Off Contract as part of the Specification.

## 2 CONTRACT GENERAL CLAUSES

### 2.1 Defined Terms, Interpretation and Operation of Framework Agreement

- 2.1.1 In this Call Off Contract, unless the context otherwise requires, all capitalised words and expressions shall (to the extent that they are used in this Call Off Contract) have the meanings ascribed to them by the Framework Agreement, mutatis mutandis.
- 2.1.2 References to Clauses and Schedules are to clauses and schedules of this Call Off Contract (unless the context otherwise requires).
- 2.1.3 In the event of (and only to the extent of) any conflict between the Framework Agreement, the Order and this Call Off Contract the following order of precedence shall apply:
  - 2.1.3.1 this Call Off Contract;
  - 2.1.3.2 the Order; and
  - 2.1.3.3 the Framework Agreement.
- 2.1.4 The Service Provider shall perform the Call Off Contract in accordance with:
  - 2.1.4.1 the requirements of the Framework Agreement; and



2.1.4.2 this Call Off Contract.

## 2.2 Subsequent Enactments

References herein to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

## 2.3 Severability

If any provision of the Call Off Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Call Off Contract had been executed with the invalid provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Call Off Contract, the Parties shall immediately commence good faith negotiation to remedy such invalidity.

## 2.4 Entire Agreement

With the exception of statements made fraudulently, the Customer and the Service Provider agree that the Call Off Contract, the Order and the Framework Agreement is the complete and exclusive statement of the agreement between the Parties which supersedes all proposals or prior agreements, whether oral or written, and all other communications between the Parties relating to the subject matter of the Call Off Contract.

## 2.5 Governing Law and Jurisdiction

This Call Off Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

## 2.6 Due diligence

2.6.1 The Service Provider acknowledges that it:

2.6.1.1 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer;

2.6.1.2 has raised all relevant due diligence questions with the Customer before the Commencement Date; and

2.6.1.3 has entered into this Call Off Contract in reliance on its own due diligence alone.

2.6.2 The Service Provider acknowledges that it has inspected the Operating Environment and has advised the Customer of any aspect of the Operating Environment that is not suitable for the provision of the Goods and/or Managed Services and that the specified actions required to remedy the unsuitable aspects of the Operating Environment, together with a timetable for and the costs of those actions, have been specified in the relevant parts of the Specification.

2.6.3 If the Service Provider has either failed to inspect the Operating Environment or failed to notify the Customer of any required remedial actions in accordance with clause 2.6.1.3 then the Service Provider shall not be entitled to recover any additional costs or charges from the Customer relating to any unsuitable aspects of the Operating Environment except in respect of any latent structural defect in the Location. The onus shall be on the Service Provider to prove to the Customer that any work to the Location is required in respect of a latent structural defect and

that the additional costs or charges are reasonable and necessary. The Service Provider shall not incur such additional costs or charges without obtaining the Customer's prior written consent.

- 2.6.4 Any disputes relating to due diligence shall be resolved through clause 10 (*Dispute Resolution*).

## 2.7 **Term**

- 2.7.1 The Call Off Contract will commence on the date of execution by the parties the "**Commencement Date**") or such other date as agreed in writing between the Customer and the Service Provider.

- 2.7.2 The Call Off Contract shall take effect on the Commencement Date and shall continue, unless terminated earlier in accordance with clause 11 (*Termination*), until 31 March 2025 ("**Initial Term**"), when it shall terminate automatically without notice at the end of the Initial Term.

## 3 **OBLIGATIONS OF THE PARTIES**

### 3.1 **Appointment**

From the Commencement Date, the Customer appoints the Service Provider to provide the Goods and/or Managed Services:

- 3.1.1 promptly (and in any event within any time targets as may be set out in the Specification and/ or Schedule 5 (*Contract Management*) and/or Schedule 6 (*Implementation*) and/or Schedule 7 (*Acceptance Criteria And Procedures*) and/or the Order) and in a professional and courteous manner so as to reflect and promote the positive and professional image of the Customer. Any failure to meet Service Levels shall entitle the Customer to Service Credits calculated in accordance with the provisions of Schedule 5 (*Contract Management*);
- 3.1.2 strictly in accordance with the Specification and all provisions of the Call Off Contract;
- 3.1.3 in accordance with all applicable UK and European Laws and regulations and Good Industry Practice and Guidance;
- 3.1.4 in accordance with the policies (including, when on any premises of the Customer or on any other premises where it works physically alongside the Customer's staff, any equality policies), rules, procedures and the quality standards of the Customer as detailed in the Specification; and
- 3.1.5 the Service Provider shall at its own cost obtain all and any necessary consents, licences, approvals and permits required for the provision and or delivery of the Goods and/or Managed Services.
- 3.1.6 The Service Provider shall provide the Goods and Managed Services in accordance with the Service Levels at all times throughout the Term. Any failure to meet Service Levels shall entitle the Customer to Service Credits calculated in accordance with the provisions of Schedule 5 (*Contract Management*).

- 3.1.7 The Service Provider shall ensure that the Goods and/or Managed Services and the Service Provider System integrate with the Customer System.
- 3.1.8 The Service Provider shall begin performing the Managed Services on the Commencement Date and continue to perform them for the Term.

### 3.2 **Ordering procedures and delivery**

- 3.2.1 The Customer and the Service Provider will comply with the Ordering Procedures in relation to any Orders placed or accepted pursuant to the Framework Agreement and this Call Off Contract including under the following clause 3.2.2.
- 3.2.2 To the extent applicable, the Service Provider will comply with all local Customer ordering procedures for the Goods and/or Managed Services notified to it by the Customer. The Head of Service for the Customer shall contact the Service Provider, in order to provide information or instruction as to any local ordering procedures. For the avoidance of doubt, this clause 3.2.2 shall not operate so as to amend, vary or otherwise change the terms and requirements of the Framework Agreement and this Call Off Contract. The Customer will accept no liability for the payment of any invoice raised which does not comply with the invoicing procedures notified in advance to the Service Provider by the Customer in writing from time to time.
- 3.2.3 During the Contract Period, neither the Service Provider nor any of its employees, agents or representatives will encourage the Customer to breach its obligations under the Call Off Contract, seek to make a direct approach to the Customer, or attempt to solicit the custom of or to negotiate a separate agreement for the same or substantially the same Goods and/or Managed Services to the Goods and/or Managed Services.
- 3.2.4 Subject to clause 15 (*Equipment and Materials*), the Service Provider shall provide at its own expense all staff, equipment, tools, appliances, materials or items required for the provision of the Goods and/or Managed Services to the Contract Standard.

### 3.3 **General Provisions**

- 3.3.1 If requested by the Customer, the Service Provider shall provide the Customer with samples of Goods for evaluation and approval, at the Service Provider's cost and expense.
- 3.3.2 The Service Provider shall ensure that the Goods are fully compatible with any equipment, to the extent specified in the Specification.
- 3.3.3 The Service Provider acknowledges that the Customer relies on the skill and judgment of the Service Provider in the supply of the Goods and/or Managed Services and the performance of its obligations under the Call Off Contract.
- 3.3.4 The Service Provider shall ensure that the Goods and/or Managed Services comply with all applicable UK and European Laws and regulations Good Industry Practice and Guidance.
- 3.3.5 The Service Provider shall at its cost ascertain and shall where relevant obtain all and any necessary consents, licences, approvals and permits that may be required for use of the Goods and or Managed Services by the Customer.
- 3.3.6 The Service Provider shall be responsible for the accuracy of all drawings, documentation and information supplied to the Customer by the Service Provider in connection with the supply of the Goods and/or the provision of the Managed Services and shall fully indemnify and keep fully indemnified the Customer on

demand against any extra costs or losses incurred by them as a result of any discrepancies, errors or omissions in such documentation and information.

- 3.3.7 The Service Provider shall deliver or shall procure that the Goods are promptly delivered (and in any event within any time targets as may be set out in the Specification and/ or Schedule 6 (*Implementation*) and/or Schedule 7 (*Acceptance Criteria And Procedures*) and/or the Order) to the Location and in accordance with any delivery instructions in the Call Off Contract, any requirements of the Specification or the Order and all provisions of the Call Off Contract or as agreed by the Parties in writing.
- 3.3.8 Subject to any other contrary provisions of the Call Off Contract and compliance with any Acceptance Tests/Acceptance Criteria (as relevant), risk and title in the Goods shall, without prejudice to any other rights or remedies of the Customer (including rights and remedies under clause 21.3 (*Rejection Of Goods*)), pass to the Customer at the time of delivery to the Location by either the Service Provider and such delivery has been accepted by a duly authorised agent, employee or representative of the Customer.
- 3.3.9 Unless agreed in advance with the Customer, if the Goods are delivered more than 5 days before the date specified in the Order (or such other date which the Customer has acknowledged in writing), the Customer shall be entitled at its sole discretion to refuse to take delivery or to charge for insurance and storage of the Goods until the contractual date for delivery.
- 3.3.10 The Customer shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Customer elects not to accept such over-delivered Goods it shall give notice in writing to the Service Provider to remove them within 5 Working Days and to refund to the Customer any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Customer may dispose of such Goods and charge the Service Provider for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Service Provider unless they are accepted by the Customer.
- 3.3.11 In the event that the Customer requires next day or short notice deliveries which are not provided for in the Specification or Order, the Service Provider may pass on any additional costs as may be agreed with the Customer relating to the delivery of the Goods to the Customer.
- 3.3.12 In the event that the Customer has specified a date in the Order but has not been ready to receive the Goods on that date, the Service Provider may charge reasonable additional costs of return, storage and redelivery to the Customer.
- 3.3.13 Any carrier engaged in the carriage and/or delivery of the Goods by the Service Provider shall be deemed to be an agent of the Service Provider and not the Customer.
- 3.3.14 Part deliveries may be rejected unless the Customer has previously agreed in writing to accept such part deliveries.
- 3.3.15 In the case of any Goods supplied from outside the United Kingdom, the Service Provider shall ensure that accurate information is provided to the Customer (as may be required) as to the country of origin of the Goods and shall be liable to the Customer for any additional duties or taxes for which the Customer may be accountable should the country of origin prove to be different from that advised by the Service Provider.
- 3.3.16 Where the Customer agrees in writing to accept delivery by instalments the Call Off Contract will be construed as a single contract in respect of each instalment.

Failure by the Service Provider to deliver any one instalment may allow the Customer at its option to treat the whole Call Off Contract as repudiated depending upon the circumstances of the non- delivery, such option not to be unreasonably invoked.

- 3.3.17 The Customer shall not be deemed to be in breach of the Call Off Contract as a result of the purchase of replacements for Goods that the Service Provider is unable to provide as required by the terms of the Call Off Contract.
- 3.3.18 The Service Provider shall send the Customer an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. Where the Goods, having been placed in transit fail to be delivered to the Customer on the due date for delivery, the Customer shall, (provided that the Customer has been advised in writing of the dispatch of the Goods), within 2 Working Days of the notified date of delivery, give notice to the Service Provider that the Goods have not been delivered and may request the Service Provider free of charge to deliver substitute Goods within the timescales specified by the Customer or cancel the Order.

#### 3.4 **Quality Management**

- 3.4.1 The Service Provider shall apply any and all quality management requirements, described in Schedule 5 of this Call Off Contract, to all its operations related to performance of the Call Off Contract. Such quality management system shall adhere to the quality standards and requirements specified in this Call Off Contract or, where no such standards or procedures are specified therein, to Good Industry Practice.
- 3.4.2 If through no fault of the Customer, the Service Provider materially fails to adhere to the timetable in Schedule 6, the Customer may request the Service Provider to provide a written, quality assurance report of its operation of the quality management system referred to in clause 3.4.1 above in respect of its performance of the Call Off Contract and the Service Provider shall provide a plan for the implementation of any appropriate remedial actions recommended therein.
- 3.4.3 The quality assurance report referred to in clause 3.4.2 above shall be delivered to the Customer within thirty (30) days of being so requested or within any period stated in such request and agreed by the Service Provider and shall be prepared by a Person appropriately qualified in quality assurance techniques who shall be appointed by the Service Provider with the approval of the Customer, such approval not to be unreasonably withheld or delayed.

### 4 **TIME**

#### 4.1 **General**

- 4.1.1 The time of delivery shall be detailed in the Order (or otherwise agreed in writing by the Parties) and if no time for delivery is expressly agreed then delivery shall be made within 7 days of receipt of the Order.

#### 4.2 **Implementation**

- 4.2.1 The Service Provider shall prepare and deliver to the Customer for the Customer's approval a draft Implementation Plan within 5 Working Days of the Commencement Date. The Service Provider shall not be entitled to propose any variations to any key milestone dates for implementation and or delivery which are set out in the Schedule 6 or the Order. The Customer shall review and comment on the Implementation Plan as soon as reasonably practicable. Following such review and consultation, the Customer shall formally approve or reject the draft

Implementation Plan no later than 5 Working Days after the date on which the draft Detailed Implementation Plan is first delivered to the Customer.

- 4.2.2 If the Customer rejects the draft Detailed Implementation Plan, the Customer shall inform the Service Provider in writing of its reasons for its rejection. The Service Provider shall then revise the draft Detailed Implementation Plan (taking reasonable account of the Customer's comments) and shall re-submit a revised draft Detailed Implementation Plan to the Customer for the Customer's approval within five Working Days of the date of the Customer's notice of rejection. The provisions of clause 4.2.1 and this clause 4.2.2 shall apply again to any resubmitted draft Detailed Implementation Plan, provided that either party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 4.2.3 The Implementation Plan shall set out planned dates for major events in the implementation of the Goods and/or Managed Services including:
- 4.2.3.1 a Planned Acceptance Date for the Goods and/or Managed Services; and
- 4.2.3.2 an Acceptance Completion Date in respect of the Goods and/or Managed Services, which if no such date is specified in Schedule 2, shall be thirty (30) days after the Planned Acceptance Date. The Acceptance Completion Date for Goods and/or Managed Services shall be a Contractual Date.
- 4.2.4 Delay or failure by the Service Provider to meet any Contractual Date contained in the Implementation Plan shall be subject to the provisions of clause 9.4 (*Delays*).

#### 4.3 Extension of Time

- 4.3.1 If the performance of the Call Off Contract by the Service Provider is delayed by reason of Default by the Customer or by its employees or agents or by other Service Providers of the Customer, the Service Provider shall be entitled to a reasonable extension of time and to any reasonable additional costs which it can show were directly incurred as a result of the delay, provided always that it advises the Authorised Officer in writing without undue delay.
- 4.3.2 If the performance of the Call Off Contract by either party is delayed by reason of any Force Majeure Event (as defined in clause 4.4), both parties shall be entitled to a reasonable extension of time provided that the party so delayed notifies the other Party in writing without undue delay. Neither Party shall be entitled to any additional costs incurred as a result of such delay.

#### 4.4 Force Majeure

- 4.4.1 Subject to the remaining provisions of this clause 4.4 any Party to the Call Off Contract may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event (the "**Affected Party**"). In particular, the Service Provider shall be relieved from its obligations to the extent that its performance of the Call Off Contract is affected by a Force Majeure Event.
- 4.4.2 A Party cannot claim relief if the Force Majeure Event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 4.4.3 An Affected Party cannot claim relief as a result of a failure or delay by any other person in the performance of that other person's obligations under a contract with the Affected Party (unless that other person is itself prevented from or delayed in complying with its obligations as a result of a Force Majeure Event).

- 4.4.4 The Affected Party shall immediately give the other Party written notice of the Force Majeure Event. The notification shall include details of the Force Majeure Event, together with evidence of its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.
- 4.4.5 As soon as practicable, after the Affected Party's notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of the Call Off Contract. Where the Service Provider is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 4.4.6 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under the Call Off Contract. Following such notification, the Call Off Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
- 4.4.7 Relief under clause 4.4.1 above shall not be given unless a party intending to claim relief has, by notice to the other party as soon as practicable after becoming aware of a Force Majeure Event or, if later, of the failure to perform, informed the other Party that it intends to claim relief. Such notice shall contain such relevant information relating to such failure as is available.
- 4.4.8 It shall not be considered to be a Force Majeure Event, nor shall either party be excused from liability for delay or failure to perform any of its obligations under the Call Off Contract, if it is delayed or fails to meet its obligations as a result of:
  - 4.4.8.1 industrial action taken by it or its employees; or
  - 4.4.8.2 failure by its agents or sub-contractors to meet any obligation in relation to the Call Off Contract when failure by such agent or sub-contractor does not itself result from a Force Majeure Event; or
  - 4.4.8.3 any unplanned event, the effects of which the Service Provider undertakes, expressly, to avoid or circumvent by:
    - 4.4.8.3.1 the operation of back-up or recovery procedures or other relevant procedures; or
    - 4.4.8.3.2 the provision of alternative or back-up services, as specified in the Specification.

## **5 COMMUNICATIONS UNDER THE CONTRACT**

### **5.1 Notices**

- 5.1.1 Any notice to be given under the Call Off Contract shall be delivered personally, sent by facsimile or sent by first class recorded delivery post (airmail if overseas) or electronic mail. The address for service of each Party shall be its registered office or such other address as either Party may previously have notified to the other Party in writing.
- 5.1.2 A notice shall be deemed to have been served:
  - 5.1.2.1 if personally delivered, at the time of delivery;
  - 5.1.2.2 if sent by facsimile at the time of transmission;

5.1.2.3 If posted, at the expiration of 48 hours or (in the case of airmail seven days) after the envelope containing the same was delivered into the custody of the postal authorities; and

5.1.2.4 if sent by electronic mail, a telephone call is made to the recipient warning the recipient that an electronic mail message has been sent to him (as evidenced by a contemporaneous note of the Party sending the notice) and a hard copy of such notice is also sent by first class recorded delivery post (airmail if overseas) on the same day as that on which the electronic mail is sent.

5.1.3 In proving such service it shall be sufficient to prove that personal delivery was made, or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authority as prepaid first class, recorded delivery or airmail letter (as appropriate) or that the facsimile was transmitted on a tested line or that the correct transmission report was received from the facsimile machine sending the notice as the case may be.

## 5.2 **Validity of communications**

No notice, approval, acceptance, waiver, consent or other communication by the Customer or the Service Provider shall be valid unless made in writing and executed on behalf of the party sending the communication by the Authorised Officer specified in Schedule 5 (*Contract Management*) or on behalf of the relevant Authorised Officer by a Person delegated by him to serve such notice, approval, acceptance, waiver, consent or other communication.

## 5.3 **Authorised Officers**

5.3.1 Any notice, information or communication given to or made by an Authorised Officer shall be deemed to have been given or made by the Customer.

5.3.2 The Service Provider shall only be obliged to accept instructions in relation to the supply of the Goods and/or Managed Services from Authorised Officers.

5.3.3 The representative for the Customer for all purposes connected with the Call Off Contract will be such person as is notified by the Customer to the Service Provider from time to time or such other person to act on their behalf as nominated by the Customer and notified to the Service Provider from time to time.

## 6 **STATUTORY RESPONSIBILITIES**

### 6.1 **Compliance with statutory and other regulations**

6.1.1 The Service Provider shall in all matters arising from the performance of the Call Off Contract conform with all relevant Laws and with all orders, regulations and bye-laws made by Government Departments or by local or other authorities that shall be applicable to the Call Off Contract. The Service Provider shall also observe through its personnel any rules applicable to the Location whilst operating at the Location as set out in the Specification or Order, or otherwise when operating at the Service Provider's own sites in accordance with the Service Provider's rules. The Customer shall provide to the Service Provider without undue delay following the signing of the Call Off Contract and from time-to-time thereafter as may be necessary during the term of the Call Off Contract, written information as to current local conditions. Such information shall include:

6.1.1.1 location regulations;

6.1.1.2 location of any toxic hazards the existence of which the Customer should reasonably be expected to know; and



6.1.1.3 relevant procedures to be followed and precautions to be taken in relation to such hazards.

6.1.2 The Service Provider shall not in the performance of the Call Off Contract in any manner endanger the safety or unlawfully interfere with the convenience of the public and shall procure that its employees, agents and sub-contractors shall conform to such regulations, procedures and precautions provided by the Customer as may be appropriate.

## 6.2 Corrupt Gifts and Payments of Commission

6.2.1 The Service Provider shall not do (and warrants that in entering the Call Off Contract that it has not done) any of the following (referred to in this clause as “**Prohibited Acts**”):

6.2.1.1 offer, give or agree to give to any servant of the Crown any gift or consideration of any kind as an inducement or reward for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of this or any other agreement with the Crown, or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the Crown; and/or

6.2.1.2 enter into this or any other agreement with the Crown in connection with which commission has been paid or has been agreed to be paid by him or on his behalf, or to his knowledge, unless before the agreement is made particulars of any such commission and the terms and conditions of any such agreement for the payment of it have been disclosed in writing to the Customer.

6.2.2 If the Service Provider, his employees, agents or any subcontractor, or anyone acting on his or their behalf, does any of the Prohibited Acts or commits any offence as the case may be under the Bribery Act 2010 with or without the knowledge of the Service Provider in relation to this or any other agreement with the Crown, the Customer shall be entitled:

6.2.2.1 to terminate the Call Off Contract immediately by giving notice in writing and recover from the Service Provider the amount of any loss resulting from the termination;

6.2.2.2 to recover from the Service Provider the amount or value of any such gift consideration or commission; and

6.2.2.3 to recover from the Service Provider any other loss sustained in consequence of any breach of this clause, whether or not the agreement has been terminated.

6.2.3 In exercising its rights or remedies under this clause, the Customer shall act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing the Prohibited Act.

## 6.3 Conflict of Interest

6.3.1 “**Conflict of Interest**” means a situation in which the Service Provider or a member of the Service Provider’s staff has a private, personal or corporate interest which could appear to influence the objective exercise of his or her work towards the provision of the Managed Services.

6.3.2 The Service Provider shall ensure that there is no Conflict of Interest as to be likely to prejudice its independence and objectivity in performing the Call Off Contract,

and undertakes that upon becoming aware of any such Conflict of Interest during the performance of the Call Off Contract (whether the conflict existed before the award of the Call Off Contract or arises during its performance), it shall immediately notify the Customer in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises, and shall furnish such further information as the Customer may reasonably require.

- 6.3.3 Subject to the Service Provider first having an opportunity to remedy such Conflict of Interest within 30 days where the Customer is of the opinion (acting reasonably) that a Conflict of Interest is not capable of being avoided or removed, the Customer may terminate the Call Off Contract immediately by giving notice in writing and recover from the Service Provider the amount of any loss from such termination.

#### **6.4 Child Labour**

- 6.4.1 The Service Provider shall and shall procure that its sub-contractors and its manufacturers of Goods comply with all applicable labour and employment laws regarding, and prohibiting, any form of child labour or other exploitation of children in the manufacturing, supply and delivery of the Goods, consistent with provisions of the Children and Young Persons Act 1933 and 1963 (as amended from time to time).
- 6.4.2 The Service Provider shall and shall procure that its manufacturers of Goods comply with an appropriately drafted social accountability guideline or policy of the Service Provider pursuant to which the Service Provider shall be entitled to disqualify any manufacturer site that uses unacceptable manufacturing practices, such as child labour, forced labour or unsafe or unsanitary working conditions.
- 6.4.3 The Service Provider shall undertake annual inspections of any sub-contractor and manufacturer involved in the provision of Goods hereunder to ensure compliance with the foregoing.

#### **6.5 Health and Safety**

- 6.5.1 The Service Provider shall comply, and shall ensure that its employees comply with, the requirements of relevant health and safety and other relevant legislation, including regulations and codes of practice issued thereunder, and with the Customer's own policies and procedures whilst at the Location.
- 6.5.2 The Service Provider shall at all times maintain a specific health and safety at work policy relating to the employment of his own staff whilst carrying out their duties in relation to the Call Off Contract.
- 6.5.3 The Service Provider will be required to nominate a health and safety representative to liaise with the Authorised Officer on all health and safety matters.
- 6.5.4 The Service Provider's staff shall follow a system of accident recording in accordance with the Customer's accident recording procedure whilst at the Location and the Service Provider's own accident reporting procedures whilst at Service Provider sites.
- 6.5.5 All notifiable accidents shall immediately be brought to the attention of the Authorised Officer.
- 6.5.6 The Service Provider shall ensure the co-operation of its staff in all prevention measures designed against fire, or any other hazards, and shall notify the Customer of any change in the Service Provider's working practices or other occurrences likely to increase such risks or to cause new hazards.

- 6.5.7 The Service Provider's staff shall be trained to recognise situations which involve an actual or potential hazard including:
- 6.5.7.1 danger of personal injury to any person at the Location; and
  - 6.5.7.2 where possible, without personal risk, make safe any such situation; or
  - 6.5.7.3 report any such situation to the Authorised Officer;
  - 6.5.7.4 fire risks and fire precautions and procedures including attendance at fire lectures/drills in accordance with the Customer's policies;
  - 6.5.7.5 security;
  - 6.5.7.6 risk management; and
  - 6.5.7.7 major incident.
- 6.5.8 The Service Provider shall provide such first aid facilities and ensure that its staff abide by such first aid procedures as shall be required by the Customer whilst at the Location.
- 6.5.9 The Service Provider shall at any time ensure that the equipment used and procedures operated conform to the Customer's fire policy whilst at the Location.
- 6.5.10 The Service Provider shall co-operate with the Customer's fire, security and safety advisors and shall comply with their reasonable instructions whilst at the Location.
- 6.5.11 The Service Provider will comply with the Control of Substances Hazardous to Health (COSHH) Regulations (as amended) and COSHH hazard management and control.

**6.6 NOT USED**

**6.7 Compliance with Law**

- 6.7.1 The Service Provider shall not be relieved of its obligations to supply the Goods and or Managed Services in accordance with the terms of this Call Off Contract nor be entitled to an increase in the Contract Price as a result of:
- 6.7.1.1 a General Change in Law; or
  - 6.7.1.2 a Specific Change in Law where the effect of that Specific Change in Law on the Goods and or Managed Services is known at the Commencement Date.
- 6.7.2 Subject to clause 6.7.3 the Service Provider shall indemnify the Customer for any costs incurred by the Customer as a result of the Service Provider's failure to fulfil its responsibilities and obligations under the Call Off Contract to which it would not otherwise be liable due to any relevant law or any relevant order, regulation or bye-law having the force of the law providing the Customer has made all reasonable efforts to mitigate such costs.
- 6.7.3 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in clause 6.7.1.2), the Service Provider shall:
- 6.7.3.1 notify the Customer as soon as reasonably practicable of the likely effects of that change, including:

- 6.7.3.1.1 whether any change is required to the Managed Services, the Contract Price or this Call Off Contract; and
- 6.7.3.1.2 whether any relief from compliance with the Service Provider's obligations is required; including any obligation to meet any and all quality management requirements specified in this Call Off Contract, including any standards specified in Schedule 3 (Specification).
- 6.7.3.2 provide the Customer with evidence:
  - 6.7.3.2.1 that the Service Provider has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its sub-contractors;
  - 6.7.3.2.2 as to how the Specific Change in Law has affected the cost of providing the Managed Services; and
  - 6.7.3.2.3 demonstrating that any expenditure that has been avoided, has been taken into account in amending the Contract Price.
- 6.7.4 Any variation in the Contract Price or relief from the Service Provider's obligations resulting from a Specific Change in Law (other than as referred to in clause 6.7.1.2) shall be implemented in accordance with the variation procedure at clause 7.

## **7 VARIATIONS TO THE CONTRACT**

### **7.1 Amendments**

- 7.1.1 No material variation to the Call Off Contract or the Specification shall be made without the prior written consent of the Customer.
- 7.1.2 Subject to clause 7.1.1 above, no amendments to the Call Of Contract, nor any additional or substitute clauses, schedules or appendices thereto, shall be valid unless made in writing expressly purporting to amend the Call Off Contract and executed on behalf of both parties by their respective Authorised Officers.
- 7.1.3 Both parties shall maintain a complete and accurate master copy of the Call Off Contract during the term thereof containing all amendments thereto.

### **7.2 Change Control**

- 7.2.1 Subject to clause 7.1.1, the control of change hereunder shall be in accordance with the change control principles and procedures laid down in Schedule 10. For these purposes, subject to clauses 6.7.1 and 6.7.3 above a change includes any proposed amendment to the Call Off Contract, including the proposed assignment or any new sub-contracting of the Call Off Contract where the relevant sub-contractor is not an approved sub-contractor set out in Schedule 16 whether in whole or in part. For each such change, which is agreed by the Customer and the Service Provider, the Call Off Contract shall be amended using the form of amendment set out in Schedule 10.

### **7.3 Assignment**

- 7.3.1 The Service Provider shall not assign the whole or any part of its rights or benefits under the Call Off Contract without the prior written consent of the Customer.

- 7.3.2 Subject to clause 7.3.1, if consent to assign is requested from the Service Provider or Authorised Officer (as the case may be):
- 7.3.3 The Customer may insist upon the production to it (inter alia) of all reasonable information and documentation relevant to:
- 7.3.3.1 the financial position, viability and liability;
  - 7.3.3.2 capacity and competence; and
  - 7.3.3.3 relevant experience and/or required registrations of the proposed assignee,
  - 7.3.3.4 as reasonable and valid conditions of their consent under clause 7.3.3.3;
  - 7.3.3.5 the Service Provider must warrant that the Service Provider and assignee will fully comply with the obligations on the Service Provider to obtain insurance cover under clause 17.1 (*Insurance*) and comply with the Data Protection requirements detailed in clause 12.1 (*Data Protection*);
  - 7.3.3.6 the Service Provider must engage the most appropriate and qualified assignee to undertake the supply of the Goods and/or Managed Services; and
  - 7.3.3.7 the Customer may insist that the Call Off Contract be novated from the Service Provider to the assignee.
- 7.3.4 The Service Provider acknowledges and agrees that by way of illustration only and without restricting or fettering the Customer's right to withhold its consent on reasonable grounds, it shall be reasonable for the Customer to withhold its consent where the sub-contracting of the production or supply of Goods and/or Managed Services would be contrary to Law or contrary to public or government policy or contrary to public morality and decency or which is not in the national interest.

#### 7.4 **Sub-contractors**

- 7.4.1 The Service Provider shall not sub-contract the supply of any Goods and/or Managed Services without the previous consent in writing of the Authorised Officer and the Customer save that the Service Provider may refer to the supply of the Goods and/or Managed Services to the approved sub- contractors in Schedule 16 (*APPROVED SUB-CONTRACTORS To Be Inserted From Tender Response*).
- 7.4.2 Subject to clause 7.4.1 if consent to sub-contract is requested from the Authorised Officer or the Customer:
- 7.4.2.1 the Customer may insist upon the production to it (inter alia) of all reasonable information and documentation relevant to:
    - 7.4.2.1.1 the financial position, viability liability;
    - 7.4.2.1.2 capacity and competence; and
    - 7.4.2.1.3 relevant experience of the proposed sub- contractor,
  - 7.4.2.2 as reasonable and valid conditions of their consent under clause 7.4.1;

- 7.4.2.3 the Service Provider must warrant that appropriate and adequate insurance is in place for the life of the sub-contract and that the Service Provider and sub-contractor will fully comply with clause 17 (*Insurance*) and clause 12.1 (*Data Protection*);
- 7.4.2.4 the Service Provider must engage the most appropriate and qualified sub-contractor to undertake the supply of the Goods and/or Managed Services.
- 7.4.2.5 In the event that the Service Provider sub-contracts the supply of any of the Goods and/or Managed Services, the Service Provider will remain liable under the Call Off Contract for any acts or omissions of the sub-contractor in relation to the supply of the Goods and/or Managed Services as if such act or omission had been committed or omitted by the Service Provider itself.

## 8 PAYMENT AND TAXES

### 8.1 Contract Price and Payment

- 8.1.1 In consideration of the Service Provider's due and proper performance of its obligations under the Call Off Contract, the Service Provider may charge the Customer the Contract Price in accordance with this clause 8.1 and Schedule 9 (*Pricing Matrices*) of the Call Off Contract.
- 8.1.2 Not used.
- 8.1.3 The Contract Price shall be net i.e. after the deduction of all agreed discounts. In the absence of written agreement by the Parties to the contrary, the Contract Price shall include the cost of packaging, packing materials, addressing, labelling, loading and delivery to the Location. All appropriate tax (excluding VAT) and duty and all other costs, charges, fees and expenses of whatever kind arising out of or in connection with the Call Off Contract shall be the responsibility of the Service Provider. The amount of any duty additional to the Contract Price and any early settlement discounts shall be shown separately in the Call Off Contract.
- 8.1.4 For the avoidance of doubt, all sums payable by the Customer under the Call Off Contract shall be the sole responsibility of the Customer.
- 8.1.5 The Customer shall be entitled to withhold payment of the Contract Price pending receipt and acceptance of the Goods and/or Managed Services in accordance with the Specification and /or any applicable Service Credits in accordance with Schedule 5 (*Contract Management*).
- 8.1.6 Unless otherwise agreed in writing by the Customer and the Service Provider, within 15 days of the end of each Month, the Service Provider shall invoice the Customer for any Goods and/or Managed Services supplied by the Service Provider in that Month. Such invoice shall be rendered on the Service Provider's own invoice form clearly marked with the Customer's order number (if any). Invoices must show the period to which they relate and the Goods and/or Managed Services for which payment is claimed together with the agreed charging rates and any other details the Customer may require. Failure to provide such information will entitle the Customer to delay payment of the Contract Price until such information is provided. Any such invoices shall take into account any Service Credits which have been accrued in the previous month.
- 8.1.7 Subject to clause 8.1.3, the Customer shall pay any valid invoice submitted by the Service Provider in accordance with clause 8.1.5 within 30 days of receipt by the Customer of such valid invoice. The Customer shall pay such invoice(s) by BACS

(Bank Automated Clearing System) if the Customer so chooses, or any alternate means as agreed between the Customer and the Service Provider.

- 8.1.8 The Service Provider shall be registered in all taxing jurisdictions where, as a supplier of Goods and/or Managed Services under the Call Off Contract, it is legally required to register. Upon request, the Service Provider shall provide to the Customer a copy of the Service Provider's registration certificate and number within each tax jurisdiction.
- 8.1.9 The Customer shall not be responsible for the payment of any charges for Goods and/or Managed Services supplied in excess of the Goods and/or Managed Services required by the Order or Specification or any variation of them unless authorised in writing by a further Order or otherwise by the parties.
- 8.1.10 No payment of or on account of the Contract Price shall constitute any admission by the Customer as to proper performance by the Service Provider of its obligations.
- 8.1.11 In the event of any Party breaching a payment obligation under the Call Off Contract, the other Party shall be entitled to charge interest on the outstanding amount in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 8.1.12 Where the Service Provider enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Call Off Contract it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Service Provider to the sub-contractor within a specified period not exceeding 30 days from the receipt of a raised invoice.
- 8.1.13 The Service Provider will keep accurate information, books and records in relation to the supply of the Goods and/or Managed Services in accordance with sound and prudent financial management. All such information, books and records shall be made available to the Customer at regular intervals of not less than quarterly.
- 8.1.14 Save as otherwise provided for in the Framework Agreement or this Call- Off Contract, the Contract Price shall not be subject to any increase whatsoever by the Service Provider during the Contract Period.
- 8.1.15 In the event that the Customer fails to adhere to or comply with any volume/exclusivity or Committed Category of Spend commitments, the Customer shall pay the relevant Contract Price as determined in accordance with the Pricing Matrices.

## 8.2 **ABI Management Charge**

The Customer acknowledges and agrees that the Service Provider is subject to an ABI Management Charge in relation to any Orders placed by the Customer under the Framework Agreement.

## 8.3 **Value Added Tax**

The Customer shall pay the Service Provider, in addition to the Contract Price and any other valid charges, a sum equal to the value added tax chargeable on the value of the Goods supplied and Managed Services performed under the Call Off Contract at the date of invoice. The Service Provider shall, upon request, provide such information as may be reasonably required by the Customer regarding the amount of value added tax charged on invoices submitted.

#### 8.4 Recovery of sums due

Whenever, under the Call Off Contract, any sum of money shall be recoverable from or payable by the Service Provider, including any over-payments and any sum which the Service Provider is liable to pay to the Customer in respect of any breach of the Call Off Contract, the same may be deducted from any sum then due or which at any time may become due to the Service Provider under this Call Off Contract or any other contract with the Customer, subject to prior written notice to the Service Provider.

### 9 REMEDIES AND INDEMNITIES

#### 9.1 Limitation of liability

9.1.1 Subject to clause 9.1.2 and clause 9.1.4, the limit of the Service Provider's liability to the Customer under or in connection with this contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to the greater of: (a) five million GBP (£5,000,000); or (b) one hundred and twenty percent (120%) of the total Contract Price paid or payable by the Customer to the Service Provider for the Services for all occurrences or series of occurrences in any year of the Term.

9.1.2 If the total Contract Price paid or payable by the Customer to the Service Provider in any year of the Term:

9.1.2.1 is less than or equal to one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at clause 9.1.1 shall be replaced with one million pounds (£1,000,000);

9.1.2.2 is less than or equal to three million pounds (£3,000,000) but greater than one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at clause 9.1.1 shall be replaced with three million pounds (£3,000,000);

9.1.2.3 is equal to, exceeds or will exceed ten million pounds (£10,000,000), but is less than fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at clause 9.1.1 shall be replaced with ten million pounds (£10,000,000) and the figure of one hundred and twenty percent (120%) at clause 9.1.1 shall be deemed to have been deleted and replaced with one hundred and fifteen percent (115%); and

9.1.2.4 is equal to, exceeds or will exceed fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at clause 9.1.1 shall be replaced with fifty million pounds (£50,000,000) and the figure of one hundred and twenty percent (120%) at clause 9.1.1 shall be deemed to have been deleted and replaced with one hundred and five percent (105%).

9.1.3 Subject to clause 9.1.4, the Customer's total liability to the Service Provider for any and all claims arising under this Call Off Contract shall be limited to the total Contract Price.

9.1.4 Nothing in this Call Off Contract shall exclude or limit the liability of either Party for death or personal injury caused by negligence or for fraud or fraudulent misrepresentation or any other liability which cannot be excluded or limited by reason of law.

9.1.5 Where any liability arises from the deliberate default of the Service Provider the references:



- 9.1.5.1 in clause 9.1.1 to (a) five million GBP (£5,000,000); or (b) one hundred and twenty percent (120%) shall be deemed to be references to (a) ten million GBP (£10,000,000); or (b) two hundred and forty percent (240%);
- 9.1.5.2 in clause 9.1.2.1 the text “shall be replaced with one million pounds (£1,000,000)” shall be deemed to be a reference to “shall be replaced with two million pounds (£2,000,000)”;
- 9.1.5.3 in clause 9.1.2.2 the text “shall be replaced with three million pounds (£3,000,000)” shall be deemed to be a reference to “shall be replaced with six million pounds (£6,000,000)”;
- 9.1.5.4 in clause 9.1.2.3 the text “shall be replaced with ten million pounds (£10,000,000)” shall be deemed to be a reference to “shall be replaced with twenty million pounds (£20,000,000)”;
- 9.1.5.5 in clause 9.1.2.4 the text “shall be replaced with fifty million pounds (£50,000,000)” shall be deemed to be a reference to “shall be replaced with sixty million pounds (£60,000,000)”.
- 9.1.6 Not used.
- 9.1.7 Neither party shall be liable to the other for any:
  - 9.1.7.1 indirect, special or consequential loss arising in connection with this Call Off Contract;
  - 9.1.7.2 loss of profits, loss of sales, anticipated savings or goodwill, loss of business opportunity or contracts in each case whether direct or indirect,

even if such loss could have been foreseen.
- 9.1.8 The provisions of clause 9.1.7 shall not be taken as excluding or limiting the Customer's right under the Call Off Contract to claim for any of the following which results from a Default by the Service Provider provided that the Customer has made all reasonable efforts to mitigate such results:
  - 9.1.8.1 costs and expenses which would not otherwise have been incurred by the Customer including, without limiting the generality of the foregoing, costs relating to the time spent by the Customer's executives and employees in dealing with the consequences of the Default;
  - 9.1.8.2 expenditure or charges paid by the Customer which would not otherwise have been incurred or would have ceased or would not have recurred;
  - 9.1.8.3 costs, expenses and charges resulting from the loss or corruption of the data or Software owned by or under the control of the Customer provided that the Service Provider's liability shall be limited to costs, expenses and charges associated with re-constituting such data or Software and returning it to a fully operational state insofar as it is inherently capable of being re-constituted.
- 9.1.9 Not used.

## 9.2 Customer's indemnity

- 9.2.1 Any reference in this clause 9.2.1 to a claim, demand or action for the infringement or alleged infringement of intellectual property rights shall apply only to any claim, demand or action for the infringement or alleged infringement of intellectual property rights in connection with Customer Software or any other item supplied by the Customer in connection with the provision of Managed Services, (hereinafter referred to in clause 9.2.2 as "**Customer Supplied Items**").
- 9.2.2 Subject always to the Service Provider's proper observance of its obligations under this clause 9.2.2, the Customer shall fully indemnify the Service Provider against all claims, demands, actions, costs, expenses (including but not limited to full legal costs and disbursements on a solicitor and client basis), losses and damages arising directly from or incurred only by reason of any infringement or alleged infringement (including but not limited to the defence of such alleged infringement) of any IPR, enforceable in the united kingdom, in the Customer Supplied Items.
- 9.2.3 The Service Provider shall forthwith notify the Customer if any claim or demand is made or action brought against the Service Provider for infringement or alleged infringement of any IPR in the Customer Supplied Items. The Customer shall at its own expense conduct any litigation arising therefrom and all the negotiations in connection therewith and the Service Provider hereby agrees to grant the Customer exclusive control of any such litigation or such negotiations.
- 9.2.4 The Customer shall forthwith notify the Service Provider if any claim or demand is made or action brought against the Customer for infringement or alleged infringement of any IPR in the Customer Supplied Items which may affect the performance of the Goods and/or Managed Services by the Service Provider.
- 9.2.5 The Service Provider shall at the request of the Customer afford all reasonable assistance for the purpose of contesting any such claim, demand or action and shall be repaid all costs and expenses incurred in so doing.
- 9.2.6 The Service Provider shall not make admissions which may be prejudicial to the defence of such claim or demand or action.
- 9.2.7 If a claim, demand or action is made which is subject to this clause 9.2.7 or in the reasonable opinion of the Customer is likely to be made, the Customer may at its own expense:
- 9.2.7.1 modify or replace Customer Supplied Items without increasing the burden of the Service Provider's obligations in providing the Goods and/or Managed Services, so as to avoid the infringement or the alleged infringement and the terms herein shall apply mutatis mutandis to such modified or replaced Customer supplied items; or
  - 9.2.7.2 modify or replace Customer Supplied Items so as to avoid the infringement or the alleged infringement and, insofar as the burden of the Service Provider's obligations in providing the Goods and/or Managed Services is increased, such modification or replacement shall be treated as an amendment to the Contract in accordance with clause 7.1 and subject to the change control procedures contained in Schedule 10. Acceptance by the Service Provider of such modification or replacement shall not be unreasonably withheld or delayed; or
  - 9.2.7.3 procure a licence in respect of Customer supplied items in order that the Service Provider may continue to perform the Goods and/or Managed Services.

- 9.2.8 The foregoing provisions of this clause 9.2 shall not apply insofar as any such claim or demand or action is in respect of:
- 9.2.8.1 any use in the provision of the Goods and/or Managed Services by the Service Provider of anything supplied by the Service Provider in combination with any Customer Supplied Items where such combined use of the item supplied by the Service Provider directly gives rise to the claim, demand or action;
  - 9.2.8.2 any modification of any Customer Supplied Items carried out by the Service Provider if such modification has not been authorised by the Customer in writing;
  - 9.2.8.3 the Service Provider's unreasonable refusal to use any modified or replaced Customer supplied item in the performance of the Goods and/or Managed Services pursuant to clause 9.3.8.3; or
  - 9.2.8.4 any infringement or alleged infringement of any Intellectual Property Right arising only by reason of the Service Provider's non-compliance with the express instructions of the Customer issued in writing after the date hereof.
- 9.2.9 If the Customer has availed itself of its rights to modify or replace Customer Supplied Items in accordance with clause 9.3.7.1 or to procure a licence in accordance with clause 9.3.7.2 and such exercise of the said rights has avoided any claim, demand or action for the infringement or alleged infringement, then the Customer shall have no further liability thereafter under this clause 9.2.9 in respect of the said claim, demand or action.
- 9.2.10 If modification or replacement in accordance with clause 9.3.7.1 is not possible so as to avoid the infringement or the Customer has been unable to procure a licence in accordance with clause 9.3.7.2, the Service Provider shall be entitled to terminate the Call Off Contract in accordance with clause 11.2.

### 9.3 **Service Provider's indemnity**

- 9.3.1 Any reference in this clause 9.3.1 to a claim, demand or action for the infringement or alleged infringement of Intellectual Property Rights shall exclude any claim, demand or action which is subject to the provisions of clause 9.3.2.
- 9.3.2 Subject always to the Customer's proper observance of its obligations under clause 9.3.4, the Service Provider shall fully indemnify the Customer against all claims, demands, actions, costs, expenses (including but not limited to full legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including but not limited to the defence of such alleged infringement) of any Intellectual Property Right enforceable in the United Kingdom in connection with the Goods and/or Managed Services.
- 9.3.3 The Customer shall forthwith notify the Service Provider if any claim or demand is made or action brought against the Customer for infringement or alleged infringement of any Intellectual Property Right in connection with the Goods and/or Managed Services. The Service Provider shall at its own expense conduct any litigation arising therefrom and all the negotiations in connection therewith and the Customer hereby agrees to grant the Service Provider exclusive control of any such litigation or such negotiations provided that this clause 9.3.3 shall be subject to the provisions of clause 9.3.11.
- 9.3.4 The Service Provider shall forthwith notify the Customer if any claim or demand is made or action brought against the Service Provider for infringement or alleged

infringement of any Intellectual Property Right which may affect the use of the Managed Services by the Customer.

- 9.3.5 The Customer shall at the request of the Service Provider afford all reasonable assistance for the purpose of contesting any such claim, demand or action and shall be repaid all costs and expenses incurred in so doing.
- 9.3.6 The Customer shall not make admissions which may be prejudicial to the defence of such claim or demand or action.
- 9.3.7 If a claim, demand or action for the infringement or alleged infringement of any Intellectual Property Right is made in respect of the Goods and/or Managed Services or in the reasonable opinion of the Service Provider is likely to be made, the Service Provider may at its own expense:
  - 9.3.7.1 Modify Goods and/or Managed Services without reducing the performance or functionality of the same, so as to avoid the infringement or the alleged infringement and the terms herein shall apply mutatis mutandis to such modified Managed Services; or
  - 9.3.7.2 procure a licence for the Service Provider to perform the Managed Services on terms, which are acceptable to the Customer.
- 9.3.8 The foregoing provisions of this clause 9.3 shall not apply insofar as any such claim or demand or action is in respect of:
  - 9.3.8.1 any use in the provision of the Goods and/or Managed Services by the Service Provider of anything it supplies in combination with any item supplied by the Customer where such combined use of the item supplied by the Customer directly gives rise to the claim, demand or action;
  - 9.3.8.2 any modification carried out by or on behalf of the Customer to any item supplied by the Service Provider under the Call Off Contract if such modification has not been authorised by the Service Provider in writing;
  - 9.3.8.3 the Customer's unreasonable refusal to use modified Goods and/or Managed Services provided pursuant to clause 9.3.7; or
  - 9.3.8.4 any infringement or alleged infringement of any Intellectual Property Right arising only by reason of the Service Provider's compliance with the express instructions of the Customer issued in writing after the date hereof.
- 9.3.9 If the Service Provider has availed itself of its rights to modify Goods and/or Managed Services in accordance with clause 9.3.7.1 or to procure a licence in accordance with clause 9.3.7.2 and such exercise of the said rights has avoided any claim, demand or action for the infringement or alleged infringement, then the Service Provider shall have no further liability thereafter under this clause 9.3.9 in respect of the said claim, demand or action.
- 9.3.10 If a replacement or modification in accordance with clause 9.3.7.1 is not possible so as to avoid the infringement or the Service Provider has been unable to procure a licence in accordance with clause 9.3.7.2, the Service Provider shall be liable for the full value of the costs incurred in procuring and implementing replacement Goods and/or Managed Services.
- 9.3.11 In the event that, due to a claim, demand or action arising from or by reason of infringement or alleged infringement of any Intellectual Property Right, the quiet

enjoyment by the Customer of the Goods and/or Managed Services is disrupted or impaired and the Service Provider:

- 9.3.11.1 has not within seven (7) days of the commencement of such disruption or impairment commenced all appropriate and effective actions to restore to the Customer the quiet enjoyment of the Goods and/or Managed Services by exercising its rights in accordance with clause 9.3.7; and thereafter;
- 9.3.11.2 does not use all reasonable efforts to pursue such actions to restore to the Customer the quiet enjoyment of the Goods and/or Managed Services;

the Customer may conduct negotiations and make a settlement necessary to enable the Customer to continue to use the Goods and/or Managed Services. Such negotiations and settlement shall relate solely to the continued use of the Goods and/or Managed Services and any settlement made by the Customer shall be expressed to be without prejudice to the conduct by the Service Provider under the provisions of clause 9.3.3 of any litigation arising from, or settlement of, such claim, action or demand.

- 9.3.12 Where any claim, action or demand, to which this clause 9.3 applies, is settled as a result of negotiations by the Customer under the provisions of clause 9.3.7 and compensation resulting from such settlement is paid to a third party other than by the Service Provider or its insurers, the Service Provider shall not be required to pay by way of indemnity any sum greater than that which would be reasonably payable in settlement having regard to the circumstances of the case and in particular to the damages which might be recoverable by law.
- 9.3.13 The foregoing states the entire liability of the Service Provider with regard to the infringement of any Intellectual Property Right in connection with the Managed Services.
- 9.3.14 The liability of either party under this clause 9.3 shall not exceed the limit specified in clause (a) of the Call Off Contract.

#### 9.4 Delays

- 9.4.1 If the Service Provider fails to meet any Contractual Date specified in Schedule 6 (*Implementation*) and/or the Order as required under the provisions of clause 4.4, it shall be liable either:
  - 9.4.1.1 to pay to the Customer, as liquidated damages, a sum of money or percentage of the Contract Price as specified in the Order (or as otherwise specified and agreed by the parties) for each day of delay up to the number of days there specified or until the Call Off Contract is terminated whichever is sooner (the "**liquidated damages period**"). Such payment shall be in full and final settlement of the Service Provider's liability for all such loss incurred by the Customer up to the end of the period in which liquidated damages are payable. If the cause of such delay has not been rectified, at the expiry of the period during which liquidated damages are payable, the Customer shall be entitled to any remedy available to it for all losses, costs, damages or expenses incurred as a result of such delay after the end of the liquidated damages period. The Customer is however entitled, during the liquidated damages period, to serve a notice on the Service Provider placing the Service Provider on notice that if, at the end of the liquidated damages period, the delay is not remedied, time shall be of the essence;

- 9.4.1.2 if no such sum of money or percentage of the Contract Price to be paid as liquidated damages is specified in the Order or if Schedule 5 contains a statement to the effect that liquidated damages are 'nil' or 'zero', to reimburse the Customer for all proven losses, costs, damages and expenses incurred by the Customer by reason of such delay.

## 9.5 **Clarification**

- 9.5.1 The provisions of clause 9.4 above shall apply to delay by the Service Provider in meeting any Contractual Dates, notwithstanding the previous application of such provisions to delay or failure by the Service Provider to meet any other Contractual Dates.
- 9.5.2 Both parties acknowledge that any liquidated damages payable by the Service Provider to the Customer whether represented as a sum of money or as a percentage of the Contract Price is a genuine pre-estimate of the loss likely to be suffered by the Customer in the event of delay and that the figures specified therein are reasonable.
- 9.5.3 The Customer acknowledges that the Service Provider's ability to meet its obligations under the Call Off Contract according to the timetable in Schedule 6 or as set out in the Order may depend on the Customer likewise meeting its obligations. Consequently, insofar as the Service Provider is prevented from fulfilling any of obligations as a direct result of the Customer, it shall not be liable to the Customer for such failure and shall be entitled to an extension of time and recovery of additional costs under the provisions of clause 9.4.

## 9.6 **Waiver**

- 9.6.1 The failure of the Service Provider or the Customer to insist upon strict performance of any term, condition or provision of the Call Off Contract or to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by the Call Off Contract.
- 9.6.2 A waiver of any Default shall not constitute a waiver of any other Default.
- 9.6.3 No waiver of any of the terms, conditions or provisions of the Call Off Contract shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause 5.

## 9.7 **Statutory invalidity**

The parties expressly agree that should any limitation or provision contained in this clause 9 be held to be invalid under any particular statute or law, or any rule, regulation or bye-law having the force of law, it shall to that extent be deemed to be omitted but, if any party thereby becomes liable for loss or damage which would have otherwise been excluded, such liability shall be subject to the other limitations and provisions set out herein.

## 9.8 **Remedies cumulative**

Except as otherwise expressly provided by the Call Off Contract, all remedies available to the Call Off Service Provider or the Customer for breach of the Call Off Contract are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

## 9.9 Disbursement of public funds

- 9.9.1 The Customer has a duty to account for the disbursement of public funds. The Service Provider shall keep comprehensive and accurate records in respect of the Contract Price due to it under the Call Off Contract. The Service Provider shall allow inspection of such records at all reasonable times by the Customer's duly authorised representatives for the sole purpose of verifying the Service Provider's fulfilment of its obligations under the Call Off Contract and amounts due to the Service Provider therefor. The Service Provider shall make available such facilities and give such assistance, including the provision of copies or extracts of such records as the Customer may reasonably request in connection with the performance of such audit and shall afford the Customer's Authorised representatives all reasonable access to all other information, reports, documents, records and data, whether in human or machine readable form, solely relevant to the performance of its obligations.
- 9.9.2 Representatives of the Customer who are authorised to perform such inspection shall:
- 9.9.2.1 have other auditing responsibilities to the Customer in addition to those related to this clause 9.9; and
- 9.9.2.2 be acceptable, on all reasonable grounds, to the Service Provider.
- 9.9.3 All information of the Service Provider made available to the Customer under this clause 9.9 shall be treated as Confidential Information by the Customer in accordance with clause 12.2. The Service Provider shall use its reasonable endeavours to obtain and maintain access to its sub-contractors records in all sub-contracts entered into in relation to the Call Off Contract in order to ensure access by the Customer, where appropriate, to information of such sub-contractors required in accordance with clause 9.9.1.

## 10 DISPUTE RESOLUTION

### 10.1 Dispute Resolution Procedure

- 10.1.1 During any dispute which arises in connection with the Call Off Contract, including a dispute as to the validity of the Call Off Contract, it is mutually agreed that the Service Provider shall continue its performance of the provisions of the Call Off Contract (unless the Customer requests in writing that the Service Provider does not do so).
- 10.1.2 If a dispute arises between the Customer and the Service Provider in relation to any matter which cannot be resolved by the Authorised Officer and the Contract Manager either of them may refer such dispute to the Dispute Resolution Procedure.
- 10.1.3 In the first instance each of the Customer and the Service Provider shall arrange for a director to meet solely in order to resolve the matter in dispute.
- 10.1.4 Such meeting(s) shall be minuted and shall be chaired by the Customer (but the Chairman shall not have a casting vote). Such meeting(s) shall be conducted in such a manner and at such venue (including a meeting conducted over the telephone) as to promote a consensual resolution of the dispute in question at the discretion of the Chairman.
- 10.1.5 If the parties in dispute have been unable to resolve the dispute within 5 Working Days, they will refer the dispute to the parties' Chief Executives.

- 10.1.6 If the parties in dispute have been unable to resolve the dispute within 5 Working Days of referral to their Chief Executives in accordance with clause 10.1.5, they may refer the dispute to an Expert.

## 10.2 **Appointment of an Expert**

- 10.2.1 For the purposes of clauses 10.2.2 – 10.2.10 below, an Expert is a person appointed in accordance with this Clause to resolve a dispute which arises between the Customer and the Service Provider.
- 10.2.2 The Parties to the dispute for the purpose of this clause 10.2 shall endeavour to agree on the identity of an independent Expert and such independent Expert shall be jointly appointed by the Parties.
- 10.2.3 If the Parties are unable to agree on the identity of an Expert within 7 days of either Party serving details of a suggested Expert on the other, either Party shall be entitled to request the then President of the Institute of Chartered Accountants in England and Wales to appoint an Expert who is an accountant of repute with experience in commercial contract disputes.
- 10.2.4 Subject to clause 10.2.5, the Expert is required to prepare a written decision and give written notice (including a copy) of the decision to the Parties within a maximum of three months of the matter being referred to the Expert.
- 10.2.5 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:
- 10.2.5.1 either Party may apply to the then President of the Institute of Chartered Accountants in England and Wales to discharge the Expert and to appoint a replacement Expert with the required expertise; and
- 10.2.5.2 clauses 10.2.3 – 10.2.10 apply in relation to the new Expert as if he were the first Expert appointed.
- 10.2.6 All matters under clauses 10.2.3 – 10.2.10 shall be conducted, and the Expert's decision shall be written, in the English language.
- 10.2.7 The Parties are entitled to make submissions to the Expert including oral submissions and shall provide (or procure that others provide) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision, subject to the Expert agreeing to give such confidentiality undertakings as the Parties may reasonably require.
- 10.2.8 To the extent not provided for by clauses 10.2.3 – 10.2.10, the Expert may in his reasonable discretion determine such other procedures to assist with the conduct of the determination as he considers just or appropriate, including (to the extent he considers necessary,) instructing professional advisers to assist him in reaching his determination.
- 10.2.9 Each Party shall with reasonable promptness supply (and procure that others supply) each other with all information and give each other access to all documentation and personnel as the other Party reasonably requires to make a submission under clauses 10.2.3 – 10.2.10.
- 10.2.10 The Expert shall act as an expert and not as an arbitrator. The Expert's written decision on the matters referred to him shall be final and binding on the Parties in the absence of manifest error or fraud.
- 10.2.11 Subject to the remainder of this clause 10.2:



- 10.2.11.1 each Party shall bear its own costs in relation to the reference to the Expert;
- 10.2.11.2 the Expert's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the Parties equally or in such other proportions as the Expert shall direct; or
- 10.2.11.3 if the Expert finds in favour of the Customer, the Expert's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs of any advisers appointed by the Expert), together with the Customer's own costs in relation to the reference to the Expert, shall be borne by the Service Provider.

## 11 TERMINATION

### 11.1 Right to Terminate

- 11.1.1 The Customer may terminate the Call Off Contract (in whole or in part at its sole discretion) by serving written notice on the Service Provider in any of the following circumstances:-
  - 11.1.1.1 a material failure (in whole or in part) by the Service Provider to perform any material obligation of the Service Provider under the Call Off Contract provided that (if capable of remedy) such failure has not been remedied to the Customer's reasonable satisfaction within a period of 30 days following written notice demanding remedy of the failure in question being served by the Customer on the Service Provider; and/or
  - 11.1.1.2 the Service Provider fails (in whole or in part) to perform any material obligation of the Service Provider owed to the Customer on more than three (3) occasions; and/or
  - 11.1.1.3 the Service Provider becomes Insolvent or ceases to be capable of supplying the Goods and/or Managed Services; and/or
  - 11.1.1.4 the Service Provider is in default of any duty of care or any fiduciary or statutory duty owed to the Customer and/or any service user, employee or agent of the Customer; and/or
  - 11.1.1.5 there is a change of ownership or control of the Service Provider which, in the reasonable opinion of the Customer will have a material impact on the supply of the Goods and/or Managed Services or the image of the Customer; and/or
  - 11.1.1.6 the Service Provider purports to assign the Call Off Contract in breach of clause 7.3 (*Assignment*); and/or
  - 11.1.1.7 the Service Provider or any of its staff or sub-contractors, servants or agents shall have breached the requirements of clause 6.2 (*Corrupt Gifts and Payments of Commission*); and/or
  - 11.1.1.8 the Service Provider loses or fails to have in place such consents, licences, approvals and permits that may be required to enable it to manufacture and/or supply (as the case may be) the Goods and/or Managed Services; and/or

- 11.1.1.9 if in the opinion of the Customer the supply of the Goods and/or Managed Services by the Service Provider is likely to cause a risk of harm to service users; and/or
- 11.1.1.10 the Service Provider in any way materially damages, brings into disrepute, ridicules or lessens the reputation, goodwill or favourable name or image of the Customer.
- 11.1.2 The Customer shall be entitled to recover from the Service Provider the amount of any loss and costs resulting from termination under clause 11.1.1. For the purpose of this clause, Loss and Costs shall include reasonable cost to the Customer of the time spent by its officers in terminating the Call Off Contract and in making alternative arrangements for the provision of the Goods and/or Managed Services.
- 11.1.3 The Service Provider may terminate the Call Off Contract in the following circumstance, by giving six (6) month's written notice:
  - 11.1.3.1 if the Customer has committed a material breach of the Call Off Contract; and
  - 11.1.3.2 the Service Provider has brought the breach of contract to the attention of the Customer; and
  - 11.1.3.3 the Customer has not corrected the said breach of contract within a reasonable period of time.
- 11.1.4 The Service Provider agrees that upon termination for any reason (under clause 11.1 or otherwise) or expiry of the Call Off Contract it shall not be entitled to make a claim the Customer in relation to any loss or costs whatsoever or howsoever incurred by the Service Provider in providing the Goods and/or Managed Services or any loss or costs whatsoever or howsoever incurred in acquiring equipment and/or materials used in the provision of the Goods and/or Managed Services or in engaging third parties in connection with the Goods and/or Managed Services whether or not such costs were amortised in the calculation of the Contract Price payable by the Customer under the Call Off Contract. For the avoidance of doubt, the Service Provider will not be restricted from making any claim in respect of the Contract Price to the extent the Contract Price is outstanding and due and payable.
- 11.1.5 The Customer and the Service Provider agree that in the event of termination (in whole or in part) or expiry of the Call Off Contract, the following provisions shall survive such termination or expiry (as the case may be) and shall continue in full force and effect:
  - 11.1.5.1 clause 8 (*Payment and Taxes*) to the extent that any sum in respect of the Contract Price (including interest) remains outstanding at the date of termination or expiry (as the case may be);
  - 11.1.5.2 The indemnities contained in clauses 3.3, 6.7, 9.2, 9.3, 15.14, 16.1, 28.7, 29.3, 29.5, 29.8, 29.9, 29.10, and 32.3;
  - 11.1.5.3 clause 12.1 (*Data Protection*);
  - 11.1.5.4 clause 12.2 (*Confidentiality*);
  - 11.1.5.5 clause 12.3 (*Freedom of Information Act 2000*), clause 3.3 (*General Provisions*);
  - 11.1.5.6 clause 2.5 (*Governing Law and Jurisdiction*); and

11.1.5.7 clause 11.2 (*Exit and Service Transfer*).

- 11.1.6 Subject to clause 4.4, Either Party may, by written notice to the other, terminate the Call Off Contract, or require the partial Termination of any part of the Call Off Contract on the occurrence in relation to that part, if a Force Majeure Event endures for a continuous period of more than one hundred and twenty (120) days.
- 11.1.7 Any termination (in whole or in part) of the Call Off Contract will not prejudice the rights, obligations and duties of each Party arising prior to such termination taking effect.
- 11.1.8 The Customer may terminate the Call Off Contract immediately upon written notice upon the termination or expiry of the SLA.
- 11.1.9 Subject to clause 9 (Remedies and Indemnities) and clause 17 (Insurance), where the Customer terminates the Call Off Contract under clause 11.1.8, the Customer shall reimburse the Service Provider in respect of any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Service Provider by reason of the termination of the Call Off Contract, provided that the Service Provider takes all reasonable steps to mitigate such loss. Where the Service Provider holds insurance, the Customer shall only enter into discussions with the Service Provider for those unavoidable direct costs that are not covered by the insurance available. The Service Provider shall submit a fully itemised and costed list of any such unavoidable direct losses reasonably and actually incurred by the Service Provider as a result of termination under clause 11.1.8, with supporting evidence.

## 11.2 **Exit and Service Transfer**

- 11.2.1 Subject always to the provisions of clause 11.3.1.5, in the event of the termination or expiry of this Call Off Contract for any reason the Service Provider shall provide the Transitional Assistance Services to the Customer in accordance with the requirements of the Exit Plan and both parties shall comply with their respective obligations set out in this clause 11.2. The Service Provider shall co-operate with the Customer and/or the Replacement Service Provider to the extent reasonably required to facilitate the smooth migration of the Goods and/or Managed Services from the Service Provider to the Customer and/or the Replacement Service Provider.
- 11.2.2 The Service Provider shall comply with the Exit Plan included in Schedule 14 for the orderly transition of the Goods and/or Managed Services from the Service Provider to the Customer and/or any Replacement Service Provider in the event of any termination or expiry of this Call Off Contract.
- 11.2.3 The Service Provider shall update the Exit Plan no less than once during each Contract Year to reflect changes in the Goods and/or Managed Services and shall keep the Exit Plan under continuous review. Following each update, the Service Provider shall submit the revised Exit Plan to the Customer for review. Within 15 Working Days after the submission of the revised Exit Plan, the parties shall meet and use all reasonable endeavours to agree the contents of the revised Exit Plan, based on the principles set out in this clause 11.2 and the changes that have occurred in the Goods and/or Managed Services since the Exit Plan was last agreed. If the parties are unable to agree the contents of the revised Exit Plan within that 15 Working Day period, the previous version shall continue to apply and either party may refer the Dispute for resolution in accordance with the Dispute Resolution Procedure.
- 11.2.4 The Service Provider shall provide the Transitional Assistance Services in accordance with the principles set out in this clause 11.2 and the last-approved version of the Exit Plan (insofar as this still applies) to the Customer in good faith.

The Service Provider shall ensure that it is able to implement the Exit Plan at any time.

- 11.2.5 In addition, within 30 days after service of a Termination Notice by either party or six months prior to the expiration of this Call Off Contract, the Service Provider shall update the Exit Plan into a final form that could be implemented immediately and in doing so, provide as much detail as is appropriate given the nature of the termination or expiry and the timing of termination, so that such Exit Plan can be submitted to the Customer for review and approval. The parties shall meet and use their respective reasonable endeavours to agree the contents of such Exit Plan based on the principles set out in this clause 11.2. Until the agreement of the updated Exit Plan, the Service Provider shall provide the Transitional Assistance Services in accordance with the last-approved version of the Exit Plan (insofar as this still applies) to the Customer in good faith.

### 11.3 Consequences of Termination

- 11.3.1 In addition to the requirements detailed in clause 11.2 above, in the event of the termination or expiry of this Call Off Contract:

- 11.3.1.1 the Service Provider shall repay forthwith to the Customer any advance payments made by the Customer relating to any Goods and/or Managed Services not performed by the Service Provider in accordance with the Call Off Contract;
- 11.3.1.2 the Service Provider shall provide to the Customer or a replacement Service Provider nominated by the Customer any data belonging to the Customer in its possession either in its then current format or in a format nominated by the Customer (in which event the Customer will reimburse the Service Provider's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Customer;
- 11.3.1.3 the Service Provider shall cease to use the data belonging to the Customer;
- 11.3.1.4 each party shall return all items supplied to it in connection with the Call Off Contract by the other party;
- 11.3.1.5 the Service Provider shall render reasonable assistance to the Customer, if requested, to the extent necessary to effect an orderly assumption by a replacement Service Provider of the Goods and/or Managed Services performed previously by the Service Provider hereunder and the Customer shall reimburse the Service Provider for such assistance at the rates then prevailing for customers of the Service Provider for the same or similar services; and
- 11.3.1.6 the Service Provider shall immediately return to the Customer all Confidential Information, Personal Data and Intellectual Property in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Managed Services.

- 11.4 Where the Customer terminates the Call Off Contract under clause 11 (*Termination*) and then makes other arrangements for the supply of the Managed Services, the Customer may recover from the Service Provider the incremental cost reasonably incurred of making those other arrangements in respect of the period for the remainder of the Term. The Customer shall take reasonable steps to mitigate such additional expenditure.

## 12 CONFIDENTIALITY AND DATA PROTECTION

### 12.1 Data Protection

- 12.1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the NHS Commissioning Board (known as NHS England) is the Controller, the Customer is a Processor for the NHS Commissioning Board and the Service Provider is a sub-processor of the Controller. Please refer to Schedule 17 for further details.
- 12.1.2 The Service Provider shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 12.1.3 The Service Provider shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
- 12.1.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
  - 12.1.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - 12.1.3.3 an assessment of the risks to the rights and freedoms of natural persons; and
  - 12.1.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 12.1.4 The Service Provider shall provide all reasonable assistance to the Customer if the outcome of the Data Protection Impact Assessment leads the Customer to consult the Information Commissioner.
- 12.1.5 The Service Provider shall, in relation to any Personal Data processed in connection with its obligations under this Call Off Contract:
- 12.1.5.1 process that Personal Data only in accordance with the instructions set out in the Specification and in accordance with Schedule 17, unless the Service Provider is required to do otherwise by Law. If it is so required the Service Provider shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
  - 12.1.5.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
    - 12.1.5.2.1 nature of the data to be protected;
    - 12.1.5.2.2 harm that might result from a Data Loss Event;
    - 12.1.5.2.3 state of technological development; and

- 12.1.5.2.4 cost of implementing any measures;
- 12.1.5.3 ensure that:
  - 12.1.5.3.1 Service Provider personnel do not process Personal Data except in accordance with this Call Off Contract (and in particular the Specification and Schedule 17);
  - 12.1.5.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Service Provider personnel who have access to the Personal Data and ensure that they:
    - 12.1.5.3.2.1 are aware of and comply with the Service Provider's duties under this clause;
    - 12.1.5.3.2.2 are subject to appropriate confidentiality undertakings with the Service Provider or any Sub-processor that are in writing and are legally enforceable;
    - 12.1.5.3.2.3 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in advance and in writing to do so by the Customer or as otherwise permitted by this Call Off Contract; and
    - 12.1.5.3.2.4 have undergone adequate training in the use, care, protection and handling of Personal Data that enables them and the Service Provider to comply with their responsibilities under the Data Protection Legislation and this Call Off Contract. The Service Provider shall provide the Customer with evidence of completion and maintenance of that training within two Working Days of request by the Customer;
  - 12.1.5.3.3 not transfer Personal Data outside of the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
    - 12.1.5.3.3.1 the Customer or the Service Provider has provided appropriate safeguards in relation to the transfer (in accordance with GDPR Article 46) as determined by the Customer;
    - 12.1.5.3.3.2 the Data Subject has enforceable rights and effective legal remedies;
    - 12.1.5.3.3.3 the Service Provider 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 Customer and the NHS Commissioning Board in meeting their legal obligations); and

- 12.1.5.3.4 the Service Provider complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- 12.1.5.4 at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Call Off Contract unless the Service Provider is required by Law to retain the Personal Data. If the Service Provider is asked to delete the Personal Data the Service Provider shall provide the Customer with evidence that the Personal Data has been securely deleted in accordance with the Data Protection Legislation within a reasonable period of time as directed by the Customer in writing.
- 12.1.6 Not used.
- 12.1.7 Before allowing any Sub-processor to process any Personal Data related to this Call Off Contract, the Service Provider must:
  - 12.1.7.1 notify the Customer in writing of the intended Sub-processor and processing;
  - 12.1.7.2 obtain the written consent of the Customer;
  - 12.1.7.3 enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Call Off Contract such that they apply to the Sub-processor and in respect of which the Customer is given the benefits of third-party rights to enforce the same; and
  - 12.1.7.4 provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 12.1.8 Subject to Clause 12.1, as at the Commencement Date the Service Provider is hereby deemed to have complied with its obligations under Clauses 12.1.7.1, 12.1.7.2, and 12.1.7.3 in respect of the sub-processors identified in Schedule 16.
- 12.1.9 The Service Provider confirms that it has entered or (as the case may be) will enter into a written agreement with each sub-processor listed in Schedule 16 substantially on that sub-processor's standard terms of business, and the Service Provider confirms that those standard terms reflect and will continue to reflect the requirements of the Data Protection Legislation.
- 12.1.10 The Service Provider shall ensure that the third party's access to the Personal Data terminates automatically on termination of this Call Off Contract for any reason save that the Sub-processor may access the Personal Data in order to securely destroy it.
- 12.1.11 The Service Provider shall remain fully liable for all acts or omissions of any Sub-processor.
- 12.1.12 Subject to clause 12.1.15, the Service Provider shall notify the Customer immediately if it:

- 12.1.12.1 receives a Data Subject Access Request (or purported Data Subject Access Request) connected with Personal Data processed under this Call Off Contract;
- 12.1.12.2 receives a request to rectify, block or erase any Personal Data connected with Personal Data processed under this Call Off Contract;
- 12.1.12.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation connected with Personal Data processed under this Call Off Contract;
- 12.1.12.4 receives any communication from the Information Commissioner or any other supervisory or regulatory body in connection with Personal Data processed under this Call Off Contract;
- 12.1.12.5 receives a request from any third Party for disclosure of Personal Data connected with this Call Off Contract; or
- 12.1.12.6 becomes aware of an actual or suspected Data Loss Event.
- 12.1.13 The Service Provider shall not respond substantively to the communications listed at clause 12.1.12 save that it may respond to a regulatory or supervisory body following prior consultation with the Customer.
- 12.1.14 This notification shall be given by emailing the original request and any subsequent communications to [NECSU.IG@nhs.net](mailto:NECSU.IG@nhs.net).
- 12.1.15 The Service Provider's obligation to notify under clause 12.1.12 shall include the prompt provision of further information to the Customer in phases, as details become available.
- 12.1.16 Taking into account the nature of the processing, the Service Provider shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 12.1.12 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
  - 12.1.16.1 the Customer with full details and copies of the complaint, communication or request;
  - 12.1.16.2 such assistance as is reasonably requested by the Customer to enable the Customer to assist the NHS Commissioning Board to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - 12.1.16.3 such assistance as is reasonably requested by the Customer to enable the Customer to assist with the NHS Commissioning Board to comply with other rights granted to individuals by the Data Protection Legislation including the right of rectification, the right to erasure, the right to object to processing, the right to restrict processing, the right to data portability and the right not to be subject to an automated individual decision (including profiling);
  - 12.1.16.4 the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 12.1.16.5 assistance as requested by the Customer following any Data Loss Event;



- 12.1.16.6 assistance as requested by the Customer in relation to informing a Data Subject about any Data Loss Event, including communicating with the Data Subject;
- 12.1.16.7 assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer or the NHS Commissioning Board with the Information Commissioner's Office;
- 12.1.16.8 the Customer with any copies of requests from Data Subjects seeking to exercise their rights under the Data Protection Legislation. Such requests must be sent immediately to the Customer at [NECSU.IG@nhs.net](mailto:NECSU.IG@nhs.net).
- 12.1.17 The Service Provider shall allow for audits of its delivery of the Data Processing Services by the Customer or the Customer's designated auditor.
- 12.1.18 The Service Provider shall provide the Customer with evidence to demonstrate compliance with all of its obligations under this Call Off Contract and the relevant Data Protection Legislation.
- 12.1.19 The Service Provider shall designate a Data Protection Officer if required by the Data Protection Legislation and shall communicate to the Customer the name and contact details of any Data Protection Officer.
- 12.1.20 The Service Provider shall maintain complete and accurate records and information to demonstrate its compliance with this Call Off Contract and the Data Protection Legislation. The Service Provider must create and maintain a record of all categories of data processing activities carried out under this Call Off Contract, containing:
  - 12.1.20.1 the categories of processing carried out under this Call Off Contract;
  - 12.1.20.2 where applicable, transfers of Personal Data to a country or territory outside of the UK or an international organisation, including the identification of that country, territory, or international organisation and, where relevant, the documentation of suitable safeguards;
  - 12.1.20.3 a general description of the Protective Measures taken to ensure the security and integrity of the Personal Data processed under this Call Off Contract; and
  - 12.1.20.4 An incident log provided on written request by the Customer sufficient to support internal investigation/root cause analysis' and which records the processing of Personal Data in connection with this Call Off Contract comprising, as a minimum, details of the Personal Data concerned, how the Personal Data was processed, where the Personal Data was processed and the identity of any individual carrying out the processing.
- 12.1.21 The Service Provider shall ensure that the record of processing maintained in accordance with clause 12.1.20.4 is provided to the Customer within two Working Days of a written request from the Customer.
- 12.1.22 This Call Off Contract does not relieve the Service Provider from any obligations conferred upon it by the Data Protection Legislation.
- 12.1.23 The Parties agree to take account of any guidance issued by the Information Commissioner. The Customer may on not less than 20 Working Days' notice to

the Service Provider amend this Call Off Contract to ensure that it complies with any guidance issued by the Information Commissioner.

- 12.1.24 The Customer may, at any time on not less than 20 Working Days' notice, revise this clause by adding to it any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Call Off Contract).
- 12.1.25 The Service Provider warrants and undertakes that it will deliver the Managed Services in accordance with all Data Protection Legislation and this Call Off Contract and in particular that it has in place Protective Measures that are sufficient to ensure that the delivery of the Managed Services complies with the Data Protection Legislation.
- 12.1.26 The Service Provider must take prompt and proper remedial action regarding any Data Loss Event.
- 12.1.27 Any right enforceable by the Customer or obligation owed by the Service Provider to the Customer under this clause 12 shall be enforceable by the NHS Commissioning Board as if the NHS Commissioning Board were the Customer provided always that there shall be no requirement on the NHS Commissioning Board to review or approve the Protective Measures put in place by the Service Provider under this clause 12.1.
- 12.1.28 The parties agree that without prejudice to their respective obligations under this clause 12.1 they agree at all times to act reasonably and cooperatively with each other with regards to dealings concerning data protection and privacy matters. The parties further agree that reviews of compliance with the terms of this clause 12.1 will be a standing item for the review meetings which take place in accordance with Schedule 5.

## 12.2 Confidentiality

- 12.2.1 In respect of any Confidential Information it may receive from the other party (the "Discloser") and subject always to the remainder of this clause 12.2, each party (the "Recipient") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser's prior written consent provided that:
  - 12.2.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of the Call Off Contract;
  - 12.2.1.2 the Recipient shall not be prevented from passing Confidential Information to its professional advisors, to the extent necessary to enable it to perform (or cause to be performed), or to enforce its rights or obligations under the Call Off Contract;
  - 12.2.1.3 the provisions of this clause 12.2 shall not apply to any Confidential Information;
  - 12.2.1.4 which:-
    - 12.2.1.4.1 is in or enters the public domain other than by breach of the Call Off Contract or other act or omissions of the Recipient;
    - 12.2.1.4.2 is obtained by a third party who is lawfully authorised to disclose such information; or

- 12.2.1.4.3 is authorised for release by the prior written consent of the Discloser.
- 12.2.2 Nothing in this clause 12.2 shall prevent the Recipient from disclosing Confidential Information where:
- 12.2.2.1 it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law; and/or
- 12.2.2.2 the information is contained in the Call Off Contract and is to be disclosed under the Government's transparency policy.
- 12.2.3 Nothing in this clause 12.2 shall prevent the Customer from disclosing the Service Provider's Confidential Information on a confidential basis:
- 12.2.3.1 to any Crown body or any other Contracting Authority which term shall have the same meaning as set out in the Public Contracts Regulations 2015;
- 12.2.3.2 for the purpose of the examination and certification of the Customer's accounts; or
- 12.2.3.3 for any examination pursuant to Section 6(1) of the National Audit Act 1983.
- 12.2.4 Not used
- 12.2.5 Should any Party provide disclosure of any information in accordance with its obligations under the FOIA then such party shall comply with clause 12.2 and 12.3 in respect of confidential information which is subject to the FOIA and with clause 12.3 in respect of Personal Data which is subject to the Data Protection Legislation.
- 12.2.6 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Call Off Contract is not confidential information. Notwithstanding any other term of the Call Off Contract, the Service Provider hereby gives its consent for the Customer to publish the Call Off Contract in its entirety, including from time to time agreed changes to the Call Off Contract, to the general public (save that the Customer agrees to consult the Service Provider prior to disclosure of the Call Off Contract). The Service Provider shall assist and cooperate with the Customer to enable the Customer to publish the Call Off Contract. The Customer shall be responsible for determining in its absolute discretion whether any of the content of the Call Off Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 12.2.7 The Service Provider authorises the Customer to disclose the Confidential Information to such person(s) as is necessary for the purposes of auditing and collating information so as to ascertain a realistic market price for the Goods and/or Managed Services supplied in accordance with the Call Off Contract, such exercise being commonly referred to as "benchmarking". The Customer shall use all reasonable endeavours to ensure that such person(s) keeps the Confidential Information confidential and does not make use of the Confidential Information except for the purpose for which the disclosure is made. The Customer shall not without good reason claim that the lowest price available in the market is the realistic market price.
- 12.2.8 The Service Provider and the Customer each authorise NHS London Procurement Partnership to disclose Confidential Information to any entity within the NHS

London Procurement Partnership. This clause only applies to NHS London Procurement Partnership Customers.

- 12.2.9 This clause 12.2 shall remain in force without limit in time in respect of Confidential Information which comprises Personal Data or which relates to a patient or service user (living or deceased), his or her treatment and/or medical records or care package records. Save as aforesaid and unless otherwise expressly set out in the Call Off Contract, this clause 12.2 shall remain in force for a period of 6 years after the termination or expiry of the Call Off Contract.
- 12.2.10 In the event that the Service Provider fails to comply with this clause 12.2, the Customer reserves the right to terminate the Call Off Contract by notice in writing with immediate effect.

### 12.3 Freedom of Information Act 2000

- 12.3.1 The Service Provider acknowledges that the Customer is subject to the FOIA, its codes of practice and the Environmental Information Regulations 2004 (and any other applicable codes of practice, guidance or requirements under the Cabinet Office transparency programme) as may be amended, updated or replaced from time to time.
- 12.3.2 The Service Provider will act in accordance with the FOIA, its codes of practice and the Environmental Information Regulations (and any other applicable codes of practice or guidance) to the extent that they apply to the creation, operation or termination of the Call Off Contract.
- 12.3.3 The Service Provider shall and shall procure that its sub-contractors shall:
- 12.3.3.1 transfer any request for information, as defined under section 8 of the FOIA or regulation 5 of the Environmental Information Regulations 2004 to the Customer as soon as practicable after receipt and in any event within five (5) Working Days of receiving a request for information;
  - 12.3.3.2 provide the Customer with a copy of all information in its possession or power in the form that the Customer requires within five (5) Working Days (or such other period as the Procuring Body or the Customer may specify); and
  - 12.3.3.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to a request for information within the time for compliance set out in section 10 of the FOIA.
- ~~12.3.4~~ 12.3.4 The Customer (as the case may be) may:
- 12.3.4.1 consult the Service Provider in relation to any request for disclosure of the Service Provider's Confidential Information; and
  - 12.3.4.2 may consult with the Service Provider to inform its decision regarding any redactions, but the Customer shall have the final decision in its absolute discretion.

### 12.4 Disclosure to Regulatory Bodies

Notwithstanding the provisions of clause 12.2 above, the Customer may disclose any information provided by the Service Provider to other Regulatory Bodies, provided that the Customer shall take all reasonable steps to ensure that if such information is confidential it is treated as confidential by other Regulatory Bodies and their employees or agents.

## 12.5 **Know-how**

Nothing herein shall be so construed as to prevent either party from using data processing techniques, ideas, know-how and the like gained during the performance of the Call Off Contract in the furtherance of its normal business, to the extent that this does not result in a disclosure of confidential information or infringement of any valid Intellectual Property Rights of either party or the unauthorised processing of any Personal Data.

## 12.6 **Publicity**

12.6.1 The Service Provider shall not make any public statement relating to the existence or performance of the Call Off Contract without the Customer's prior approval in writing, which shall not be unreasonably withheld.

12.6.2 The Service Provider and its subcontractors shall not refer to the Customer in any advertisement without the Customer's prior written consent.

12.6.3 The Service Provider shall not do anything which may damage the reputation of the Customer or bring the Customer into disrepute.

12.6.4 The provisions of this clause 12.6 shall apply during the continuance of this Call Off Contract and after its termination howsoever arising, without limitation of time.

## 13 **PREMISES AND SECURITY**

### 13.1 **On-site regulations**

The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. The Service Provider shall comply with all reasonable security requirements of the Customer while on its premises and shall procure that all its employees, agents and sub-contractors shall likewise comply with such requirements. The Service Provider confirms that, prior to signature of the Call Off Contract it has received copies of all the Customer's written security procedures detailed in the Order or otherwise in the Call Off Contract and has been afforded an opportunity to inspect the Customer's physical security arrangements. The Service Provider also acknowledges that, with the exception of any notified to the Customer prior to signature of the Call Off Contract, it accepts and will abide by such procedures and arrangements detailed in the Order.

### 13.2 **Location**

13.2.1 Subject to satisfactory agreement between the Parties on Contract Price, the Customer reserves the right to increase or reduce the number of Locations under the Call Off Contract at any time during the Contract Period.

13.2.2 Without prejudice to any other right or remedy, the Customer will endeavour to give as much notice as possible of increases or reductions to the number of Locations under the Call Off Contract, although a minimum period of time is not specified in these conditions.

13.2.3 Upon completion of the Call Off Contract the Customer shall grant a non- exclusive and revocable licence to the Service Provider, if relevant, to enter upon the Locations for the sole purpose of supplying the Goods and/or Managed Services to the Customer, subject to the provisions of clause 13.3, for the term of the Call Off Contract. The licence thereby granted shall be subject to the conditions of the Call Off Contract and shall not be deemed to create a relationship of Landlord and Tenant as between the Customer and the Service Provider.

### 13.3 Use of sites

- 13.3.1 To the extent needed in order to supply the Goods and/or Managed Services in accordance with the Call Off Contract, the Service Provider shall provide the Managed Services at certain Service Provider sites as set out in the Specification or Order.
- 13.3.2 The Service Provider shall ensure that the Service Provider sites have a clean, tidy and professional appearance at all times.

## 14 SECURITY REQUIREMENTS

### 14.1 Security Management

- 14.1.1 The Service Provider shall comply, and shall procure the compliance of its agents representatives, staff and sub-contractors, with the Security Policy and the Security Management Plan and the Service Provider shall ensure that the Security Management Plan produced by the Service Provider fully complies with the Security Policy.
- 14.1.2 The Customer shall notify the Service Provider of any changes or proposed changes to the Security Policy.
- 14.1.3 If the Service Provider believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Goods and/or Managed Services it may submit a variation to the Call Off Contract. In doing so, the Service Provider must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Contract Price shall be agreed in accordance with clause 7 (*Variations to the Contract*).
- 14.1.4 Until and/or unless a change to the Contract Price is agreed by the Customer pursuant to clause 14.1.3 the Service Provider shall continue to deliver the Goods and/or perform the Managed Services in accordance with its existing obligations.

### 14.2 Malicious Software

- 14.2.1 The Service Provider shall, as an enduring obligation throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software in the ICT Environment (or as otherwise agreed by the Parties).
- 14.2.2 Notwithstanding clause 14.2.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Data, assist each other to mitigate any losses and to restore the Goods and/or Managed Services to their desired operating efficiency.
- 14.2.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of clause 14.2.2 shall be borne by the parties as follows:
  - 14.2.3.1 by the Service Provider where the Malicious Software originates from the Service Provider Software, the Third Party Software supplied by the Service Provider (except where the Customer has waived the obligation set out in clause 14.2.2) or the Data (whilst the Data was under the control of the Service Provider) unless the Service Provider can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Customer when provided to the Service Provider; and

- 14.2.3.2 by the Customer if the Malicious Software originates from the Customer Software (in respect of which the Customer has waived its obligation set out in clause 14.2) or the Data (whilst the Data was under the control of the Customer).

### 14.3 **Business Continuity and Disaster Recovery**

- 14.3.1 The Service Provider shall prepare and deliver to the Customer for the Customer's approval a draft BCDR Plan within 15 Working Days of the Commencement Date. The Customer shall review and comment on the Draft BCDR Plan as soon as reasonably practicable. Following such review and consultation, the Customer shall formally approve or reject the draft BCDR Plan no later than 15 Working Days after the date on which the draft BCDR is first delivered to the Customer.
- 14.3.2 If the Customer rejects the BCDR Plan, the Customer shall inform the Service Provider in writing of its reasons for its rejection. The Service Provider shall then revise the BCDR Plan (taking reasonable account of the Customer's comments) and shall re-submit a revised BCDR Plan to the Customer for the Customer's approval within 15 Working Days of the date of the Customer's notice of rejection. The provisions of clause 14.3.1 and this clause 14.3.2 shall apply again to any resubmitted BCDR Plan, provided that either party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 14.3.3 The Parties shall comply with the provisions of the BCDR Plan and the provisions of Schedule 15 (*Business Continuity And Disaster Recovery*).
- 14.3.4 The Service Provider shall ensure that it is able to implement the BCDR Plan at any time in accordance with its terms.
- 14.3.5 The Service Provider shall undertake regular risk assessments in relation to the provision of the Goods and/or Managed Services not less than once every six months and shall provide the results of, and any recommendations in relation to, those risk assessments to the Customer promptly in writing following each review.
- 14.3.6 The Service Provider shall establish, maintain, and review its own internal processes and procedures with respect to the identification of any threats or risks to the provision of the Goods and/or Managed Services, how such threats and risks may be mitigated and how the provision of the Goods and/or Managed Services may be maintained in the event of any such identified threats or risks materialising.

## 15 **EQUIPMENT AND MATERIALS**

- 15.1 The Service Provider shall be responsible for the provision and installation of all equipment and materials used in connection with the Call Off Contract except where these are licensed to the Service Provider by the Customer in accordance with clause 15.14.
- 15.2 Where equipment and materials are supplied by the Customer these will be serviced and maintained by the Customer. However, the Customer gives no warranty that such equipment and materials used in connection with the Call Off Contract, are fit for the purpose or in a good state of repair. It shall be the responsibility of the Service Provider to ensure that any such equipment and materials are capable of being used for the purposes intended.
- 15.3 The Contract Manager shall forthwith inform the Authorised Officer of any defects appearing in or losses of, or damage, occurring to the Customer's equipment. The Service Provider shall be liable to pay to the Customer the cost of any replacement necessary as a result of loss or damage caused deliberately or negligently by the Service Provider's staff.

- 15.4 In accordance with the Specification, the Service Provider will, at his own expense, install all necessary equipment for the use of or in connection with the Goods and/or the provision of the Managed Services.
- 15.5 Subject to clause 15.2 above, the Service Provider shall ensure that all equipment used in connection with the Call Off Contract is maintained in good working order in compliance with manufacturer's instructions and current legislation.
- 15.6 Subject to clause 15.2 above, all equipment and materials used by the Service Provider shall comply with latest relevant British Standard or European equivalent specifications where such exist and any applicable policies of the Customer as notified to the Service Provider from time to time and the Service Provider shall upon request furnish the Authorised Officer with evidence to prove that such equipment and materials comply with this condition.
- 15.7 All equipment and materials of the Service Provider brought on to the Locations shall be at the Service Provider's own risk. The Service Provider shall provide for the haulage or carriage of equipment to the Locations and the removal of any equipment when no longer required under the Call Off Contract at its sole cost (including the costs of making good any damage caused to the Locations). The Service Provider shall ensure that the Locations are appropriate to contain and/or operate the equipment.
- 15.8 The Service Provider shall:
- 15.8.1 establish effective planned maintenance programmes;
  - 15.8.2 ensure compliance with all regulations covering the inspection and testing of all equipment used at the Location in relation to the supply of the Goods and/or Managed Services; and
  - 15.8.3 maintain records, open for inspection by the Customer, of maintenance testing and certification.
- 15.9 Any communication or electrical equipment used by the Service Provider in connection with the Call Off Contract shall not cause any interference with or damage to any equipment used by the Customer.
- 15.10 Any communication or electrical equipment proposed to be used by the Service Provider in connection with the Call Off Contract shall, at the discretion of the Customer, be tested and approved by the Customer before use on the Customer's premises.
- 15.11 Notwithstanding clause 15.10 the Service Provider shall be liable for any damage or disruption to services caused by any communication or electrical equipment used in connection with the Call Off Contract.
- 15.12 The Customer reserves the right to inspect equipment used by the Service Provider in or about the provision of the Goods and/or Managed Services during normal business working hours and on reasonable prior written notice.
- 15.13 The Customer shall not be responsible, charged or chargeable for any equipment or materials brought on site and used by the Service Provider in relation to the supply of Goods and/or the Managed Services.
- 15.14 **Licence of Customer Equipment**
- 15.14.1 The Customer will with effect from the Commencement Date grant to the Service Provider a non-exclusive, non-transferrable (save as necessary in relation to any permitted subcontractors) licence to use any of the Licensed Equipment (as detailed in the ITT) for the duration of the Call Off Contract.



- 15.14.2 The Service Provider will fully indemnify and keep fully indemnified on demand the Customer against all Costs and Losses arising out of or in connection with the use of the Licensed Equipment by the Service Provider unless such Costs and Losses are caused by any negligent act or omission by the Customer.
- 15.14.3 In relation to the Licensed Equipment, the Service Provider shall:
- 15.14.3.1 use the Licensed Equipment strictly in accordance with any reasonable instructions provided by the Customer;
  - 15.14.3.2 store, operate and/or utilise all the Licensed Equipment in accordance with the reasonable recommendations of the Customer and of the manufacturers which are notified in writing to the Service Provider by the Customer from time to time;
  - 15.14.3.3 store, operate and/or utilise the Licensed Equipment in accordance with current statutory requirements and other applicable guidelines;
  - 15.14.3.4 not charge or encumber the Licensed Equipment;
  - 15.14.3.5 not sub-licence, assign or novate the benefit or burden of the licence set out in clause 15.14.1 in whole or in part;
  - 15.14.3.6 notify the Customer as soon as practicable of it coming to the notice of the Service Provider that any of the Licensed Equipment has developed a fault or is otherwise not operating correctly (provided that the Service Provider shall notify the Customer immediately in the case of an emergency relating to the Licensed Equipment and shall take all reasonable steps to secure the relevant item to ensure it does not pose any risk or harm to any service user or employee or any other person);
  - 15.14.3.7 not, nor shall it permit, any third party to modify, disassemble or alter the Licensed Equipment; and
  - 15.14.3.8 ensure that the Licensed Equipment is returned to the Customer as soon as reasonably practicable in the same or similar condition as the Licensed Equipment have been provided to the Service Provider (accepting fair wear and tear) at the expiry of the licence granted pursuant to clause 15.14.
- 15.14.4 Subject to the Service Provider complying with its obligations pursuant to clause 15.14.3, in relation to the Licensed Equipment the Customer shall at its discretion and own cost replace any Licensed Equipment which in its opinion (acting reasonably) ceases to be capable of being safely and effectively used for the purposes for which they are intended.
- 15.14.5 The Customer shall insure the Licensed Equipment for their full replacement value.
- 15.14.6 For the avoidance of any doubt, nothing in this clause transfers or purports to transfer ownership of the Licensed Equipment to the Service Provider.
- 15.14.7 Upon expiry or termination of the licence granted pursuant to clause 15.14.1 or, if earlier, upon written notice given by the Customer to the Service Provider following a material breach by the Service Provider of its obligations under clause 15.14.3, all of the rights and licences granted by the Customer pursuant to clause 15.14 will terminate with immediate effect and the Service Provider will return all the Licensed Equipment to the Customer or transfer them to a Replacement Service Provider as the Customer may direct within the timescales and in the manner agreed by the Parties from time to time each acting reasonably.

- 15.14.8 The Service Provider shall satisfy himself that any Licensed Equipment is suitable for the purpose intended.
- 15.14.9 The Service Provider shall be liable for any damage to any Licensed Equipment caused by misdirection or misuse due to negligence on the part of the Service Provider, his staff, subcontractors, servants or agents.
- 15.14.10 The Customer shall not be liable for any damage to the Licensed Equipment caused by a defect in or faulty operation of the Licensed Equipment.
- 15.14.11 The Customer shall have the right to withdraw Licensed Equipment at any time and shall be under no liability whatsoever for failing to licence equipment at any time.

## 16 PERSONNEL

### 16.1 Service Provider's personnel

- 16.1.1 The Customer reserves the right to refuse to admit to, or remove from, any premises occupied by or on behalf of it any Person employed by the Service Provider or by its sub-contractors whose admission or presence would, in the reasonable opinion of the Customer, be undesirable. The reasonable exclusion of any such individual from the premises of the Customer under the provisions of this clause 16.1.1 shall not relieve the Service Provider from the performance of its obligations under the Contract nor provide grounds for an extension of time under clause 4.3. However, the Customer will indemnify the Service Provider for failure to carry out its obligations if such refusal by the Customer is unreasonable.
- 16.1.2 If and when directed by the Customer, the Service Provider shall provide a list of the names and business addresses of all Persons, who may require admission in connection with the performance of the Contract to premises occupied by or on behalf of the Customer, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Customer may reasonably require.
- 16.1.3 Failure by the Service Provider to comply with the provisions of clause 16.1.2 within a reasonable time of written notice to do so will entitle the Customer to refuse admission to its premises to any Person who has not been notified to the Customer in accordance therewith.

### 16.2 Employees

- 16.2.1 The Service Provider shall be entirely responsible for the employment and conditions of service of his staff employed in relation to the Call Off Contract.
- 16.2.2 The Service Provider will employ sufficient employees to ensure that all of the Goods and/or Managed Services are supplied at all times and in all respects in complete conformity with the Specification. This will include, but not be limited to, the Service Provider providing a sufficient reserve of trained and competent staff to supply the Goods and/or Managed Services and any related or required services during staff holidays or absence due to sickness or voluntary absence. In relation to the supply of the Goods and/or Managed Services, the Service Provider will employ only such persons as are careful, skilled and experienced in the duties required of them, and will ensure that every such person is properly and sufficiently trained and instructed (at the Service Provider's expense) and supply the Managed Services with regard to:
  - 16.2.2.1 the task or tasks that person has to perform;
  - 16.2.2.2 all relevant provisions of the Call Off Contract and the Specification;

- 16.2.2.3 all relevant policies, rules, procedures and standards of the Customer (including any equality policies) whilst at the Locations;
  - 16.2.2.4 the need for those working in a health or social care environment to observe the highest standards of hygiene, customer care, courtesy and consideration; and
  - 16.2.2.5 the need to keep confidential all information howsoever acquired relating to the Customer and its business, or relating to service users, including but not limited to patient identity, clinical conditions and treatment or details of social care needs or care packages.
- 16.2.3 Subject to any other obligations detailed in the Framework Agreement or the Call Off Contract, the Service Provider shall contact the Head of Procurement of the Customer as soon as reasonably practicable following the Commencement Date (if it has not already done so prior to the Commencement Date), in order to obtain a copy of all relevant policies, rules, procedures and standards referred to in clause 16.2.2.2 above.
- 16.2.4 The Service Provider must familiarise itself with such policies, rules, procedures and standards to ensure full compliance with the same.
- 16.2.5 The adherence of the Service Provider's staff to required standards of performance shall be routinely monitored and the Service Provider shall promptly take such remedial action as may be required where such standards are not attained.
- 16.2.6 When on the Customer's Premises before the Service Provider engages or employs any person in relation to the Call Off Contract, or in any activity related to, or connected with the Call Off Contract, the Service Provider shall comply with the following guidance as amended from time to time:
- 16.2.6.1 NHS Employment Check Standards;
  - 16.2.6.2 such other checks as required by the Independent Safeguarding Authority or which are to be undertaken in accordance with current and future national guidelines and policies; and
  - 16.2.6.3 the Service Provider shall comply as the Customer requires with any procedures for the vetting of workers advised to the Service Provider for all persons employed or engaged in the provision of the Goods and/or Managed Services.
- 16.2.7 The Customer shall not be liable for any failure by the Service Provider to comply with the Customer's vetting procedures in respect of individuals employed or engaged by the Service Provider prior to the Commencement Date who subsequently transfer under TUPE to the Service Provider as a result of this Call Off Contract.
- 16.2.8 The Service Provider will, when recruiting potential employees for the purpose of the Call Off Contract, act in accordance with the Specification.
- 16.2.9 The Service Provider shall ensure that employees of appropriate levels of experience and expertise perform the Service Provider's obligations under the Call Off Contract to achieve cost efficiency.
- 16.2.10 The Service Provider shall at all times provide a sufficient number of staff of a supervisory level to ensure that all Service Provider staff are at all times adequately supervised and properly perform their duties. The Service Provider shall ensure that such supervisory level staff are sufficiently skilled, trained and

instructed with regard to all matters under the Call Off Contract, including without limitation the supply of the Goods and Managed Services.

- 16.2.11 The Customer reserves the right to reject staff whom they consider to be unsuitable for the duties proposed. Where staff are rejected the Service Provider shall supply alternative staff. In addition, the Authorised Officer may (but not unreasonably or vexatiously) instruct the Service Provider to take disciplinary action against or to remove them from working on the Call Off Contract any person employed by the Service Provider and the Service Provider shall immediately comply with such instruction, and in the case of a removal from work shall, as soon as it is reasonably practicable thereafter provide a substitute and any such instruction shall not give rise to any liability whatsoever on the part of the Customer to the Service Provider or any other Party and shall not affect in any way the obligations of the Service Provider to supply the Goods and/or Managed Services in accordance with the Specification.
- 16.2.12 Not used
- 16.2.13 Not used
- 16.2.14 Not used
- 16.2.15 Not used
- 16.2.16 Not used
- 16.2.17 To the extent it relates to the Managed Services and is possible in accordance with Data Protection Legislation, the Service Provider shall procure that the Customer is kept advised at all times of any:
  - 16.2.17.1 disciplinary incident relating to his staff involving visitors, or the Customer's staff or property; and
  - 16.2.17.2 incidence of serious misconduct involving his staff.
- 16.2.18 The Service Provider shall only employ staff for the purposes of the Call Off Contract who:
  - 16.2.18.1 fulfil any minimum training and qualification requirements of the Customer as set out in the Specification and also all training and qualification requirements that may be deemed necessary by the Authorised Officers, legislation, or any special bodies or associations;
  - 16.2.18.2 are medically and physically fit in so far as the requirements of the work are concerned.
- 16.2.19 Not used.
- 16.2.20 The Service Provider will maintain detailed records of its staff employed or engaged by it in relation to the Call Off Contract including details of names and place of duty and starting and finishing times, training performance and disciplinary action and any other information relating to the Service Provider's obligations in this clause 16.2 as may be reasonably required and subject to the Data Protection Legislation, these records will be available to the Customer, on reasonable request.
- 16.2.21 As a condition of employment in the contract, the Service Provider's staff:

- 16.2.21.1 shall not corruptly solicit or receive any bribe or other consideration from any person, or fail to account for monies or property received in connection with duties under the Call Off Contract assignments;
  - 16.2.21.2 shall not be uncivil to persons encountered in the course of work, or make unnecessary use of authority in connection with the discharge of the Call Off Contract assignment instructions;
  - 16.2.21.3 shall not act in a manner reasonably likely to bring discredit upon the Customer;
  - 16.2.21.4 shall maintain proper standards of appearance and deportment whilst at work;
  - 16.2.21.5 shall not at any time be on duty under the influence of alcohol or drugs;
  - 16.2.21.6 shall on being charged with any criminal offence which relate or impact upon the Managed Services or that person being able to provide the Managed Services, notify the Service Provider immediately;
  - 16.2.21.7 shall not neglect, nor without due and sufficient cause omit, to discharge promptly and diligently a required task within the terms of the Call Off Contract; and
  - 16.2.21.8 shall not smoke while on the Customer's premises, except in those areas where smoking is expressly permitted.
- 16.2.22 The Service Provider shall provide its employees with a form of identification that is acceptable to the Customer and which employees shall display on their clothing at all times while on the Customer's premises.
- 16.2.23 The Customer shall not be liable for loss of, or damage to, the personal property of Service Provider's staff, wheresoever or howsoever caused.
- 16.2.24 It is the joint responsibility of the Service Provider and his staff to ensure that the staff engaged on the Call Off Contract have not worked excessive hours which could prejudice the standards required by the Call Off Contract. In accordance with the Working Time Regulations 1998 it is the responsibility of the Service Provider to keep records of hours worked for each employee.
- 16.2.25 The Service Provider shall and shall procure that any sub-contractor shall comply with the Cabinet Office statement entitled "Principles of Good Employment Practice" (December 2010)(as may be amended from time to time) including, but not limited to, the third principle in this statement entitled "a commitment to fair and reasonable terms and conditions."

### **16.3 Control and Supervision of Staff**

- 16.3.1 Any notice, information, instruction or other communication given or made to the Contract Manager shall be deemed to have been given or made to the Service Provider.
- 16.3.2 The Contract Manager shall be suitably qualified in accordance with the Specification. In addition a work history/biography will be submitted to the Authorised Officer for approval prior to interview.
- 16.3.3 The Service Provider shall forthwith give notice in writing to the Authorised Officer of the identity of the person appointed as Contract Manager and of any

subsequent appointment. Until notice of a subsequent appointment shall have been given the Customer shall be entitled to treat as Contract Manager the person last notified to the Authorised Officer as being the Contract Manager.

- 16.3.4 The Service Provider shall ensure that the Contract Manager, or a competent deputy who is duly authorised to act on his behalf, is available to the Customer at all times when any employee of the Service Provider is on duty for the supply of the Goods and any Managed Services.
- 16.3.5 The Service Provider shall inform the Authorised Officer of the identity of any person authorised to act for any period as deputy for the Contract Manager before the start of that period.
- 16.3.6 The Contract Manager or his deputy shall consult with the Authorised Officer and such other of the Customer's own supervisory staff as may from time to time be specified by the Authorised Officer as often as may reasonably be necessary for the efficient discharge of the Service Provider's obligations in accordance with the Call Off Contract.
- 16.3.7 The Service Provider shall provide a sufficient complement of supervisory staff in addition to the Contract Manager, to ensure that the Service Provider's staff engaged in and about the supply of Goods and Managed Services at the Location are adequately supervised and properly perform their duties at all times.
- 16.3.8 All persons appointed to managerial and supervisory positions in accordance with the Specification must be to the acceptance of the Authorised Officer who will have the right to veto the appointment of any candidate who is deemed to be unsuitable.
- 16.3.9 The Service Provider's staff engaged in relation to the Call Off Contract shall primarily be under the control and direction of the Service Provider's own supervisory staff but nevertheless while on the Customer's premises will obey all reasonable instructions given to them by the Customer's supervisory staff (as the case may be) in any matter occasioned by the operational needs or the health, safety or welfare of anyone.
- 16.3.10 The Service Provider shall ensure that his staff carry out their duties and behave while on the Customer's premises in an orderly manner and in as quiet a manner as may reasonably be practicable having regard to the nature of the duties being performed by them. The Service Provider's staff shall not cause any unreasonable or unnecessary disruption to the routines, practices, and procedures of the Customer's, service users or visitors, or any of the staff of any other Service Providers.

#### 16.4 **Employment Offers**

The Customer and the Service Provider agree that during the period from the signature of the Call Off Contract to twelve months after the date of expiry or termination of the Call Off Contract they shall not offer employment to any of the other Party's staff who have been associated with the performance of the Call Off Contract without the other party's prior agreement in writing. The above provision shall not however apply to offers of employment resulting from general recruitment advertising.

### 17 **INSURANCE**

- 17.1 The Service Provider shall effect and maintain policies of insurance to provide a level of cover sufficient for all risks which may be incurred by the Service Provider under this Call Off Contract including death or personal injury, or loss of or damage to property.

17.2 The Service Provider shall effect and maintain the following insurances for the duration of the Call Off Contract in relation to the performance of the Call Off Contract:-

17.2.1 public liability insurance adequate to cover all risks in the performance of this Call Off Contract from time to time with a minimum limit of £5 (five) million for each individual claim or such higher limit as required by the Procuring Bodies and as required by Law;

17.2.2 employers' liability insurance with a minimum limit of indemnity as required by Law from time to time; and

17.2.3 professional indemnity insurance to cover all risks in the performance of this Call Off Contract from time to time with a minimum limit of indemnity of £5 (five) million for any one individual claim and in all.

17.3 Any excess or deductibles under such insurance (referred to in clause 17.1) shall be the sole and exclusive responsibility of the Service Provider.

17.4 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities arising under the Call Off Contract.

17.5 The Service Provider shall produce to the Customer, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

17.6 If, for whatever reason, the Service Provider fails to give effect to and maintain the insurances required by the Call Off Contract then the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements as a debt due from the Service Provider.

17.7 The Service Provider shall maintain the insurances referred to in clause 17.1 for a minimum of six (6) years following the expiration or earlier termination of the Call Off Contract.

17.8 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the Call Off Contract.

## 18 **AUTHORITY AND APPROVAL**

The Service Provider warrants to the Customer that it has undertaken all requisite corporate and other action to approve the signature and performance of the Call Off Contract.

## 19 **STANDARDS**

The Service Provider undertakes that the provision of the Goods and/or Managed Services under this Call Off Contract and its performance of the Call Off Contract shall conform to all standards specified in the Schedule 3 (*Specification*).

## 20 **ACCEPTANCE**

### 20.1 **Acceptance process**

20.1.1 The Goods and/or Managed Services shall be required to meet any acceptance criteria specified in Schedule 7 before being accepted by the Customer. The Customer shall notify the Service Provider in writing of acceptance, such notification not to be unreasonably withheld or delayed, with the date on which such criteria were met in all material respects. Such date shall be the Acceptance Date in respect of the Goods and/or Managed Services. Acceptance of the Goods and/or Managed Services may be completed in stages as indicated in Schedule 7.

- 20.1.2 The Customer shall conduct Acceptance Tests and other acceptance procedures and the respective responsibilities of the parties in the performance of such tests and procedures shall be as specified in Schedule 7.

## 20.2 **Acceptance Tests**

- 20.2.1 Following implementation of the Goods and/or Managed Services in accordance with the timetable contained in Schedule 6, the Service Provider shall prepare for Acceptance Tests and notify the Customer when ready. On being so notified, the Customer shall conduct the relevant Acceptance Tests by the appropriate planned Acceptance Date and if the relevant acceptance criteria specified in Schedule 7 are met in all material respects, the Customer shall notify the Service Provider of acceptance.
- 20.2.2 If Acceptance Tests show that the Goods and/or Managed Services do not meet the relevant Acceptance Criteria specified in Schedule 7 in all material respects, the Customer shall notify the Service Provider of such failure without undue delay. The Service Provider shall thereupon undertake all necessary steps to rectify such failure at no additional cost to the Customer and re-submit the Goods and/or Managed Services for re-testing. If the relevant Acceptance Criteria are met in all material respects, the Customer shall notify the Service Provider of acceptance, as specified in clause 20.2.1 above.

## 20.3 **Failure to gain acceptance**

- 20.3.1 If the Goods and/or Managed Services have failed to meet the required Acceptance Criteria specified in Schedule 7 in all material respects by the Acceptance Completion Date specified in relation to them, unless the provisions of clause 4.4 apply the Service Provider shall be deemed to be in default, thereon, without prejudice to any other remedies available to the Customer, it shall be entitled in respect of and as appropriate to such failure, to:
- 20.3.1.1 grant further periods of time during which the Service Provider shall be required to submit or re-submit the Goods and/or Managed Services to the relevant Acceptance Tests in accordance with clause 20.2 as applicable; or
  - 20.3.1.2 accept such Goods and/or Managed Services and pay such amended Contract Prices as shall be agreed upon and the resulting changes to the Call Off Contract shall be treated as amendments in accordance with clause 7 (*Variations to the Contract*);
  - 20.3.1.3 terminate the Call Off Contract under the provisions of clause 11.1 (*Right to Terminate*).
- 20.3.2 If the Customer grants a further period of time under the provisions of clause 20.3.1 and the Service Provider has failed to meet the relevant acceptance criteria before expiry of such period, the Customer shall be entitled, at that time, to exercise any of remedies to which it is entitled under clause 20.3.1.
- 20.3.3 A grant of additional time under the provisions of clause 20.3.1.1 or clause 20.3.2 shall not imply any change in the timetable in Schedule 6 or be interpreted to mean that the Planned Acceptance Date or Acceptance Completion Date have been or shall be changed and the provisions of clause 20.3.1 above shall continue in full force and effect.
- 20.3.4 If the Service Provider's failure to meet the Acceptance Completion Date is due to a delay by the Customer, the provisions of clause 4.3 (*Extension of Time*) shall apply and the Acceptance Completion Date may be rescheduled as an



amendment to the Call Off Contract in accordance with clause 7 (*Variations to the Contract*).

- 20.3.5 In the event that, through no fault of the Service Provider, the Acceptance Tests in respect of the Goods and/or Managed Services have not commenced by the Acceptance Completion Date, unless the provisions of clause 4.3 (*Extension of Time*) apply, any payment, which would have become due on successful completion of such Acceptance Tests shall become due. Such payment shall not be construed as acceptance by the Customer of the Goods and/or Managed Services and, notwithstanding such payment, the provisions of clause 20 shall remain applicable and in the event of any subsequent failure of the Goods and/or Managed Services to meet the required acceptance criteria such sums shall be repaid to the Customer forthwith.

## 21 DELIVERY OF GOODS

### 21.1 Forms

- 21.1.1 Unless otherwise agreed in writing by the Customer and the Service Provider:
- 21.1.1.1 a delivery note shall accompany each delivery of the Goods;
  - 21.1.1.2 an invoice shall be rendered on the Service Provider's own invoice form;
  - 21.1.1.3 all delivery notes and invoices shall be clearly marked with the Customer's order number, the name and address of the Customer and the description and quantity of the Goods, and shall show separately any additional charge for containers and/or any other item not included in the Call Off Contract Price or, where no charge is made, whether the containers are required to be returned
  - 21.1.1.4 and clauses 21.1.1.1, 21.1.1.2 and 21.1.1.3 shall be compatible in all respects with the Call Off Contract.

### 21.2 Packaging

- 21.2.1 The Service Provider shall ensure that all items of packaging used to package the Goods meet the requirements set out in The Packaging (Essential Requirements) Regulations 2003 (as amended) or any other equivalent legislation applicable to the packaging of goods from time to time before being placed on the United Kingdom market.
- 21.2.2 Where the Goods are imported into the United Kingdom then for the purposes of the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended) or any other equivalent legislation applicable to the packaging of goods from time to time the Service Provider shall assume the rolled-up obligations for all the activities performed outside the United Kingdom in relation to the Goods and the packaging which is used for the containment, protection, handling, delivery and presentation of the Goods in addition to any other obligations the Service Provider may have pursuant to the said regulations.

### 21.3 Rejection Of Goods

- 21.3.1 Without prejudice to the operation of clause 21.3.7 and subject to clause 21.3, the Goods shall be inspected on behalf of the Customer within a reasonable time after delivery under clause 3.2 and may be rejected if:
- 21.3.1.1 the Goods are found to be defective or inferior in quality generally or differing in form or material from any approved sample; or

- 21.3.1.2 the Goods fail to meet the requirements of the Call Off Contract or with any applicable law or regulation;
- 21.3.1.3 the Goods do not comply with any term, whether expressed or implied, of the Call Off Contract; or
- 21.3.1.4 the Goods have damaged packaging;
- 21.3.1.5 if the Goods (or the possession or use of them) infringe, misappropriate or are alleged to infringe or misappropriate any third party Intellectual Property Right; or
- 21.3.1.6 the Goods are subject to Recall.
- 21.3.2 If the Customer rejects any of the Goods pursuant to clause 21.3.1 above, the Customer may (without prejudice to other rights and remedies) either:
  - 21.3.2.1 have such Goods promptly, and in any event within five Working Days, either repaired by the Service Provider or replaced by the Service Provider with Goods which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred: or
  - 21.3.2.2 treat the Call Off Contract as discharged by the Service Provider's breach and obtain a refund (if payment for the Goods has already been made) from the Service Provider in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Customer in obtaining other goods in replacement provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement goods.
- 21.3.3 For the avoidance of doubt, the Customer will be deemed to have accepted the Goods if it expressly states the same in writing or fails to reject the Goods in accordance with the requirements of this clause 21.3.
- 21.3.4 The issue by the Customer of a receipt note for the Goods shall not constitute any acknowledgement of the condition, quantity or nature of these Goods, or the Customer's acceptance of them.
- 21.3.5 Without prejudice to the operation of clause 21.3.8, the Customer shall notify the Service Provider of:
  - 21.3.5.1 the discovery of any defect within a reasonable time of its discovery and shall give the Service Provider all reasonable opportunities to investigate such defect; and
  - 21.3.5.2 any shortage or damage caused in transit and found on delivery within 14 days of delivery or such time as agreed by the Parties.
- 21.3.6 The whole of any delivery may be rejected if a reasonable sample of the Goods taken indiscriminately from that delivery is found not to conform in every material respect to the requirements of the Call Off Contract.
- 21.3.7 Goods so rejected after delivery shall be removed by the Service Provider at its own expense within fourteen days from the date of notification of rejection. If the Service Provider fails to remove them within such period the Customer may return the rejected Goods at the Service Provider's risk and expense and charge the Service Provider for the cost of storage from the date of rejection.

- 21.3.8 The Customer's right of rejection shall continue irrespective of whether the Customer has in Law accepted the Goods. In particular, taking delivery, issuing a receipt note, inspection, use or payment by the Customer of the Goods or part of them shall not constitute acceptance, waiver or approval and shall be without prejudice to any right or remedy that the Customer may have against the Service Provider provided that the right of rejection shall cease within a reasonable time from the date on which the Customer discovers or might reasonably be expected to discover the latent defect or other relevant breach of contract.

## 22 **INTELLECTUAL PROPERTY RIGHTS**

- 22.1.1 All Background Intellectual Property Rights are and shall remain the exclusive property of the Party owning them (or, where applicable, the third party from whom its right to use the Background Intellectual Property has derived). Each Party shall grant or procure the grant of all such licences to the other Party to use Background Intellectual Property Rights as are necessary to allow the other Party to exercise its rights and perform its obligations under the Call Off Contract, such licences to automatically terminate on the expiry or earlier termination of the Call Off Contract.
- 22.1.2 The Service Provider hereby assigns to the Customer all Intellectual Property Rights in any material the Service Provider generates solely and specifically for the Customer in the performance of the Managed Services. These shall include, but are not limited to, any manuals, guidelines, reports, databases that the Service Provider creates specifically on the Customer's behalf. The Service Provider shall waive all moral rights relating to such material.
- 22.1.3 In performing the Managed Services, the Service Provider shall not infringe the Intellectual Property Rights of any third party.
- 22.1.4 Subject to any prior rights and to the rights of third parties, copyright in all reports, documents and things produced or information obtained by the Service Provider solely or specifically for the Customer in the performance of the Managed Services or which is prepared or obtained under the Service Provider's direction or control solely or specifically for the Customer in the performance of the Managed Services under this Call Off Contract shall be vested as copyright in the Customer or at its election the NHS Commissioning Board or the Crown.
- 22.1.5 The Service Provider and any of its subcontractors shall not disclose any Background Intellectual Property of the Customer (including any specifications, plans, instructions, drawings, patents, models or other information) obtained pursuant to or by reason of the Call Off Contract without the written permission of the Customer. To avoid doubt, this clause 22 shall not apply to any such materials created by the Service Provider or subcontractor, which the Service Provider or subcontractor may disclose without prior permission from the Customer.
- 22.1.6 The provisions of this clause 22 shall apply during the continuance of this Call Off Contract and after its termination howsoever arising, without limitation of time.

## 23 **TRAINING**

Where indicated in the Specification, the Contract Price shall include the cost of training the Customer's personnel (as relevant) in the use and maintenance of the Goods and/ or Managed Services and such instruction shall be in accordance with the requirements detailed in the Specification.

## 24 **WARRANTIES**

24.1 The Service Provider warrants, represents and undertakes to the Customer that:

- 24.1.1 it has full capacity and authority and all necessary consents to enter into and perform its obligations under the Call Off Contract and that the Call Off Contract is executed by a duly authorised representative of the Service Provider;
- 24.1.2 in entering the Call Off Contract, it has not committed any Fraud;
- 24.1.3 as at the Commencement Date, all information it has supplied to the Customer in respect of its entry into the Call Off Contract remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Customer prior to execution of the Call Off Contract;
- 24.1.4 it has and will continue to hold all necessary (if any) regulatory approvals from the regulatory bodies necessary to perform the its obligations under the Call Off Contract;
- 24.1.5 it has and will continue to have all necessary rights in and to the Service Provider Software or the Third Party Software and/or the Service Provider's Background IPRs, or any other materials made available by the Service Provider to the Customer necessary to perform the Service Provider's obligations under the Call Off Contract;
- 24.1.6 in performing its obligations under the Call Off Contract, all Software used by or on behalf of the Service Provider will:
  - 24.1.6.1 be currently supported versions of that Software; and
  - 24.1.6.2 perform in all material respects in accordance with its specification;
- 24.1.7 it shall at all times comply with the Law in carrying out its obligations under the Call Off Contract;
- 24.1.8 as at the Commencement Date, all information contained in the Tender or submitted in response to a costing exercise remains true, accurate and not misleading, save as may have been specifically declared in writing to the Customer prior to the Commencement Date;
- 24.1.9 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Call Off Contract;
- 24.1.10 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Call Off Contract;
- 24.1.11 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Service Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Service Provider's assets or revenue;
- 24.1.12 in the 3 years prior to the date of the Call Off Contract:

- 24.1.12.1 it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - 24.1.12.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
  - 24.1.12.3 it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Call Off Contract.
- 24.2 The Service Provider warrants that it has taken all practical steps, in accordance with Good Industry Practice, to prevent the introduction of any Virus into data or Software owned by or under the control of the Customer including Customer Software.
- 25 **SERVICE PROVIDER SOFTWARE**
- 25.1 **Licence**
  - 25.1.1 The Service Provider hereby grants to the Customer for the term of the Contract a non-exclusive, non-transferable licence to use the Service Provider Software solely as contemplated hereunder for the purposes of the Managed Services.
- 26 **ESCROW**
- 26.1 If applicable, for all Service Provider Software identified in Schedule 3 as escrow programs, where the Service Provider is the owner, the Service Provider shall deposit, within thirty (30) days of acceptance of the Managed Services by the Customer, with the escrow agent specified in Schedule 11 and under the terms and conditions of the escrow agreement contained in Schedule 11, a copy of such Software in source code form on appropriate media. Where the Service Provider is not the owner of such escrow programs, it will procure under the terms and conditions of the relevant sub-contract with the owner to deposit a copy of escrow programs as stated above.
- 26.2 If no escrow agent is named in Schedule 11 and / or no escrow agreement is contained therein, or if the parties are unable to reach agreement within a reasonable time after the commencement of the Contract on an escrow agent to be appointed and / or an escrow agreement to be applied, then the National Computing Centre, Oxford House, Oxford Road, Manchester, M1 7ED shall be appointed as escrow agent and the terms and conditions of its then current, multi-licensee escrow agreement shall be applied by reference to clause 26.1.
- 26.3 The parties agree that any escrow agreement entered into between the parties to the Contract and attached at Schedule 11 in terms of clause 26.1 shall contain clauses equivalent to those terms used in the latest escrow agreement used by the National Computing Centre.
- 26.4 The Service Provider shall for the term of the Contract maintain, and comply with, the terms of any escrow agreement established under the provisions of this clause 26.
- 26.5 Both parties agree that as at the signature date of the Call Off Contract there is no Service Provider Software to be placed in escrow.
- 27 **SERVICE PROVIDER'S PERFORMANCE OF GOODS AND/OR MANAGED SERVICES**
- 27.1 **Performance**
  - 27.1.1 The Customer shall ascertain whether the Service Provider's provision of the Goods and/or Managed Services in question meets any Service Levels or performance criteria as specified in the Order, Schedule 3 (*Specification*) or

Schedule 5 (*Contract Management*) or, if the criteria are not so specified, meets the standards of a professional supplier of the Goods and/or Managed Services. On or before the fifteenth working day of each calendar month during the Contract Period and within 14 days after termination of the Call Off Contract, the Customer may:

- 27.1.1.1 in respect of the supply of the Goods and/or Managed Services during the preceding calendar Month, provide to the Service Provider a notice (each called a "**Performance Notice**") which shall set out a statement of the Customer's dissatisfaction with the Service Provider's performance and supply of the Goods and/or the Managed Services;
- 27.1.1.2 not used;
- 27.1.1.3 if the Service Provider disputes any matter referred to in any Performance Notice the Service Provider may raise this objection in writing within 7 days of receipt of the Performance Notice with the Customer and if this matter is not resolved within 7 days the matter shall be referred in the case of the Service Provider to the Dispute Resolution Procedure; and
- 27.1.1.4 if the Service Provider (as relevant) has not raised any objection to the Performance Notice within 7 days of receipt (or such other period as agreed between the Parties) then that Performance Notice shall be deemed to have been accepted by the Service Provider.
- 27.1.2 The Customer, the Service Provider will co-operate with each other in good faith and will take all reasonable action as is necessary for the efficient transmission of information and instructions and to enable the Customer to derive the full benefit of the Call Off Contract.
- 27.1.3 In addition to any more specific obligations imposed by the terms of the Call Off Contract, it shall be the duty of the Service Provider to notify the Authorised Officer of all significant changes to staffing, rates of pay or conditions of employment, or hours of work or other technological changes at least one month prior to the implementation of any such revised arrangements.
- 27.1.4 The Service Provider shall provide information in a format, medium and at times specified by the Customer relating to the supply of the Goods and/or Managed Services as may be reasonably required.
- 27.1.5 In supplying and or installing Goods and in providing the Managed Services, the Service Provider shall use Good Industry Practice to ensure that any computer systems and/or related hardware and/or software it uses in or in relation to the Goods and/or Managed Services are free from corrupt data, viruses, worms and any other computer programs which might cause harm or disruption to the Customer's computer systems.
- 27.1.6 If at any time the Service Provider becomes aware of any act or omission or any proposed act or omission by the Customer or by any member, official or employee of the Customer which prevents or hinders or may prevent or hinder the Service Provider from supplying the Goods and/or Managed Services in accordance with the Call Off Contract, then the Service Provider shall immediately inform the Authorised Officer. For the avoidance of doubt, the Service Provider's compliance with this clause 27.1.6 shall not in any way relieve the Service Provider of any of its obligations under the Call Off Contract.
- 27.1.7 Not Used

- 27.1.8 The Customer may, where necessary, require the Service Provider to set up and maintain appropriate policies, rules, procedures and quality standards in relation to the employment of his own staff whilst carrying out their duties in relation to the Call Off Contract at the Location. This shall include, but not be limited to, its own disciplinary and grievance procedures. The Service Provider shall provide the Customer with copies of such policies, rules, procedures and quality standards (and shall promptly inform the Customer of any amendments to such documents).
- 27.1.9 The Service Provider will immediately notify the Authorised Officer the Customer of any actual or potential problems relating to the Service Provider's own suppliers that affects or might affect his ability to supply the Goods and/or Managed Services.
- 27.1.10 The Service Provider will be responsible for providing and maintaining the supply of Goods and/or Managed Services to the Contract Standard at all times and will ensure continuity of supply (at no extra cost to the Customer) in accordance with the Specification. The Service Provider must have in place contingency plans and arrangements which are approved by the Customer to ensure continuity of supply of the Goods and/or Managed Services.
- 27.1.11 The Service Provider will immediately notify the Authorised Officer and the Customer of any actual or potential industrial action, including strike action, whether such action be of his own staff or others that affects or might affect his ability at any time to supply the Goods and/or Managed Services.
- 27.1.12 The Service Provider will be responsible for supplying the Goods and/or the Managed Services to the Contract Standard during industrial action to the extent it only affects the Service Provider, at no additional cost to the Customer. The Service Provider must have in place contingency plans and arrangements which are approved by the Customer.
- 27.1.13 In the event of a major incident (as defined in the Customer's business continuity plan) the Service Provider shall supply the Goods and/or Managed Services in accordance with the relevant section of the Specification.

## 27.2 **Service Levels**

The Service Provider's performance of the Goods and/or Managed Services shall be required to meet any Service Levels specified in Schedule 5 from the Commencement Date in accordance with clause 27.3.

## 27.3 **Achievement of Service Levels**

The Service Provider's achievement of the Service Levels specified in accordance with clause 27.2 shall be determined in accordance with the procedures set out in the Specification or Schedule 6.

## 27.4 **Failure to meet Service Levels**

- 27.4.1 If the Service Provider fails to achieve any Service Levels, as determined under the provisions of clause 27.3, the Service Provider shall carry out a programme of corrective actions agreed at the time between the parties, such agreement not to be delayed or withheld unreasonably.
- 27.4.2 If, notwithstanding any corrective actions taken in accordance with clause 27.4.1, the Service Provider persistently fails in any material respect, to achieve any Service Level, such failure shall be considered to be a material breach of its obligations and shall entitle the Customer to terminate the Call Off Contract in accordance with the provisions of clause 11.1.1 provided that neither party shall

be prevented from determining that any other breach of the Contract constitutes a material breach.

## 27.5 **Review**

The Service Provider shall attend formal, minuted review meetings in accordance with the requirements of Schedule 5 (*Contract Management*), as required by the Authorised Officer or the Customer to discuss the Customer's levels of satisfaction in respect of the Goods and/or Managed Services supplied by the Service Provider under the Call Off Contract and to agree the necessary action to address areas of dissatisfaction. The Service Provider will not obstruct or withhold its agreement to any such necessary action. Such Reviews shall be attended by duly authorised and sufficiently senior employees of both the Customer and the Service Provider, together with any other relevant attendees. The Parties shall agree a standing agenda for such Reviews.

## 28 **DELIVERABLES**

28.1 Wherever the Call Off Contract requires the Service Provider to provide a Deliverable in relation to or in addition to the Goods and/or Managed Services:

28.1.1 such Deliverable will be delivered in the form prescribed and in accordance with the Specification. If no such form is prescribed in the Specification, the Service Provider will provide Deliverables in a professional form to the requirements (including as to time of delivery) notified to the Service Provider by the Authorised Officer;

28.1.2 the Customer may accept such Deliverable or reject it in its reasonable discretion on the grounds that such Deliverable is (in whole or in part) not of satisfactory quality and/or does not meet the brief set out in the Specification or the requirements otherwise made known to the Service Provider by the Customer;

28.1.3 the Customer will not reject any Deliverable (wholly or in part) without providing written reasons to the Service Provider as to why such Deliverable has been rejected;

28.1.4 any dispute as to whether the Customer has exercised its right to reject any Deliverable reasonably shall be resolved by the Dispute Resolution Procedure; and

28.1.5 any Deliverables which are rejected shall be replaced by the Service Provider (at no extra charge to the Customer) by Deliverables which are reasonably satisfactory to the Authorised Officer.

28.2 The Service Provider shall allow the Customer and any person, firm or organisation authorised by the Customer to have access to and to audit all records maintained by the Service Provider in relation to the supply of the Goods and/or Managed Services. The Service Provider shall assist the Customer or any party authorised by the Customer (as the case may be) in the conduct of the audit.

28.3 The Customer's rights under clause 28.1 are without prejudice to any other rights or remedies the Customer may be entitled to.

28.4 If required by the Customer, the Parties shall co-operate in sharing information and developing performance measurement criteria with the object of improving the Parties' efficiency. Any such agreements shall be fully recorded in writing by the Customer.

28.5 Notwithstanding clause 28.1 above, for the avoidance of doubt, any performance measure or standard to be complied with by the Service Provider under the Call Off Contract (whether with a view to generating savings, providing optimum value for money or achieving any other target or level of benefit) shall cease to apply in respect of the supply of Goods and/or the



Managed Services to the extent that such performance measure or standard has been calculated, prescribed set or agreed on the basis of any exclusivity, volume commitments or Committed Categories of Spend relating to the supply of Goods and/or the Managed Services and the Customer has not complied with such exclusivity, volume commitments or Committed Categories of Spend requirements, including changing the Contract Price payable by the Customer in accordance with clause 8.1.

## 28.6 **Quality**

28.6.1 The Goods shall be of first class quality, new, and shall be supplied strictly in accordance with the Specification and/or any sample previously provided to the Customer and, unless otherwise agreed in writing, shall conform to all relevant Quality Standards any standards, specifications and conditions, all Laws and all work performed by the Service Provider shall be in accordance with Good Industry Practice.

28.6.2 The Service Provider warrants to the Customer that the Goods when delivered to the Customer :

28.6.2.1 are new, unadulterated and not used, remanufactured or reconditioned (unless specified in the Order or elsewhere in the Call Off Contract and pre-approved by the Customer);

28.6.2.2 are free from defects in design, whether patent or latent, materials and workmanship; and

28.6.2.3 are fit and sufficient for all purposes for which such Goods are used or to be used and for any particular purpose made known to the Service Provider by the Customer.

28.6.3 The Service Provider warrants its expertise and confirms the accuracy of all statements and representations made in respect of the Goods and/or the Managed Services prior to and subsequent to, the Order.

28.6.4 The Service Provider agrees to assign to the Customer upon request the benefit of any warranty, guarantee or similar right which it has against any third party manufacturer or supplier of the Goods and/or Managed Services or any part thereof.

28.6.5 The Service Provider shall immediately notify the Customer if it becomes aware of any safety issues involving the Goods and/or Managed Services. In the event of any safety issues arising in relation to the Managed Services, either initiated by the Customer, the Service Provider or any other supplier, or any other legal authority pertaining to the Goods and/or Managed Services supplied by the Service Provider to the Customer, the Service Provider shall ensure that all information required to be provided by the Service Provider to enable the Customer to comply with their respective obligations is provided in a timely and consistent manner. It shall be the sole responsibility of the Service Provider to effectively manage the safety issue. The Service Provider acknowledges and confirms that (save as required by Law) it shall make no announcement in relation to a safety issue without the prior written consent of the Customer, nor shall it disclose to any third party any information concerning the safety issue save as directed by the Customer.

28.7 Notwithstanding any other provisions of this Call Off Contract, the Service Provider shall fully indemnify and keep fully indemnified on a separate and independent basis the Customer on demand against all loss, damage, claims, liabilities, costs and expenses (including legal expenses) incurred by the Customer (as the case may be) in connection with a safety issue relating to the Goods and/or Managed Services.

## **Transfer of undertakings**

### **29 TUPE ON COMMENCEMENT**

- 29.1 The Parties hereby acknowledge that, subject to the right of employees under Regulation 4(7) of TUPE, TUPE and the Cabinet Office Statement will operate to transfer each of the Employees to the Service Provider on the Commencement Date which shall be the “date of transfer” under TUPE.
- 29.2 If in relation to any or all of the Employees the transfer of their employment occurs on any date before the Commencement Date, the provisions of this clause 29.2 and this clause 29 generally will apply to those Employees as if references to the Commencement Date were references to that date.
- 29.3 The Service Provider warrants that it shall comply with its obligations under the Cabinet Office Statement and / or the Pensions Legislation and TUPE, including without limitation its obligations under Regulations 13 of TUPE and shall indemnify the Customer and keep the Customer indemnified against all Loss including, without limitation, any reasonable legal costs and any awards of compensation arising from the Service Provider’s defective performance of its obligations under the Cabinet Office Statement and / or the Pensions Legislation and TUPE.
- 29.4 In accordance with clause 29.1 and TUPE, the contracts of employment of the Employees shall transfer to and have effect on and after the Commencement Date as if originally made between those employees and the Service Provider except insofar as such contracts relate to an occupational pension scheme and the Service Provider shall thereafter assume all rights, powers, duties and liabilities under the contracts of employment of the Employees including, without limitation, providing for each Employee rights and/or benefits that are equivalent to those that were made available to the Employees prior to the Commencement Date under the NHS Injury Benefits Scheme, as governed by the National Health Service (Injury Benefits) Regulations 1995 (as amended from time to time) and premature retirement benefits equivalent to those which any Employee would have been entitled to under the National Health Service (Compensation for Premature Retirement Regulations) 2002 (as amended or replaced from time to time) had the Employee remained in the employment of the NHS incumbent Service Provider. For the avoidance of doubt, the Service Provider shall be required to replicate the redundancy terms of the NHS Pension Scheme Regulations 1995 (as amended from time to time) and NHS (Compensation for Premature Retirement) Regulations 2002 (as amended from time to time) where applicable.
- 29.5 If it is determined by a Tribunal or other court of competent jurisdiction or as a result of a change of law that TUPE does not apply to any Employee at or immediately before the Commencement Date or to any other employee of any other body or person who is wholly or substantially engaged immediately before the Commencement Date in the provision of any services equivalent to the Services or part thereof, then the following provisions shall apply:
- 29.5.1 the Service Provider shall offer to each and every such employee a new contract of employment commencing on the Commencement Date whose terms and conditions, including full continuity of employment, shall not differ from those enjoyed prior to the Commencement Date except insofar as they relate to an occupational pension scheme; and
- 29.5.2 the offer referred to in clause 29.5.1 shall be in writing and shall be made not less than fourteen days before the Commencement Date and open to acceptance for not less than fourteen (14) days, and where any such offer is accepted, the Service Provider shall fully indemnify the Customer against all claims, costs damages, expenses, payments and liabilities whatsoever arising out of or in connection with or in respect of the employment of each and every employee who accepts such an offer, or the termination thereof, whenever arising.

- 29.6 The Service Provider shall in accordance with TUPE recognise the trade unions and/or employee associations representing the Employees and any employees who accept an offer of employment made in accordance with clause 29.10.5 in accordance with each recognition agreement with such trade union and/or employee association in force immediately before the Commencement Date in respect of any of the above mentioned employees.
- 29.7 The Service Provider warrants that it does not intend to and shall not make any changes to the terms and conditions of employment or to any other statutory, contractual, or other legal right of any of the Employees in connection with the transfer nor terminate the employment of any of them in connection with that transfer on or after the Commencement Date except for any variation and/or dismissal which TUPE provide may lawfully be made.
- 29.8 The Service Provider shall fully indemnify and keep fully indemnified in full on demand the Customer without any limitation in time against all Loss arising on or after the Commencement Date out of or in connection with or in respect of the employment of any of the Employees or the employment or engagement of any other person by the Service Provider in connection with the Services or the termination of such employment or engagement, which shall include any claim made by any third Party arising out of, or in respect, of any act or omission of any Employee or other employee or person as aforesaid and the Service Provider shall on request by the Customer provide a written and legally binding indemnity in the same terms to the NHS incumbent Service Provider which provided the Services or services equivalent to the Services immediately prior to the Commencement Date and any new provider of services equivalent to the Services or any part of them after the expiry, termination or variation of the Call Off Contract or any part of it in respect of such of those said persons whose employment transfers to that provider and in respect of Loss arising up to the date of that transfer.
- 29.9 The Service Provider shall fully indemnify and keep fully indemnified on demand the Customer for any Loss arising from any claim or demand brought by any Employee or any other person arising out of or in connection with any act or proposal by the Service Provider whatsoever prior to, on or following the Commencement Date which amounts to a repudiatory breach of contract as referred to in Regulation 4(11) of TUPE and/or to make any substantial change in working conditions of any Employee to the material detriment of any such person. For the purposes of this clause 29.9 the expressions "repudiatory breach", "substantial change" and "detriment" shall have the meanings ascribed to them for the purposes of Regulations 4(9) and 4(11) of TUPE.
- 29.10 TUPE on Termination or Expiry of the Contract**
- 29.10.1 The Parties acknowledge that TUPE and / or the Cabinet Office Statement may apply upon the Service Provider ceasing to provide the Services or part of the Services. Where TUPE and/or the Cabinet Office Statement applies in such circumstances, the Service Provider shall comply with its obligations under TUPE.
- 29.10.2 In the event of expiry or termination in whole or in part of the Call Off Contract, the Customer and the Service Provider shall co-operate fully to ensure an orderly handover in relation to all aspects of the Services to Replacement Service Provider(s) and shall at all times act in such a manner as to not adversely affect the delivery of the Services or the obligations of the parties under the Call Off Contract. If requested to do so by the Customer, the Service Provider shall co-operate fully during the discussions and any transfer of the Services or any part thereof to any Replacement Service Provider and this co-operation shall, during the setting up operations period of the Replacement Service Provider, extend to allowing full access to, and providing copies of all documents, reports, summaries and other information necessary in order to achieve an effective transition without disruption to the routine operational requirements. The transfer shall be arranged to reduce to a minimum any interruption to the provision of the Services by the Service Provider.

- 29.10.3 Notwithstanding the obligations of the Service Provider in clause 29.10.2, at any time before or after the end of the Contract Period, or upon early termination or variation of the Call Off Contract in accordance with the terms hereof, the Service Provider shall, within 20 Working Days of a written request from the Customer, provide in a suitably anonymised format so as to comply with the Data Protection Act, the Provisional Service Provider Personnel List, together with the staffing information detailed in clause 29.10.4 in relation to the Provisional Service Provider Personnel List and it shall provide an updated Provisional Service Provider Personnel List at such intervals as are reasonably requested by the Customer.
- 29.10.4 Where, in the opinion of the Customer, TUPE is likely to apply on the termination or expiration of the Call Off Contract, the information to be provided by the Service Provider under clause 29.10.3 shall include, without limitation and as applicable, accurate information relating to the employees who would be transferred under the same terms of employment under TUPE, including in particular (but not limited to):
- 29.10.4.1 the number of employees who would be transferred;
  - 29.10.4.2 in respect of each of those employees, age banding, salary, length of service, hours of work and rates, and any other factors affecting redundancy entitlement, any specific terms applicable to those employees individually and any outstanding claims arising from their employment;
  - 29.10.4.3 the general terms and conditions applicable to those employees, including Agenda for Change provisions, probationary periods, retirement age, periods of notice, current pay agreements and structures, special pay allowances, working hours, entitlement to annual leave, sick leave, maternity and special leave, injury benefit, redundancy rights, terms of mobility, any loan or leasing agreements, and any other relevant collective agreements, facility time arrangements, additional employment benefits and any other particulars of employment that an employer is obliged to give to an employee pursuant to Section 1 of the Employment Rights Act 1996;
  - 29.10.4.4 details of the proportion of time (approximate, if necessary) spent by each of those employees in connection with the Services (or any part of the Services) and the length of time such person has been assigned to the Services;
  - 29.10.4.5 details of any such employees currently on sick leave for a period in excess of one month, maternity or other statutory leave or otherwise absent from work;
  - 29.10.4.6 details of any Employees currently subject to notice of dismissal;
  - 29.10.4.7 details of all current agreements or arrangements entered into in relation to any Employee with any trade union or other organisation or body of employees or their representative at the date of the request for information;
  - 29.10.4.8 details of any trade or industrial action involving any Employee in the two years preceding the date of the request for information;
  - 29.10.4.9 details of any legally enforceable obligations on the Service Provider in relation to each of the Employees to increase or otherwise vary the remuneration, benefits and other rewards to which each of the Employees may be entitled;

- 29.10.4.10 details of any current or pending negotiations with offers to any Employees concerning their terms and conditions of employment at the time of the request for information;
  - 29.10.4.11 information of any disciplinary or grievance procedure taken against or by an Employee within the previous two years;
  - 29.10.4.12 information of any court or tribunal case, claim or action brought by an Employee against the Service Provider within the previous two years and any information that the Service Provider has reasonable grounds to believe that an employee may bring any court or tribunal case, claim or action against the Customer or Replacement Service Provider arising out of the Employee's employment with the Service Provider.
- 29.10.5 At least 28 days prior to the Service Transfer Date, the Service Provider shall provide to the Customer, or at the direction of the Customer to any Replacement Service Provider, the Final Service Provider Personnel List, which shall identify which of the Service Provider personnel are Transferring Service Provider Employees; and the staffing information detailed in clause 29.10.4 in relation to the Final Service Provider Personnel List (insofar as such information has not previously been provided).
- 29.10.6 The Customer shall take all necessary precautions to ensure that the information referred to in clauses 29.10.3 and 29.10.4 is given only to Replacement Service Providers who have qualified to offer for the future provision of services. The Customer shall require that such Replacement Service Provider(s) shall treat that information in confidence, that they shall not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to offer issued by the Customer and that they shall not use it for any other purpose.
- 29.10.7 The information referred to in clauses 29.10.3 and 29.10.4 shall be provided in such form as shall be requested by the Customer in writing and the Service Provider hereby agrees that all such information may be passed on to prospective tenderers (in confidence) during any retender exercise.
- 29.10.8 The Service Provider warrants that the information that it is required to provide to the Customer under clauses 29.10.3 and 29.10.4 is accurate and complete at the time of issue and shall indemnify the Customer against any claim made against the Customer at any time by any person in respect of any liability incurred by the Customer arising from any deficiency or inaccuracy in information, which or is required to provide under clauses 29.10.3 and 29.10.4.
- 29.10.9 Not used.
- 29.10.10 The Service Provider shall allow access to the Service Provider sites, in the presence of a representative of the Customer, to any person representing any Replacement Service Provider whom the Customer has selected to offer for the future provision of services. The Customer shall give the Service Provider seven days' notice of a proposed visit together with a list showing the names of all persons who will be attending those premises.
- 29.10.11 All persons who attend the Service Provider's premises for the purposes of clause 12 shall comply with the Service Provider's security procedures, subject to such compliance not being in conflict with the objective of the visit.
- 29.10.12 Where notice is given to terminate the Call Off Contract or after the Service Provider shall have otherwise become aware of the proposed termination of the

Call Off Contract or the provision by it of the Services, the Service Provider shall not without the consent of the Customer (not to be unreasonably withheld):

- 29.10.13 vary the rates of remuneration of or hours to be worked by or the terms and conditions of employment of any person engaged or employed to provide the Services (save where such amendments arise in the ordinary course of business as a result of annual pay settlements and are made in good faith or where such amendments are made in accordance with a statutory or other legal requirement or are necessary to give effect to any national agreements under which the Service Provider is obliged to change the terms and conditions of employment of such persons);
  - 29.10.13.1 increase or decrease the number of persons that perform the Services unless it is necessary in the reasonable opinion of the Service Provider to do so to ensure efficient performance of the Services; or
  - 29.10.13.2 deploy, redeploy or replace (unless the individual has resigned or been fairly dismissed and the replacement is so far as possible employed on materially the same terms and conditions as the employee being replaced) any person engaged or employed to provide the Services or terminate the employment of any such person unless it is necessary in the reasonable opinion of the Service Provider to do so to ensure the efficient performance of the Services; or
  - 29.10.13.3 take any steps to oblige the Customer or any future transferee under TUPE to do any of the matters referred to above.
- 29.10.14 In connection with a Relevant Transfer, the parties agree that:
  - 29.10.14.1 the Service Provider shall perform and discharge all its obligations in respect of all the Transferring Service Provider Employees and their representatives for its own account up to and including the Service Transfer Date.
- 29.10.15 The Service Provider shall indemnify the Customer and any Replacement Service Provider in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Customer or any Replacement Service Provider including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:
  - 29.10.15.1 the Service Provider's failure to perform and discharge any such obligation;
  - 29.10.15.2 any act or omission by the Service Provider on or before the Service Transfer Date or any other matter, event or circumstance occurring before the Service Transfer Date in connection with the Transferring Service Provider Employees;
  - 29.10.15.3 all and any claims in respect of all emoluments and outgoings in relation to the Transferring Service Provider Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contributions and otherwise) payable in respect of any period on or before the Service Transfer Date;
  - 29.10.15.4 any claim arising out of the provision of, or proposal by the Service Provider to offer any change to any benefit, term or condition or working condition of any Transferring Service Provider Employees arising on or before the Service Transfer Date;

- 29.10.15.5 any claim made by or in respect of any person employed or engaged or formerly employed or engaged by the Service Provider other than a Transferring Service Provider Employees for which it is alleged the Customer or any Replacement Service Provider may be liable by virtue of this agreement and/or TUPE;
- 29.10.15.6 any act or omission of the Service Provider in relation to its obligations under regulation 11 of TUPE, or in respect of an award of compensation under regulation 12 of TUPE except to the extent that the liability arises from the Customer or Replacement Service Provider's failure to comply with regulation 11 of TUPE; and
- 29.10.15.7 any statement communicated to or action done by the Service Provider or in respect of any Transferring Service Provider Employees on or before the Service Transfer Date regarding the Service Transfer which has not been agreed in advance with the Customer in writing.

29.10.16 Not Used

29.10.17 The Customer shall indemnify the Service Provider against all claims arising from the Customer's or the Replacement Service Provider's failure to perform and discharge any obligation and against any claims in respect of any Transferring Service Provider Employees arising from or as a result of:

- 29.10.17.1 any act or omission by the Customer or the Replacement Service Provider relating to a Transferring Service Provider Employees occurring on or after the Service Transfer Date; and
- 29.10.17.2 all and any claims in respect of all emoluments and outgoings in relation to the Transferring Service Provider Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contribution and otherwise) accrued and payable after the Service Transfer Date.

### **30 THIRD PARTY RIGHTS**

- 30.1 Save as set out in clause 12, a person who is not a Party to the Call Off Contract shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Call Off Contract.

### **31 ENVIRONMENTAL CONSIDERATIONS**

- 31.1 The Service Provider shall comply in all material respects with applicable environmental Laws and regulations in force from time to time in relation to the Goods and/or Managed Services that are the subject of the Call Off Contract. Where the provisions of any such legislation are implemented by the use of voluntary agreements or codes of practice, the Service Provider shall comply with such agreements or codes of practice as if they were incorporated into English law or equivalent.

- 31.2 Without prejudice to the generality of the foregoing, the Service Provider shall:-

- 31.2.1 comply with all reasonable stipulations of the Customer aimed at minimising the packaging in which the products the subject of the Call Off Contract, or any products supplied by the Service Provider to the Customer;
- 31.2.2 promptly provide such data as may reasonably be requested by the Customer from time to time regarding the weight and type of packaging according to material type used in relation to all products supplied to the Customer under or pursuant to the Call Off Contract;

- 31.2.3 comply with all obligations imposed on it in relation to the products/services the subject of the Call Off Contract by the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (or any other equivalent legislation giving effect in any part of the European Economic Area to the Packaging and Packaging Waste Directive 94/62/EC);
  - 31.2.4 label all products supplied to the Customer under the Call Off Contract, and the packaging of those products, to highlight environmental and safety information as required by applicable UK and EU legislation;
  - 31.2.5 unless otherwise agreed with the Customer, insofar as any products supplied under the Call Off Contract comprise or include electrical or electronic equipment, manage the said equipment and associated consumables at end of life to facilitate recovery, treatment and recycling and provide any information which the Customer may reasonably require from time to time regarding the costs of such activity;
  - 31.2.6 promptly provide all such information regarding the environmental impact of any products supplied or used under the Call Off Contract as may reasonably be required by the Customer to permit informed choices by end users; and
  - 31.2.7 where goods are imported in to the United Kingdom then for the purposes of the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 or equivalent the Service Provider shall assume the rolled-up obligations for all the activities performed outside the United Kingdom in relation to the Goods and the packaging which is used for the containment, protection, handling, delivery and presentation of the Goods in addition to any other obligations it may have pursuant to the said regulations.
- 31.3 The Service Provider shall meet all reasonable requests by the Customer for information evidencing the Service Provider's compliance with the provisions of this clause 31.

## **32 EQUALITY AND NON-DISCRIMINATION**

- 32.1 The Service Provider shall:
- 32.1.1 ensure that it complies with all current employment legislation and in particular, does not unlawfully discriminate within the meaning of the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 and the Equality Act 2010, or any other relevant legislation relating to discrimination in the employment of employees for the purpose of providing the Goods and/or Managed Services. The Service Provider shall take all reasonable steps (at its own expense) to ensure that any employees employed in the provision of the Goods and/or Managed Services do not unlawfully discriminate within the meaning of this clause 32.1 and shall impose on any sub-contractor obligations substantially similar to those imposed on the Service Provider by this clause 32.1; and
  - 32.1.2 in the management of its affairs and the development of its equality and diversity policies, the Service Provider shall co-operate with the Customer in light of the Customer's obligations to comply with statutory equality duties. The Service Provider shall take such steps as the Customer considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation, age, marriage and civil partnership, pregnancy and maternity and gender assignment in the provision of the Goods and/or Managed Services.
- 32.2 The Service Provider shall impose on any sub-contractor obligations substantially similar to those imposed on the Service Provider by this clause 32.



- 32.3 The Service Provider shall fully indemnify and keep fully indemnified the Customer on demand against all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by the Customer arising out of or in connection with any investigation conducted or any proceedings brought under the legislation referred to in clause 32.1 above due directly or indirectly to any act or omission by the Service Provider, its agents, employees or sub-contractors.

### 33 RELATIONSHIP OF THE PARTIES

- 33.1 The Service Provider shall not incur any liabilities on behalf of the Customer; or, make any representations or give any warranty on behalf of the Customer; or, enter into any contract or obligation on behalf of the Customer.
- 33.2 Nothing in the Call Off Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Customer and the Service Provider. Accordingly:
- 33.2.1 the Service Provider shall not (and shall procure that his agents and servants do not) say or do anything that might lead any other person to believe that the Service Provider is acting as the agent of the Customer; and
- 33.2.2 nothing in the Call Off Contract shall impose any liability on the Customer in respect of any liability incurred by the Service Provider to any other person but this shall not be taken to exclude or limit any liability of the Customer to the Service Provider that may arise by virtue of either a breach of the Call Off Contract or any negligence on the part of the Customer, its staff or agents.

### 34 AGENCY

- 34.1 The Service Provider acknowledges that the Customer may have placed the Order and entered into this Call Off Contract pursuant to a Framework Agreement established by the Authority acting as agent for the Customer.
- 34.2 In such cases, the Customer shall only be liable for any Order placed and Call Off Contract entered into under such Framework Agreement if the Order was placed on and Call Off Contract entered into with the Service Provider by the Customer.

### 35 COUNTERPARTS

This Call Off Contract may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

**SIGNED** for or on behalf of the Parties on the date which first appears in this Call Off Contract

Signed for and on behalf of **NHS** )  
**NORTH OF ENGLAND COMMISSIONING** )  
**SUPPLY UNIT 24** hosted by NHS )  
Co-ordinator (the **Customer**) )

0DBDD2F0624D438...

Full Name: [Redacted] me: Signature of authorised signatory  
Job Title/Role: **CFO** Job Title/Role:  
Date Signed: **28/03/2024** Name of authorised signatory

\_\_\_\_\_  
Date

Signed for and on behalf of **Capita** )  
**Business Services Limited** )  
(the **Service Provider**) ) [Redacted]

Full Name: [Redacted] Signature of authorised signatory  
Job Title/Role: **Commercial Director** Name of authorised signatory  
Date:

**7 March 2024**  
\_\_\_\_\_  
Date

**SCHEDULE 1****DEFINITIONS**

In the Framework Agreement and the Call Off Contracts the words and expressions below will be interpreted to have the meanings adjacent to them

<b>“ABI Management Charge”</b>	means the activity based income management charge payable by the Service Provider to the Authority in accordance with Clause 22 of the Framework Agreement;
<b>“Acceptance Criteria”</b>	means the acceptance criteria and procedure for the Goods and/or Managed Services as detailed in Schedule 7 of the Call Off Contract;
<b>“Acceptance Completion Date”</b>	means any date, contained in the timetable in Schedule 6 under the provisions of sub-clause 20.2.1 of the Call Off Contract, by which the Service Provider undertakes to have met acceptance criteria specified in Schedule 7 for implementation of Goods and/or Managed Services in accordance with clause 20 of the Call Off Contract;
<b>“Acceptance Date”</b>	means the date upon which acceptance criteria for the implementation of Goods and/or Managed Services as specified in Schedule 7, (Acceptance Criteria and Procedures) are met in accordance with clause 20 of the Call Off Contract;
<b>“Acceptance Test”</b>	means a test or sequence of tests specified in Schedule 7 to be performed in relation to a Call Off Contract in order to establish, by compliance with Acceptance Criteria, that the Goods and/or Managed Services conform to the Customer’s requirements;
<b>“Audit”</b>	means an audit carried out pursuant to Clause 23 of the Framework Agreement;
<b>“Auditor”</b>	means the National Audit Office or an auditor appointed by the Audit Commission (or such other bodies to which the services of the Audit Commission may transfer in the future) as the context requires;
<b>“Authorised Officer”</b>	means a person designated as such by the Customer from time to time as notified in writing to the Service Provider to act as the representative of the Customer for all purposes connected with a Call Off Contract, including any authorised representative of such person;
<b>“Background Intellectual Property Rights”</b>	means any Intellectual Property Rights in the ownership of a Party prior to the date of this Call Off Contract that are used in the course of or in connection with the provision of the Managed Services;

<b>"BCDR Plan"</b>	means any plan prepared pursuant to Schedule 15 (Business Continuity and Disaster Recovery Plan, as may be amended from time to time;
<b>"Cabinet Office Statement"</b>	means the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector 2000 (January 2000 as revised in November 2007 and as may be further amended from time to time) and the annex this Statement entitled "A Fair Deal for Pensions (January 2000 as revised in November 2007 and as may be further amended from time to time) and, where applicable, the related Guidance Note issued by HM Treasury in June 2004 entitled "Fair Deal for Staff Pensions: Procurement for Bulk Transfer and Related Issues" (as amended from time to time);
<b>"Call-Off Contract"</b>	means this legally binding contract (made pursuant to the terms of the Framework Agreement) for the provision of the Goods and/or Managed Services comprising of the Order, the terms and conditions set out in this Call Off Contract and any supplementary terms and conditions set out in the Order;
<b>"Change of Law"</b>	means any change in Law, which impacts on the supply of Managed Services which comes into force after the Commencement Date;
<b>"Commencement Date"</b>	means the date agreed by the Parties in clause 2.7.1 of the Call Off Contract, on which the Call Off Contract is to commence;
<b>"Complaint"</b>	means any formal complaint raised by any Customer in relation to the performance of the Framework Agreement or any Call-Off Contract;
<b>"Confidential Information"</b>	<p>means information, data and material of any nature which either Party may receive, create or obtain in connection with the formation, operation or termination of the Framework Agreement or Call Off Contract and:</p> <ul style="list-style-type: none"> <li>(i) which comprises Personal Data, Sensitive Personal Data and Patient Data (as defined below) or which relates to any patient or service user (living or deceased) or his or her treatment or medical history or care package (as the case may be);</li> <li>(ii) the release of which is likely to prejudice the commercial interests of the Customer, the Service Provider or the Authority, respectively and for the avoidance of doubt shall include any information, data, or material relating to the Pricing Matrices;</li> <li>(iii) which is a trade secret; or</li> <li>(iv) the disclosure of which could constitute an actionable</li> </ul>

	breach of confidence;
<b>“Contract Manager”</b>	means a person designated as such by the Service Provider from time to time as notified in writing to the Customer to act as the duly authorised representative of the Service Provider for all purposes connected with the Call Off Contract, including any authorised representatives of such person;
<b>“Contract Period”</b>	means (subject to earlier termination in accordance with its terms or by operation of law) the duration of the Call Off Contract, starting on the Commencement Date, as set out in clause 2.7.2 of the Call Off Contract;
<b>“Contract Price”</b>	means the monies payable by the Customer to the Service Provider for the provision of the Goods and/or Managed Services and performance by the Service Provider of its obligations under the Call Off Contract as set out Schedule 9 (Pricing Matrices) or as detailed in the Order and varied in accordance with the Call Off Contract;
<b>“Contract Standard”</b>	means such standard as complies in each and every respect with all relevant provisions of the Call Off Contract;
<b>“Contracting Authority”</b>	means any contracting authority as defined in the Public Contracts Regulations 2015;
<b>“Contractual Date”</b>	means any date specified for the fulfilment of contractual obligations in Schedule 2, 3 and 6 of the Call Off Contract or as detailed in the Order, which is identified as a Contractual Date therein;
<b>“Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer”</b>	take the meaning given in the Data Protection Legislation;
<b>“Costs”</b>	includes costs, charges, outgoings and expenses of every description excluding Indirect Losses;
<b>“Crown”</b>	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales including, but not limited to, government ministers and government departments and particular bodies, persons and government agencies;
<b>“Crown Body”</b>	means any department, office or agency of the Crown;

<b>“Customer System”</b>	the Customer computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Customer or the Service Provider in connection with the Call Off Contract which is owned by or licensed to the Customer by a third party and which interfaces with the Service Provider System or which is necessary for the Customer to receive the Managed Services;
<b>“Data”</b>	<p>means:</p> <p>the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are</p> <ul style="list-style-type: none"> <li>(i) supplied to the Service Provider by or on behalf of the Customer; or</li> <li>(ii) which the Service Provider is required to generate, process, store or transmit pursuant to the Call Off Contract; or</li> <li>(iii) any Personal Data for which the Customer or the NHS Commissioning Board is the Controller (within the meaning of the Data Protection Legislation);</li> </ul>
<b>“Data Loss Event”</b>	any event that results, or may result, in unauthorised access to Personal Data held by the Service Provider under this Call Off Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Call Off Contract, including any Personal Data Breach;
<b>“Data Processing Services”</b>	the data processing services described at Schedule 17 and set out the Specification;
<b>“Data Protection Impact Assessment”</b>	an assessment by the Customer and/or the NHS Commissioning Board of the impact of the envisaged processing on the protection of Personal Data;
<b>“Data Protection Legislation”</b>	<ul style="list-style-type: none"> <li>(i) the GDPR, and any applicable national implementing Laws as amended from time to time to the extent that they apply following the exit of the United Kingdom from the European Union;</li> <li>(ii) the UK GDPR;</li> <li>(iii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; and</li> <li>(iv) all applicable Law about the processing of personal information and privacy, including the law of confidentiality.</li> </ul>

<b>"Data Subject Access Request"</b>	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
<b>"Database"</b>	means the rights in or to the database developed and supplied by the Service Provider to the Customer in accordance with the terms of this Call Off Contract;
<b>"Default"</b>	means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party, its employees, servants agents or Sub-contractors in connection with or in relation to the subject-matter of this Call Off Contract and in respect of which such Party is liable to the other;
<b>"Deliverable"</b>	means any data, report, drawing, specification, design, invention, plan, program, document, contract, and/or other material produced by or to be produced by or acquired by or to be acquired by the Service Provider in relation to the provision or the use of the Goods and/or Managed Services;
<b>"Dispute Resolution Procedure"</b>	means the procedure set out in clause 10 of the Call Off Contract or Clause 46.3 of the Framework Agreement (as the context requires);
<b>"DPA 2018"</b>	Data Protection Act 2018;
<b>"Employees"</b>	means the employees assigned to the Services by the incumbent Service Provider, or as the case may be, by the Customer prior to the Commencement Date;
<b>"Environmental Information Regulations"</b>	mean the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations;
<b>"Exit Plan"</b>	means the exit plan agreed between the parties in accordance with Clause 11.2 and specified in Schedule 14 of the Call Off Contract;
<b>"Facilities"</b>	means any or all of the Hardware, Software and any other facilities or equipment listed in Schedule 3 to be used by the Service Provider in the provision of the Managed Services;
<b>"Final Service Provider Personnel List"</b>	means a list provided by the Service Provider of all Transferring Service Provider Employees who will transfer under TUPE on the Relevant Transfer Date;

<b>"FOIA"</b>	means the Freedom of Information Act 2000 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
<b>"Force Majeure Event"</b>	means one or more of the following to the extent that it is not attributable to the Service Provider or the Service Provider's staff: war, civil war (whether declared or undeclared), riot or armed conflict; radioactive, chemical or biological contamination; pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speed; acts of terrorism; explosion; fire; flood; extraordinarily severe weather conditions which are both unforeseen and for which precautions are not customarily taken by prudent business organisations so as to avoid or mitigate the impact thereof; industrial action which affects the supply of the Managed Services, but which is not confined to the workforce of the Service Provider or is site specific; pestilence; the actions of governmental authorities to the extent that such actions are implemented either pursuant to emergency powers or otherwise outside the usual course of governmental business; or Act of God, or other event which is beyond the reasonable control of the Party in question and could not have been avoided or mitigated by the exercise of all reasonable care by that Party and further provided that such event materially affects the ability of the Party seeking to rely upon it to perform its obligations under the Framework Agreement or the Call Off Contract;
<b>"Framework Agreement"</b>	means the framework agreement entered into between the Service Provider and the Authority under which this Call Off Contract is drawn down;
<b>"Fraud"</b>	means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Framework Agreement or any Call-Off Contract or defrauding or attempting to defraud or conspiring to defraud the Customer;
<b>"GDPR"</b>	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016;
<b>"General Change in Law"</b>	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Service Provider);
<b>"Good Industry Practice"</b>	means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances and which are in accordance with any codes of



	practice published by any relevant trade association;
<b>"Goods"</b>	means all goods, materials or articles supplied by the Service Provider (or by the Service Providers' Sub-Contractors) to the Customer under the Call Off Contract as detailed in the Specification;
<b>"Guidance"</b>	means: <ul style="list-style-type: none"> <li>(a) any applicable health or social care guidance, direction or determination which any Party has a duty to have regard to, to the extent that the same are published and publicly available or the existence or contents of them have been; or</li> <li>(b) are from time to time, notified to the Service Provider by the Customer, the Department of Health and Social Care, the Secretary of State and/or the NHS Commissioning Board and which for the avoidance of doubt shall include the NHS Operating Framework and the Adult Social Care Outcomes Framework; or</li> <li>(c) any guidance issued or updated by the UK Government from time to time in relation to the Regulations; or</li> <li>(d) any guidance issued or updated by the UK Government or any Regulatory Bodies in relation to the provision of the Managed Services;</li> </ul>
<b>"Hardware"</b>	means any hardware listed or computing facility identified in Schedule 3 to be used by the Service Provider in the provision of the Managed Services under a Call Off Contract;
<b>"ICT Environment"</b>	the Customer System and the Service Provider System;
<b>"Implementation Plan"</b>	means the implementation plan prepared by the Service Provider in accordance with Clause 4.2 clause 4.2.1 of the Call Off Contract;
<b>"Indirect Losses"</b>	means any indirect, special or consequential loss or damage, any loss of profits (whether direct or indirect), business opportunities or revenue or losses for damage to goodwill;
<b>"Information"</b>	has the meaning given under Section 84 of the Freedom of Information Act 2000;
<b>"Insolvent"</b>	means: <ul style="list-style-type: none"> <li>(a) if the Service Provider is an individual, that individual or where the Service Provider is a partnership, any partner(s) in that firm becomes bankrupt or shall have a</li> </ul>

	<p>receiving order, administration order or interim order made against him, or shall make any composition or scheme of arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or any application shall be made for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors;</p> <p>(b) if the Service Provider is a company, the passing by the Service Provider of a resolution for its winding-up or the making by a court of competent jurisdiction of an order for the winding-up of the Service Provider or the dissolution of the Service Provider, or if an administrator is appointed, or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by the Service Provider or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or the appointment of a receiver over, or the taking possession or sale by an encumbrancer of any of the Service Provider's assets, or if the Service Provider makes an arrangement with its creditors generally or makes an application to a court of competent jurisdiction for protection from its creditors generally; and any event in any jurisdiction other than England and Wales which is analogous to any of the above;</p>
<b>"Intellectual Rights" or "IPR"</b>	<p><b>Property</b></p> <p>means any and all patents, trade marks, service marks, domain names, registered designs, utility models, applications for and the right to make applications for any of such rights, inventions, Know-How (as defined below), unregistered trade marks and service marks, trade and business names, including rights in any get-up or trade dress, copyrights, (including rights in computer software and in websites) unregistered design rights and other rights in designs and rights in databases, subsisting anywhere in the world; the right for the maker of a database to prevent extraction or reutilisation or both of the whole or a substantial part of the content of that database, as described in Directive 96/9/EC on the legal protection of databases; rights under licences, consents, orders, statutes or otherwise in respect of any rights of the nature specified in this definition "Intellectual Property"; and rights of the same or similar effect or nature as or to those above in each case in any jurisdiction;</p>
<b>"ITT"</b>	<p>means the invitation to tender issued by the Customer on 7 October 2020;</p>
<b>"Know- How"</b>	<p>means all information not publicly known which is used or required to be used in or in connection with the Managed Services existing in any form (including, but not limited to, that comprised in or derived from engineering, chemical and other data, specifications, formulae, experience, drawings, manuals, component lists, instructions, designs and circuit diagrams, brochures, catalogues and other descriptions) and relating to the</p>

	design, development, manufacture or production of any products; the operation of any process; the provision of any services; the selection, procurement, construction, installation, maintenance or use of raw materials, plant, machinery or other equipment or processes; the rectification, repair or service or maintenance of products, plant, machinery or other equipment; the supply, storage, assembly or packing of raw materials, components or partly manufactured or finished products; quality control, testing or certification of any person;
<b>"Law"</b>	means 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, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body;
<b>"Location"</b>	means the Customer location or sites;
<b>"Loss"</b>	includes losses, liabilities, claims, costs, charges and outgoings of every description (including legal expenses), compensation payable under this Call Off Contract, excluding Indirect Losses;
<b>"Malicious Software"</b>	means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
<b>"Managed Services"</b>	means all services provided by the Service Provider (or by the Service Provider's sub-contractors) to the Customer under the Call Off Contract as detailed in the Specification;
<b>"Mansfield Location"</b>	means the Location at Units 7-11 Lower Oakham Way, Oakham Business Park, Mansfield, Nottinghamshire, NG18 5BY;
<b>"Month"</b>	means a calendar month;
<b>"Operating Environment"</b>	means the Customer System and the Location;
<b>"Order"</b>	means an order for Goods and/or Managed Services submitted by the Customer to the Service Provider in accordance with the Ordering Procedures;
<b>"Ordering Procedures"</b>	means the ordering and award procedures specified in this Call Off Contract;

<b>"Party"</b>	means in the context of the Framework Agreement, the Authority or the Service Provider; and in the context of a Call Off Contract, the Service Provider or the Customer. A Party shall include all permitted assigns of the Party in question;
<b>"Patient Data"</b>	means information relating to individuals which is processed (as defined by the Data Protection Legislation) by the Customer in the context of the individual receiving patient services or similar services from the Customer, and includes Personal Data and Sensitive Personal Data;
<b>"Pensions Legislation"</b>	means, as may be amended from time to time, the Pensions Act 2004, The Transfer of Employment (Pension Protection) Regulations 2005, the Pensions Act 2008 and any other legislation, Government policy or guidance in relation to the pensions entitlement of the Employees;
<b>"Person"</b>	includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency, unincorporated body of persons or association and a reference to a person includes a reference to that person's successors and permitted assigns;
<b>"Planned Acceptance Date"</b>	Means the date upon which the Service Provider shall commence delivery of the Managed Services under this Call Off Contract;
<b>"Pricing Matrices"</b>	means the pricing matrices set out in Schedule 9;
<b>"Programme of Corrective Actions"</b>	the plan agreed in accordance with Clause 27.4 of the Call Off Contract for the resolution of any outstanding Service Level Failures;
<b>"Protective Measures"</b>	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 the such measures adopted by it;
<b>"Quality Standard"</b>	means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Service Provider would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification;

<b>"Quarter"</b>	means a continuous period of three (3) calendar months in each calendar year beginning on 1 January, 1 April, 1 July and 1 October;
<b>"Regulations"</b>	means the Public Contracts Regulations 2015;
<b>"Regulatory Bodies"</b>	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Framework Agreement, any Call-Off Contract or any other affairs of the Customer;
<b>"Replacement Goods"</b>	means any goods purchased to replace or to be used instead of the Goods supplied by the Service Provider to the Customer pursuant to the terms of the Call Off Contract;
<b>"Replacement Service Provider"</b>	means any Service Provider engaged to replace the Service Provider or any sub-contractor of the Service Provider or any third party supplier appointed by the Customer to supply any Managed Services which are substantially similar to any of the Managed Services and which the Customer receives in substitution for any of the Managed Services following the expiry, termination or partial termination of the Call Off Contract;
<b>"Replacement Services"</b>	means any services purchased to replace or be used instead of the Services supplied by the Service Provider to the Customer pursuant to the terms of the Call Off Contract;
<b>"Requests for Information"</b>	means a request for information or an apparent request under the FOIA or the Environmental Information Regulations;
<b>"Security Management Plan"</b>	means the Service Provider's security plan prepared pursuant to Clause 14 of the Call Off Contract;
<b>"Security Policy"</b>	means the Customer's security policy as updated from time to time;
<b>"Sensitive Personal Data"</b>	means special category Personal Data as defined by the Data Protection Legislation;
<b>"Service Credit"</b>	means the sums payable in respect of a failure by the Service Provider to meet one or more of the Service Levels as set out in Schedule 5;
<b>"Service Levels"</b>	means the standards of service or service objectives specified which the Contract Service Provider is required to achieve in the performance of the Goods and/or Managed Services details of

	which are contained in Schedule 3 of the Call Off Contract;
<b>“Service Provider”</b>	means Capita Business Services Limited, a company incorporated and registered in England and Wales with company number 02299747 whose registered office is at 65 Gresham Street, London, England, EC2V 7NQ;
<b>“Service Software”</b>	means (where applicable) the Software which is listed as such in Schedule 3 to be supplied by the Service Provider for use in the provision of the Managed Services whether such Software is owned by the Service Provider or by a third party;
<b>“Service Provider System”</b>	means the information and communications technology system used by the Service Provider in supplying the providing the Managed Services, including but not limited to the Service Provider Software;
<b>“Service Provider’s Background IPRs”</b>	means IPRs owned by the Service Provider before the Commencement Date, for example those subsisting in the Service Provider’s standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Service Provider’s Know-How or generic business methodologies; and/or  IPRs created by the Service Provider independently of the Call Off Contract, but excluding IPRs owned by the Service Provider subsisting in the Service Provider Software;
<b>“Service Transfer”</b>	means any transfer of the Managed Services (or any part of the Managed Services),
<b>“Service Transfer Date”</b>	means the date of a Service Transfer;
<b>“SLA”</b>	the head contract between the Customer and NHS Commissioning Board (known as NHS England) for the provision of the cervical screening administration service dated 1 August 2019;
<b>“Software”</b>	means Customer Software and Service Provider Software or any of them, listed as such in Schedule 3 of the Call Off Contract;
<b>“Specific Change in Law”</b>	means a Change in Law that relates specifically to the business of the Customer;
<b>“Specification”</b>	means the description of the Goods and Managed Services as referred to or as detailed in Schedule 3 (Specification) including, where appropriate, the quantity of the Goods and Managed Services and any applicable Quality Standards; the location to which the Goods and Managed Services are to be delivered and,

	where relevant, installed; and equipment with which the Goods and Managed Services must be compatible; the date(s) and time(s) of delivery of the Goods and Managed Services and any necessary training or instructions to be given to the Customer by the Service Provider in connection with the use or maintenance of the Goods and Managed Services;
<b>"Staff"</b>	means all persons employed by the Service Provider together with the Service Provider's servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Framework Agreement or this Call-Off Contract;
<b>"Sub-Processor"</b>	any third party appointed to process Personal Data on behalf of the Service Provider related to this Call Off Contract;
<b>"Tender"</b>	means the tender submitted by the Service Provider to the Customer on 6th November 2020;
<b>"Term"</b>	means the term of this Call Off Contract as set out in clause 2.7;
<b>"Third Party Software"</b>	means software which is proprietary to any third party which is or will be used by the Service Provider for the purposes of providing the Goods and/or Managed Services;
<b>"Transferring Service Provider Employees"</b>	mean those employees of the Service Provider and/or the Service Provider's subcontractors to whom TUPE will apply on the Service Transfer Date;
<b>"Transitional Assistance Services"</b>	means the transitional assistance services to be provided by the Service Provider as set out in this Call Off Contract upon exit and transfer of the Managed Services;
<b>"TUPE"</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and Council Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfer of undertakings, businesses or parts of undertakings or businesses;
<b>"UK GDPR"</b>	means the UK GDPR as defined in sections 3 and 205 of the DPA 2018;
<b>"Variation"</b>	means a change to this Call Off Contract. Any requirement for a Variation shall be subject to the Variation Procedure;
<b>"Variation Procedure"</b>	means the process set out in clause 7 of the Call Off Contract;

<b>"VAT"</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
<b>"Virus"</b>	means any Software intended to corrupt, destroy or otherwise damage or interfere with the use of Software or other Software or data owned by or under the control of the Customer whether such Software is introduced wilfully or negligently;
<b>"Working Days"</b>	means any day (other than a Saturday, Sunday or a bank or public holiday) during which any clearing banks are open for business in the City of London in England; and
<b>"Year"</b>	means during the Contract Period or the Term, any 12 month period commencing on the Commencement Date or an anniversary thereof.

- 1 In this Call Off Contract, words importing the singular only shall include the plural and vice versa.
- 2 In this Call Off Contract, all references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made there under and any conditions attaching thereto. Moreover, where relevant, references to English statutes and statutory provision shall be construed as references also to equivalent statutes, statutory provisions and rules of law in other jurisdictions.
- 3 Any headings to Clauses, together with the front cover and the Index, are for convenience only and shall not affect the meaning of this Call Off Contract. Unless the contrary is stated, references to Clauses shall mean the clauses of this Call Off Contract.
- 4 Unless otherwise expressly defined in this Framework Agreement, the words used in this Call Off Contract shall bear their natural meaning. The Parties have had equal opportunity to take legal advice and the contra proferentem rule shall not apply to the interpretation of this Call Off Contract.
- 5 Where a term of this Call Off Contract provides for a list of items following the word "including" or "includes" then such list is not to be interpreted as being an exhaustive list. Any such list shall not be treated as excluding any item which might have been included in such list having regard to the context of the contractual term in question. The ejusdem generis principle is not to be applied when interpreting this Call Off Contract. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.
- 6 In this Call Off Contract, words importing any particular gender include all other genders.
- 7 Subject to the contrary being stated expressly or implied from the context in this Call Off Contract, all communications between the Parties shall be in writing.
- 8 All monetary amounts are expressed in pounds sterling. In the event that pounds sterling is replaced as legal tender in the United Kingdom by a different currency, then all monetary amounts shall be converted into such other currency at the rate prevailing on the date such other currency first became legal tender in the United Kingdom.



- 9 Except where an express provision of this Call Off Contract states to the contrary, each and every obligation of a Party under this Call Off Contract is to be performed at that Party's cost.
- 10 Any reference to a Party "procuring" another person to act or omit to act in a certain manner shall mean that the Party so procuring shall be liable for any default on the part of the person acting or omitting to act in that manner.
- 11 All references to this Call Off Contract include (subject to all relevant approvals) a reference to this Call Off Contract as amended, supplemented, substituted, novated or assigned from time to time.
- 12 All references to "staff" and employees" shall have the same meaning.

**SCHEDULE 2**  
**DELIBERATELY LEFT BLANK**

### SCHEDULE 3

### SPECIFICATION

NECS Service Specification for Procurement:



NECS ITQ  
Specification - CSAS.p

Capita Business Services Ltd. bid document describing service offer:



Capita Response to  
NECS ITQ Bidder Respon

The embedded document includes service standards and compliance detail, including Service Level Agreement detail for both outbound and inbound services.

Capita Business Services Ltd. Letter specifications per 2024 procurement pricing schedule:

Outbound Rate Type				Price per Unit
Data Processing	Image Creation	Images		
Enclose	Machine	1st	C5	
Enclose	Machine	Insert Additional	C5	
Enclose	Machine Wrap	1st	C5	
Enclose	Machine Wrap	Insert Additional	C5	
Fold	Machine		A4	
Fold	Machine Wrap		A4	
Print	Mono	Duplex	A4	
Print	Mono	Simplex	A4	
Stock	Outer - Envelope		Pre-Printed Outer Stock	
Stock	Outer - Envelope		White 90gsm 353mm Outer Reel Stock	
Stock	Paper		Cut Sheet White 90gsm	
Stock	Paper		White 90gsm 457mm Primary Reel Stock	
Monthly Management Fee				
Postage	Whistl			
Postage	Royal Mail 1st Class			
Professional Services				
Inbound Rate Type				Price per Unit
2D Goneaways				
General Corres / Goneaways				
Box Storage				
Box Destruction				
Professional Services				

The policies referred to at clause 3.a.4 of the Call Off Contract are as follows:

- Dignity at Work Policy
- Equality, Diversity and Inclusion Policy
- Health and Safety Policy
- NECS Business Continuity Plan.

A copy of the above policies shall be provided to the Service Provider by the Customer (and which may be updated or superceded from time to time).

**SCHEDULE 4**  
**DELIBERATELY LEFT BLANK**

## SCHEDULE 5

### CONTRACT MANAGEMENT

- 1.1 Each Party shall appoint and retain a Contract Manager who shall be the primary point of contact for the other Party in relation to matters arising from this Call Off Contract. Should the Contract Manager be replaced, the Party replacing the Contract Manager shall promptly inform the other Party in writing of the name and contact details for the new Contract Manager. Any Contract Manager appointed shall be of sufficient seniority and experience to be able to make decisions on the day to day operation of this Call Off Contract. The Service Provider confirms and agrees that it will be expected to work closely and cooperate fully with the Customer's Contract Manager.
- 1.2 Each Party shall ensure that its representatives (to include, without limitation, its Contract Manager) shall attend review meetings on a regular basis to review the performance of the Service Provider under this Call Off Contract and to discuss matters arising generally under this Call Off Contract. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day to day operation of the Call Off Contract. Review meetings shall take place at the frequency specified in the Specification. Should the Specification not state the frequency, then the first such meeting shall take place on a date to be agreed on or around the end of the first month after the Commencement Date. Subsequent meetings shall take place at monthly intervals or as may otherwise be agreed in writing between the Parties.
- 1.3 Two weeks prior to each review meeting (or at such time and frequency as may be specified in the Specification) the Service Provider shall provide a written contract management report to the Customer regarding the supply of the Goods, the provision of the Managed Services and the operation of this Call Off Contract. Unless otherwise agreed by the Parties in writing, such contract management report shall contain:
  - 1.3.1 details of the performance of the Service Provider when assessed in accordance with the KPIs since the last such performance report;
  - 1.3.2 details of any complaints by the Customer regarding the supply of Goods or provision of Managed Services and any complaints from or on behalf of patients or other service users, their nature and the way in which the Service Provider has responded to such complaints since the last review meeting written report;
  - 1.3.3 the information specified in the Specification;
  - 1.3.4 a status report in relation to the implementation of any current remedial actions by either Party; and
  - 1.3.5 such other information as reasonably required by the Customer.
- 1.4 Unless specified otherwise in the Specification, the Customer shall take minutes of each review meeting and shall circulate draft minutes to the Service Provider within a reasonable time following such review meeting. The Service Provider shall inform the Customer in writing of any suggested amendments to the minutes within five (5) Working Days of receipt of the draft minutes. If the Service Provider does not respond to the Customer within such five (5) Working Days the minutes will be deemed to be approved. Where there are any differences in interpretation of the minutes, the Parties will use their reasonable endeavours to reach agreement. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the Dispute Resolution Procedure.
- 1.5 The Service Provider shall provide such management information as the Customer may request from time to time within seven (7) Working Days of the date of the request. The Service Provider shall supply the management information to the Customer in such form as may be specified by the Customer and, where requested to do so, the Service Provider shall also provide such management information to another Contracting Authority, whose role it is

to analyse such management information in accordance with UK government policy (to include, without limitation, for the purposes of analysing public sector expenditure and planning future procurement activities) ("**Third Party Body**"). The Service Provider confirms and agrees that the Customer may itself provide the Third Party Body with management information relating to the Goods and Managed Services purchased, any payments made under this Call Off Contract, and any other information relevant to the operation of this Call Off Contract.

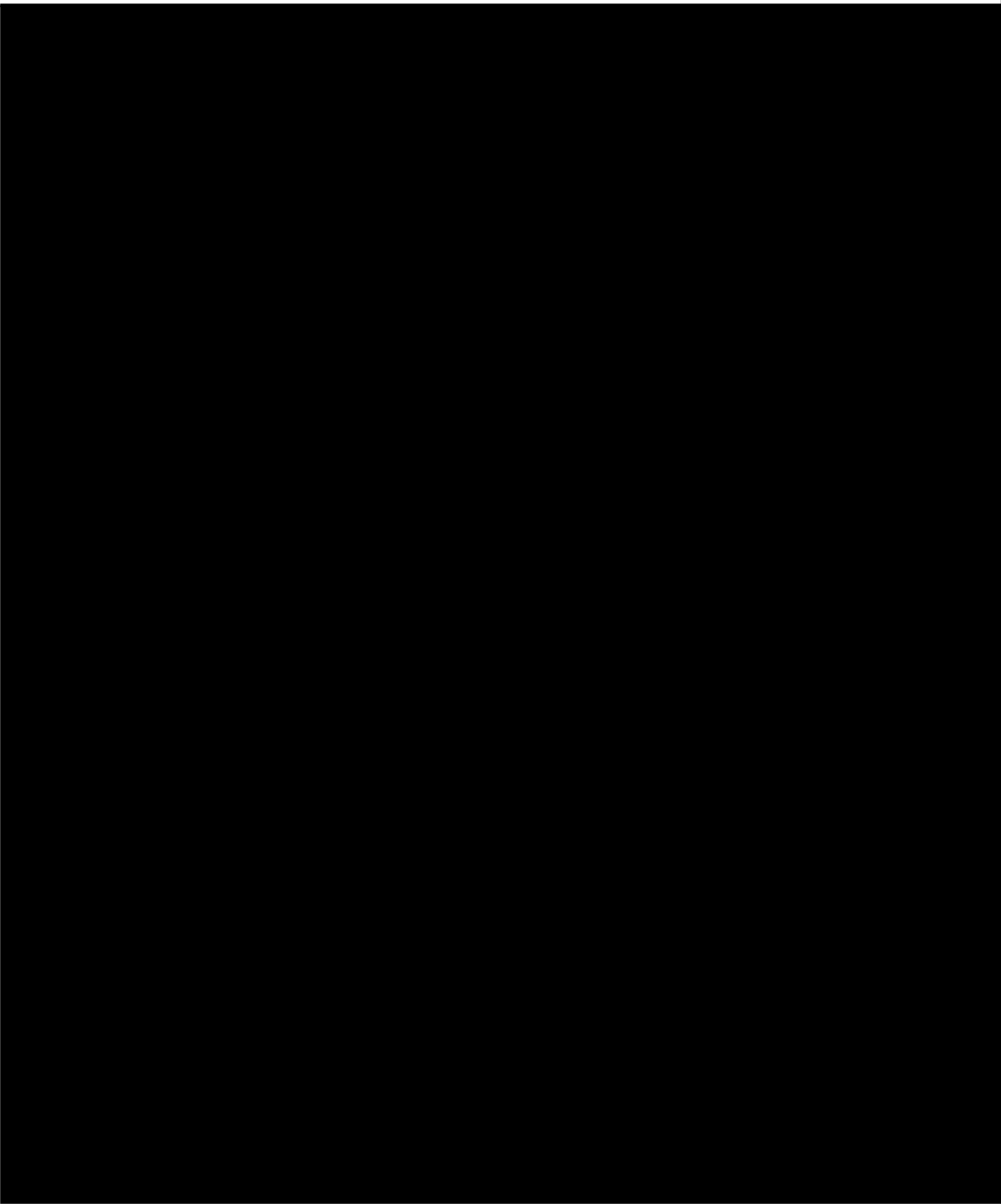
- 1.6 Upon receipt of management information supplied by the Service Provider to the Customer and/or the Third Party Body, or by the Customer to the Third Party Body, the Parties hereby consent to the Third Party Body and the Customer:
  - 1.6.1 storing and analysing the management information and producing statistics; and
  - 1.6.2 sharing the management information or any statistics produced using the management information with any other Contracting Authority.
- 1.7 If the Third Party Body and/or the Customer shares the management information or any other information provided under Clause 1.6 of this Schedule 5, any Contracting Authority receiving the management information shall, where such management information is subject to obligations of confidence under this Call Off Contract and such management information is provided direct by the Customer to such Contracting Authority, be informed of the confidential nature of that information by the Customer and shall be requested by the Customer not to disclose it to any body that is not a Contracting Authority (unless required to do so by Law).
- 1.8 The Customer may make changes to the type of management information which the Service Provider is required to supply and shall give the Service Provider at least one (1) month's written notice of any changes.

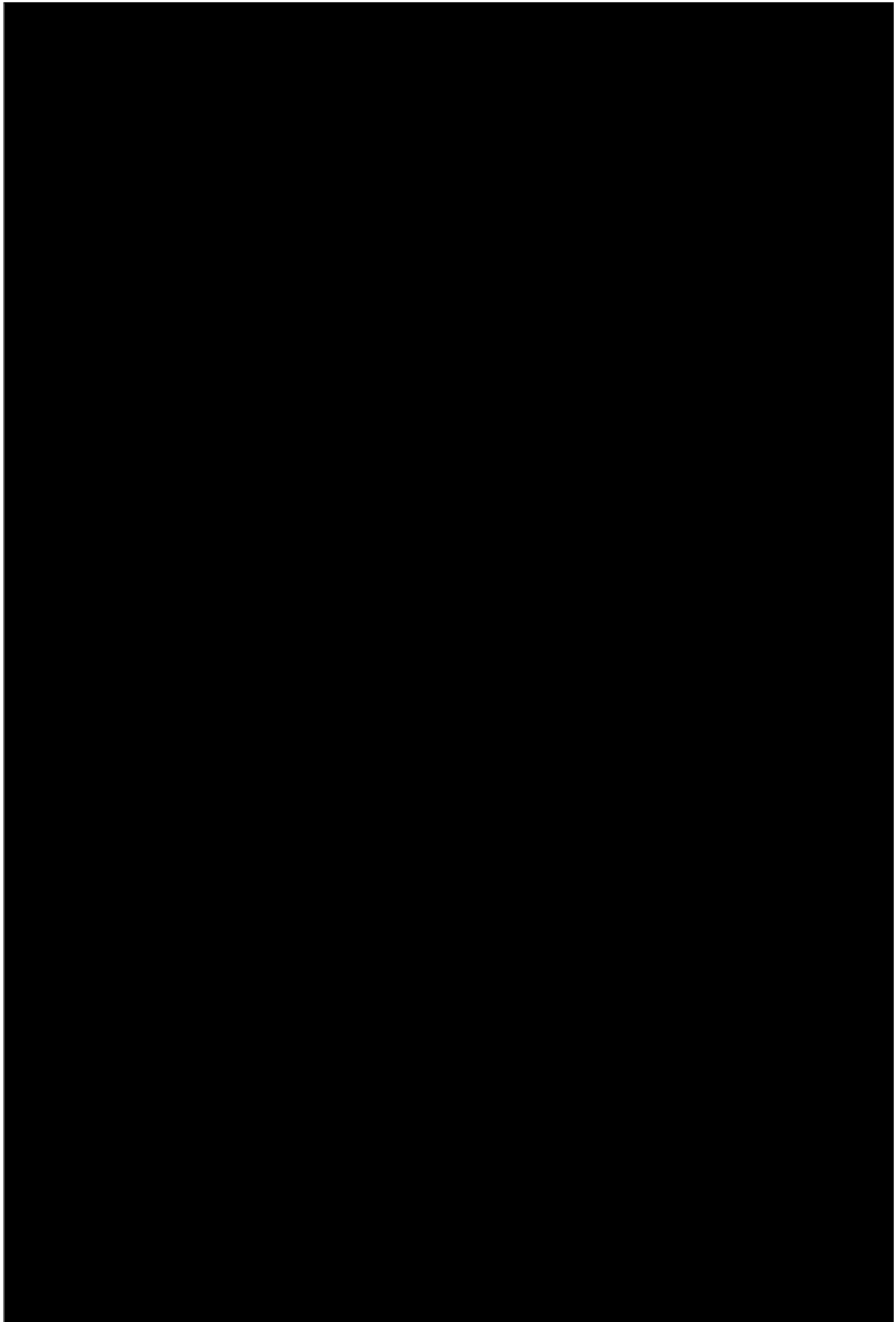
## **SCHEDULE 6**

### **IMPLEMENTATION**

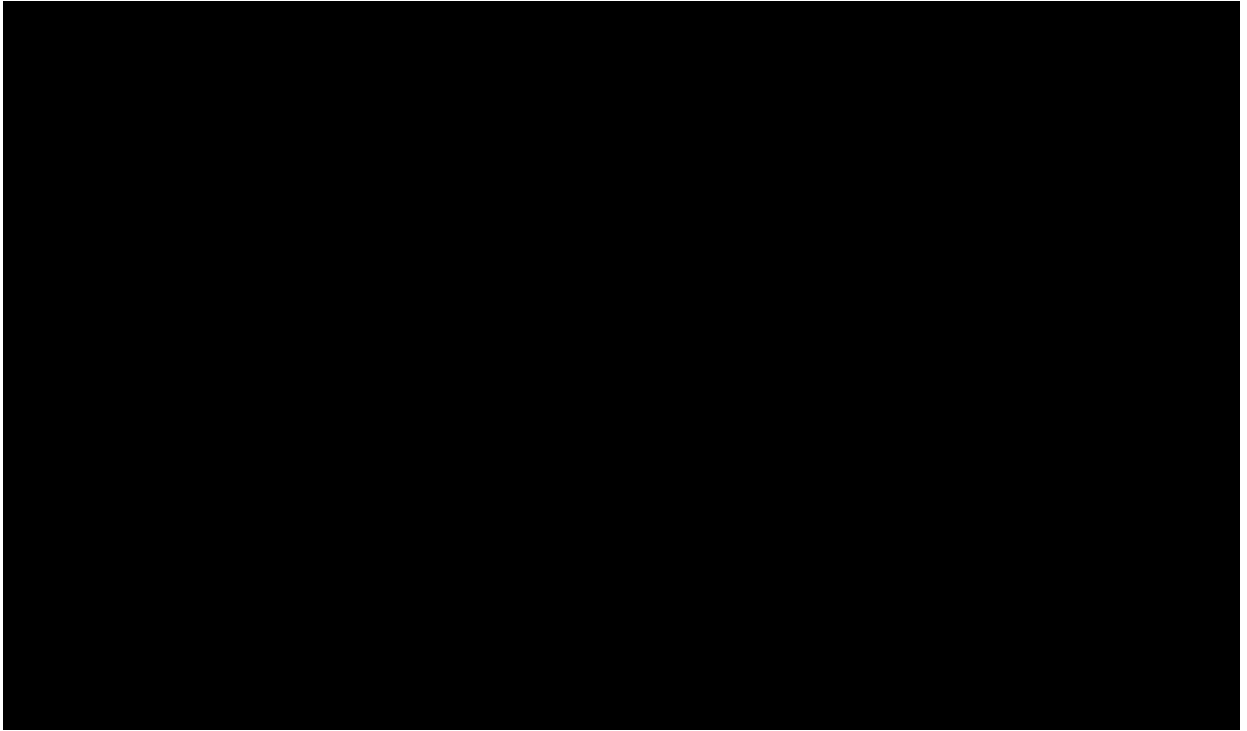
The Service Provider shall implement the Managed Services in accordance with the terms of question 2 of the bid document:

***In line with the Invitation to Quote, please set out details of your proposed approach and the assurance this provides to CSAS, to service transition and continuity, the change to the CSAS IT platform, and the client/account management arrangements offered before the contract term begins.***









**SCHEDULE 7**  
**ACCEPTANCE CRITERIA AND PROCEDURES**  
[TO BE LEFT BLANK]

**SCHEDULE 8**  
**DELIBERATELY LEFT BLANK**

**SCHEDULE 9**  
**PRICING MATRICES**

Outbound Rate Type	Production	Images		Price per Unit
Data Processing	Image Creation			
Enclose	Machine	1st	C5	
Enclose	Machine	Insert Additional	C5	
Enclose	Machine Wrap	1st	C5	
Enclose	Machine Wrap	Insert Additional	C5	
Fold	Machine		A4	
Fold	Machine Wrap		A4	
Print	Mono	Duplex	A4	
Print	Mono	Simplex	A4	
Stock	Outer - Envelope		Pre-Printed Outer Stock	
Stock	Outer - Envelope		White 90gsm 353mm Outer Reel Stock	
Stock	Paper		Cut Sheet White 90gsm	
Stock	Paper		White 90gsm 457mm Primary Reel Stock	
Monthly Management Fee				
Postage	Whistl			
Postage	Royal Mail 1st Class			
Professional Services				
Inbound Rate Type				Price per Unit
2D Goneaways				
General Corres / Goneaways				
Box Storage				
Box Destruction				
Professional Services				

**Print Production**

- 1.1 Postage rates will be amended in line with any percentage increases or decreases enforced by the approved sub- contractors in Schedule 16 (Approved Sub-Contractors). Where possible the Customer shall be provided at least 30 days' notice by the Service Provider of any such percentage increases or decreases in accordance with paragraph 1.2.
- 1.2 Such notice shall be provided in the form of a letter from the Service Provider to the Customer advising of the percentage increase or decrease and the price that their approved sub-contractors will enforce from a confirmed date.
- 1.3 The form of notice specified in paragraph 1.2 is required by the Customer before any price increases are accepted. The Service Provider will only pass on percentage changes (increases or decreases) in line with the changes imposed by the approved sub- contractors in Schedule 16 (Approved Sub-Contractors). The price changes will be evidencable via the Royal Mail published rate cards available on their website, which the Service Provider can share with the Customer upon request.
- 1.4 Only once the Customer and NHS England has verified the percentage increase or decrease referred to in paragraph 1.1 will such percentage increase or decrease be accepted.
- 1.5 The total contract value is for £8,500,000, including passthrough charges for postage, excluding VAT

**Mailroom Rate Card**

Inbound Rate Type	Price per Unit
2D Goneaways	£
General Corres / Goneaways	£
Box Storage	£
Box Destruction	£

\* The Mailroom rate card pricing is to remain at the prices specified for the duration of the contract period, including any agreed extension periods

## **SCHEDULE 10**

### **CALL OFF CONTRACT CHANGE CONTROL PRINCIPLES AND PROCEDURE**

#### **1 GENERAL PRINCIPLES**

- 1.1 Where the Customer or the Service Provider sees a need to vary this Call Off Contract, the Customer may at any time request, and the Service Provider may at any time recommend, such Variation only in accordance with the Variation Procedure set out in Paragraph 2 of this Schedule 10.
- 1.2 Until such time as a Variation is made in accordance with the Variation Procedure, the Customer and the Service Provider shall, unless otherwise agreed in writing, continue to perform this Call Off Contract in compliance with its terms before such Variation.
- 1.3 Any discussions which may take place between the Customer and the Service Provider in connection with a request or recommendation before the authorisation of a resultant Variation shall be without prejudice to the rights of either Party.

#### **2 PROCEDURE**

- 2.1 Discussion between the Customer and the Service Provider concerning a Variation shall result in any one of the following:
  - (a) no further action being taken; or
  - (b) a request to vary this Call Off Contract by the Customer; or
  - (c) a recommendation to vary this agreement by the Service Provider.
- 2.2 Where a written request for a Variation is received from the Customer,, the Service Provider shall, unless otherwise agreed, submit two copies of a Variation Form signed by the Service Provider to the Customer within three weeks of the date of the request.
- 2.3 A recommendation to amend this Call Off Contract by the Service Provider shall be submitted directly to the Customer in the form of two copies of a Variation Form signed by the Service Provider at the time of such recommendation. The Customer shall give its response to the Variation Form within three weeks.
- 2.4 Each Variation Form shall be in the form as set out in this Schedule 10.
- 2.5 For each Variation Form submitted by the Service Provider the Customer shall:
  - (a) allocate a sequential number to the Variation Form; and
  - (b) evaluate the Variation Form and, as appropriate:
    - (i) accept the Variation Form by arranging for two copies of the Variation Form to be signed by or on behalf of the Customer and return one of the copies to the Service Provider; or
    - (ii) notify the Service Provider of the rejection of the Variation Form and the reasons for such rejection.
  - (c) request further information;
- 2.6 If the Customer rejects the Variation Form under paragraph 2.5 (b)(iii), the Service Provider may refer the matter to the Dispute Resolution Procedure.

A Variation Form signed by the Customer and by the Service Provider shall constitute an amendment to this Call Off Contract.

VARIATION  
FORM

<b>Call Off Contract TITLE:</b>	
-------------------------------------	--

<b>VARIATION NO:</b>		<b>DATE</b>	
----------------------	--	-------------	--

BETWEEN:

NHS NORTH OF ENGLAND COMMISSIONING SUPPORT UNIT (the Customer) and Capita Business Services Ltd (the Service Provider)

The Call Off Contract is varied as follows:

*[(INSERT DETAILS OF VARIATION)]*

Start Date:

Proposed Completion Date:

Costs:

Extension of Time:

The Call Off Contract including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

SIGNED:

**FOR NHS NORTH OF ENGLAND  
COMMISSIONING SUPPORT UNIT**

**FOR CAPITA BUSINESS  
SERVICES LTD**

BY

BY

FULL NAME

FULL NAME

TITLE

TITLE



DATE

DAT



**SCHEDULE 11**  
**ESCROW AGREEMENT**  
[NOT USED]

**SCHEDULE 12****PENSIONS AND STAFF TRANSFERS**

1.1 In this Schedule 12, the following terms have the following meanings:

<b>Actuary</b>	a Fellow of the Institute and Faculty of Actuaries;
<b>Broadly Comparable</b>	certified by an Actuary as satisfying the condition that there are no identifiable Eligible Employees who would overall suffer material detriment in terms of their future accrual of Pension Benefits under the scheme compared with the NHS Pension Scheme assessed in accordance with Annex A of Fair Deal for Staff Pensions;
<b>Direction Letter/Determination</b>	a letter or determination issued by the NHS Business Services Authority (on behalf of the Secretary of State pursuant to Section 7(2) of the Superannuation (Miscellaneous Provisions) Act 1967 or Section 25(5) of the Public Service Pensions Act 2013) to the Service Provider (or any subcontractor, as appropriate), setting out the terms on which the Service Provider (or any subcontractor, as appropriate) is to be granted access to the NHS Pension Scheme in connection with this Call Off Contract (or the relevant subcontract, as appropriate);
<b>Eligible Employees</b>	<p>each of the Transferred Staff who immediately before the Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to become a member of, either the NHS Pension Scheme or a Broadly Comparable scheme as a result of their employment or former employment with either an NHS Body (or other employer which participates automatically in the NHS Pension Scheme) and being continuously engaged for more than 50% of their employed time with the former provider in the delivery of the Managed Services.</p> <p>For the avoidance of doubt a Staff member who is or is entitled to become a member of the NHS Pension Scheme as a result of being engaged in the Managed Services and being covered by an "open" Direction Letter/Determination or other NHS Pension Scheme "access" facility but who has never been employed directly by an NHS Body (or other body which participates automatically in the NHS Pension Scheme) is not an Eligible Employee entitled to Fair Deal for Staff Pensions protection under this Schedule</p>

	12;
<b>Exit Transfer Date</b>	the date on which the Eligible Employees transfer their employment to a new provider at the end of the Term;
<b>Fair Deal for Staff Pensions</b>	the guidance issued by HM Treasury entitled 'Fair Deal for staff pensions: staff transfer from central government', October 2013;
<b>NHS Body</b>	has the meaning given to it in section 275 of the 2006 Act;
<b>Transfer Date</b>	the Transferred Staff's first day of employment with the Service Provider (or its subcontractor);
<b>Transferred Staff</b>	those employees whose employment compulsorily transfers to the Service Provider or a subcontractor by operation of TUPE, COSOP or for any other reason, as a result of the award of this Call Off Contract; and
<b>Pension Benefits</b>	any benefits (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor's benefits provided under an occupational pension scheme.

- 1.2 In the event of any termination or expiry or partial termination or expiry of this Call Off Contract which results in a transfer of the Eligible Employees, the Service Provider must (and if offering a Broadly Comparable scheme, must use all reasonable efforts to procure that the trustees or managers of that pension scheme must):
- 1.2.1 not adversely affect pension rights accrued by the Eligible Employees in the period ending on the Exit Transfer Date;
  - 1.2.2 within 30 Working Days of being requested to do so by the new provider, (or if the new provider is offering Eligible Employees access to the NHS Pension Scheme, by NHS Business Services Authority), provide a transfer amount calculated in accordance with Fair Deal for Staff Pensions; and
  - 1.2.3 do all acts and things, and provide all information and access to the Eligible Employees, as may in the reasonable opinion of the Customer be necessary or desirable and to enable the Customer and/or the new provider to achieve the objectives of Fair Deal for Staff Pensions.

**SCHEDULE 13**

**GUARANTEE**

[NOT USED]

## **SCHEDULE 14**

### **EXIT PLAN**

#### **1 PURPOSE**

- 1.1 The purpose of the Exit Plan document is to set out a strategy that to facilitate an orderly and controlled transition from the Service Provider to a newly appointed supplier as nominated by the Customer.
- 1.2 This document sets out key deliverables that will enable the Customer and Service Provider to transition the service to the selected new supplier.
- 1.3 It also sets out the communication strategy intended to ensure that both the Customer and Service Provider can liaise with each other to achieve the transition outcome within set timescales and without any inconvenience to the Customer.
- 1.4 The primary goal is to ensure that all individuals involved in the Exit Plan understand the overall aims and objectives together with the participation and co-operation that is required to facilitate a successful transition.

#### **2 EXIT PLAN**

- 2.1 Where documents are to be exchanged between the Service Provider and Customer an agreed template should be used to standardise this process. Should any particular difficulties arise concerning any aspect of the exit arrangements, the matter may be referred for final agreement between an Authorised Officer and the Service Provider in accordance with the contractual dispute resolution process detailed in the main Call Off Contract terms and conditions.
- 2.2 Where the Call Off Contract is due to expire, the Customer will give the Service Provider formal notification not less than 6 months' prior to the end of the Term upon receipt of which the Service Provider will produce an updated Exit Plan reflecting current processes, for discussion within 30 days following receipt of the formal notification.
- 2.3 In the event the Call Off Contract is terminated by either party, the Service Provider will provide an updated Exit Plan reflecting current processes, for discussion within 30 days of the notice to terminate being issued. Where the notice period for termination is one month or less, the Service Provider will provide an updated Exit Plan for discussion within 10 days.
- 2.4 In both instances, the Customer will be expected to provide its comments and those of any of its stakeholders within 21 days (or 5 days where the notice period for termination is one month or less) and identify relevant resources to ensure that the updated Exit Plan is finalised to the satisfaction of both parties.
- 2.5 Notwithstanding clauses 2.4 to 2.4, the Exit Plan will include the terms relating to the matters set out in section 4 of this Schedule 14.

#### **3 DOCUMENT CONTROL**

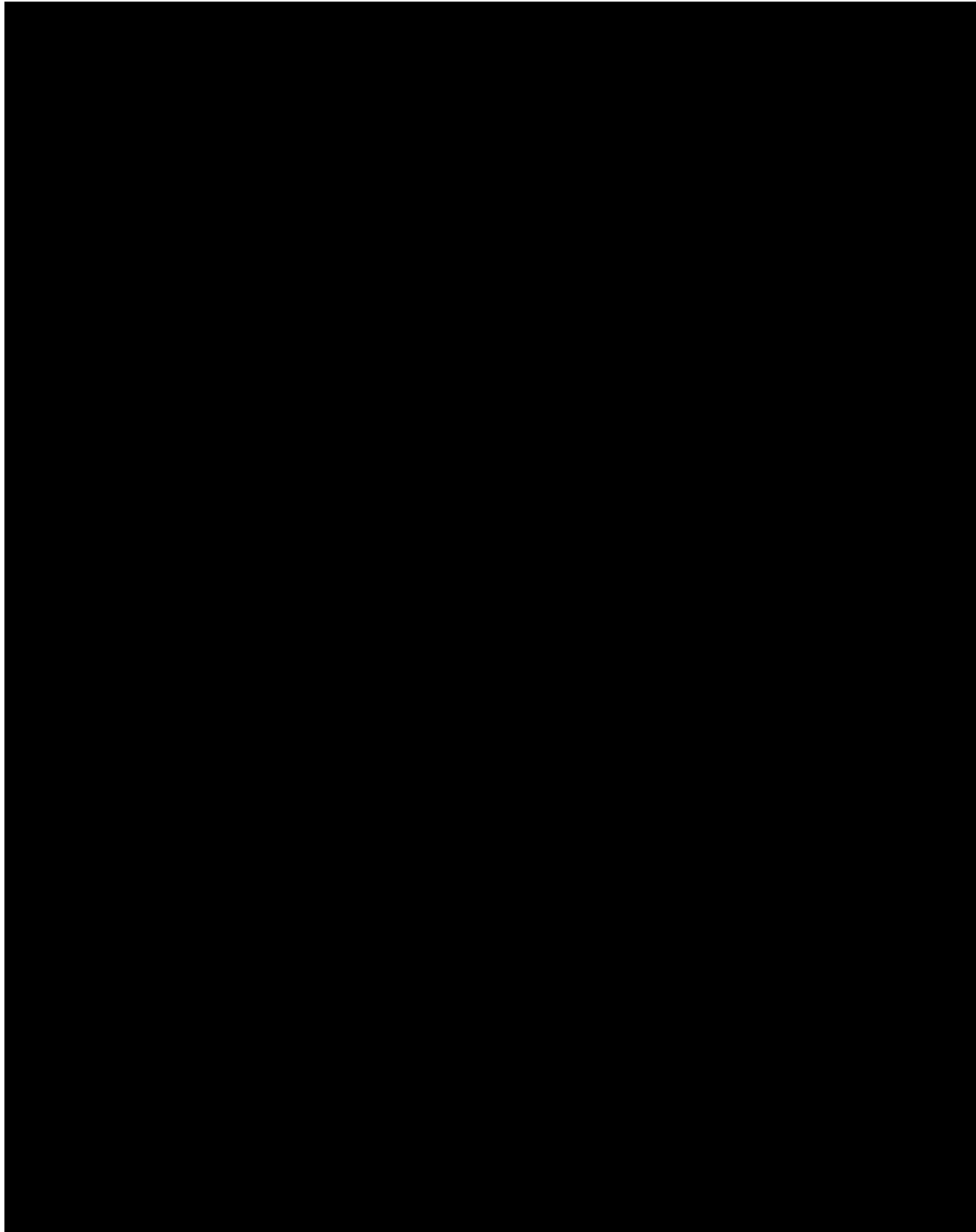
- 3.1 The Service Provider will maintain minutes of all Exit Plan meetings in a standard file format agreed by the parties and ensure that these are circulated electronically (where possible) to all attendees and other nominated parties.
- 3.2 To maintain integrity of the Exit Plan the Service Provider will apply change and version control procedures to track developments and ensure that agreed changes are historically applied.

3.3 Following a notification of termination of the Call Off Contract, all details provided to the Customer will be maintained and updated on a monthly basis through to the Call Off Contract end date.

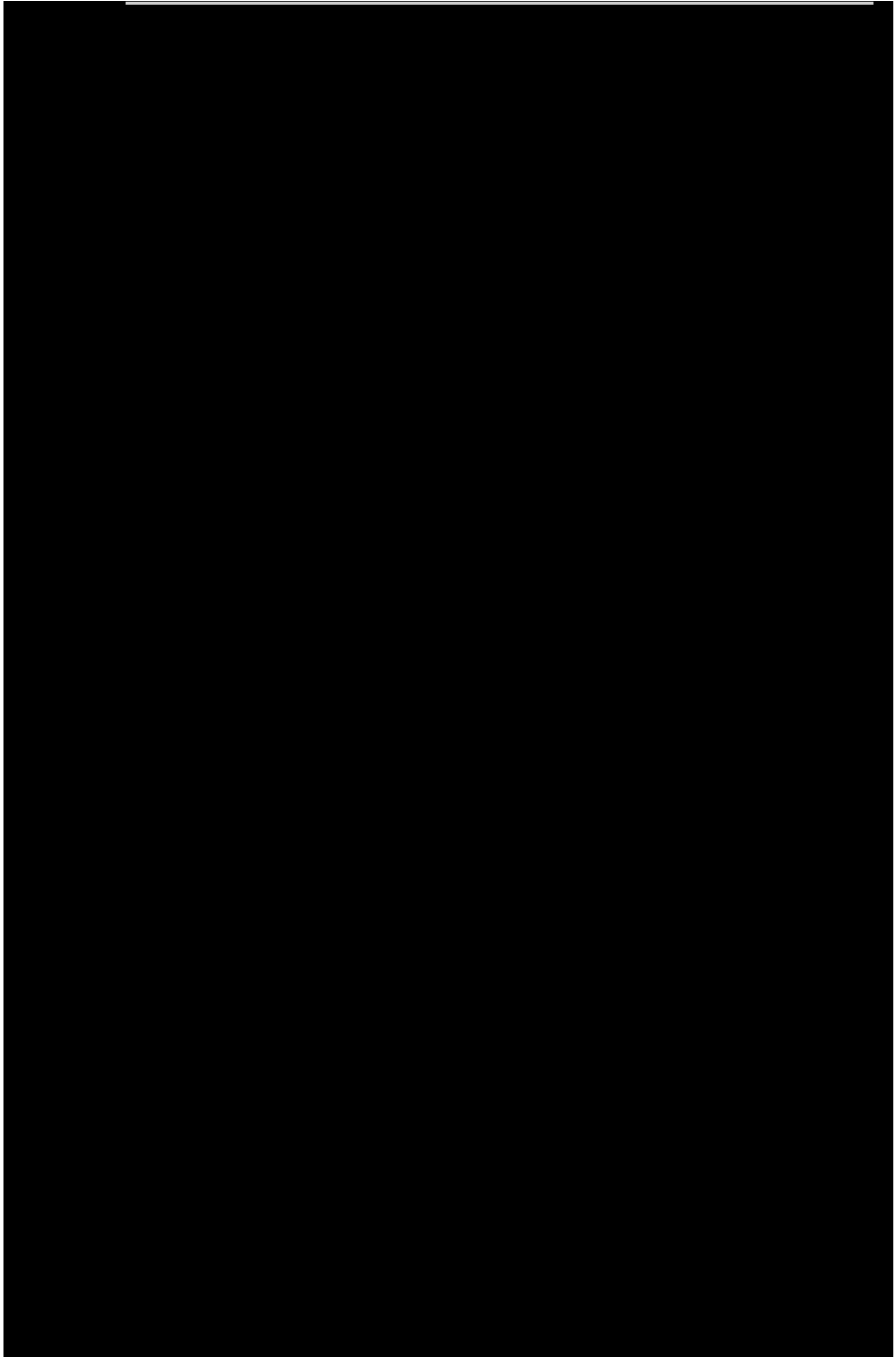
3.4 The Exit Plan shall be signed off by both the Customer and the Service Provider.

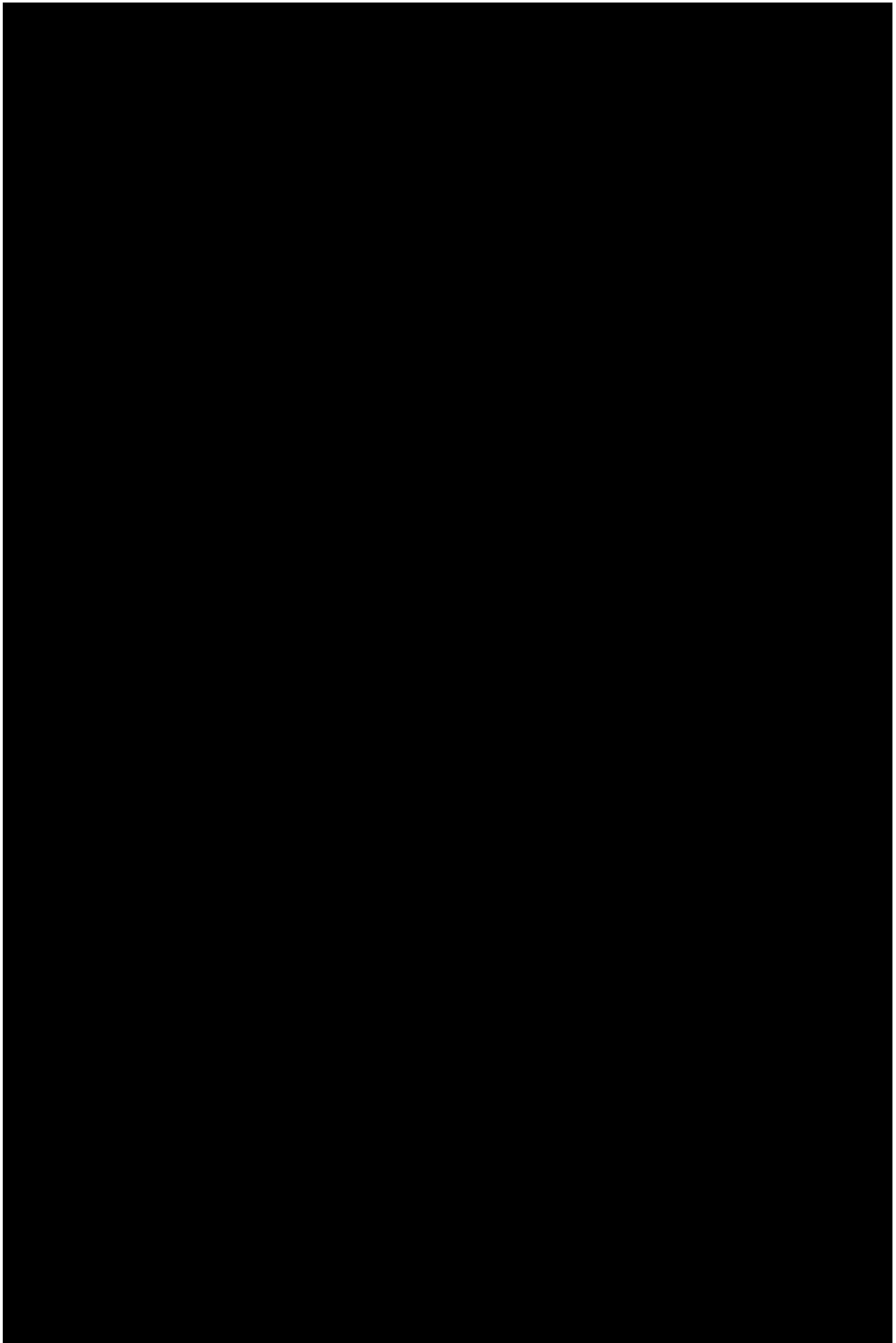
#### **4 ROLES AND RESPONSIBILITIES**

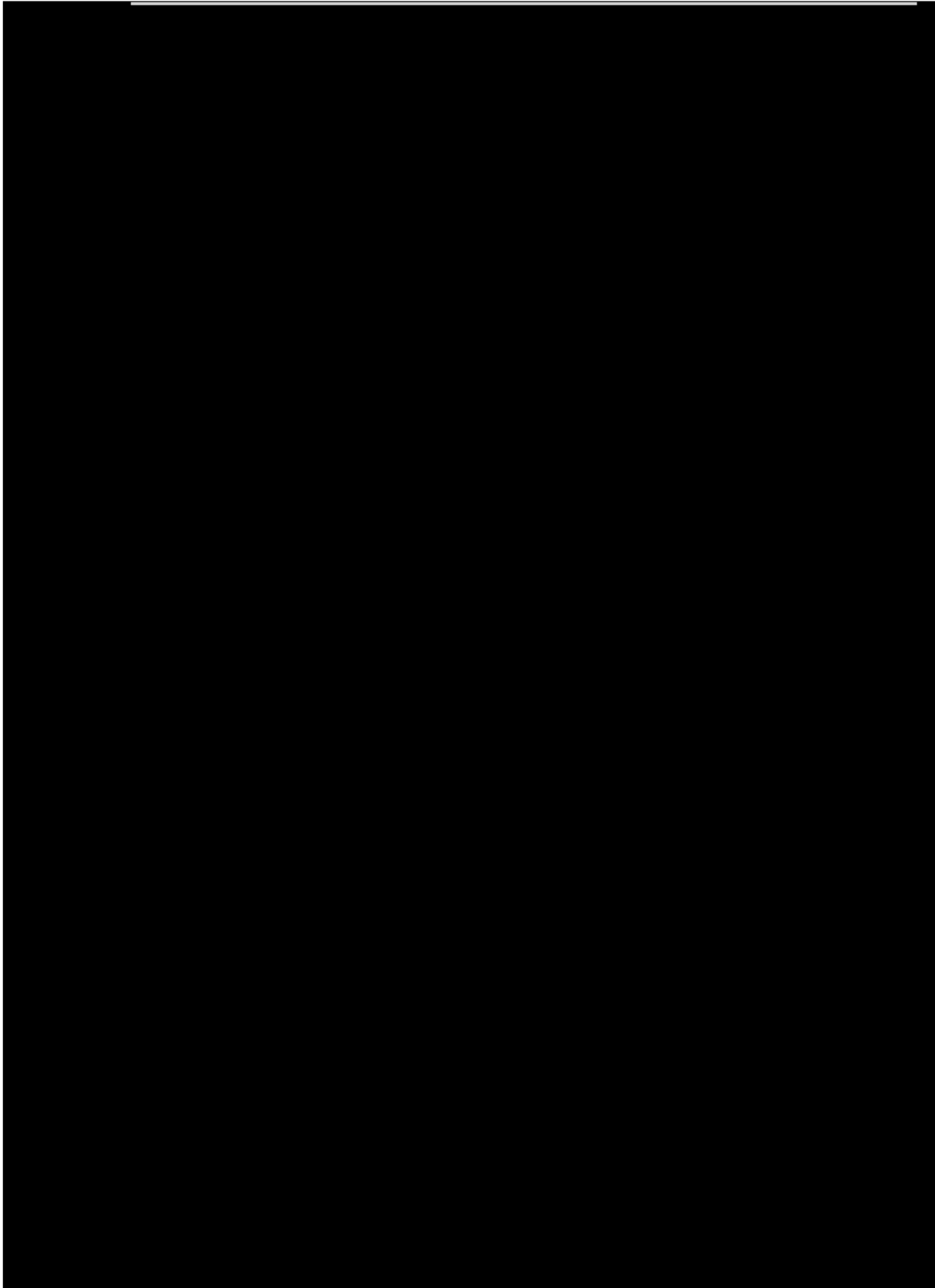
The below table sets out the joint responsibilities each party has in relation to the final Exit Plan:











## **SCHEDULE 15**

### **BUSINESS CONTINUITY AND DISASTER RECOVERY**

- 1.1 The Service Provider's standard Business Continuity and Disaster Recovery plan is based on a reasonable endeavours approach and the DR Invocation Timeline document provided below is a guide as to what the Service Provider will do and what the Customer can expect based on a wide variety of potential Business Continuity or Disaster Recovery incidents.
- 1.2 Please refer to the DR Invocation Timeline document below. This details the planned activities against a timeline in the event of a Business Continuity or Disaster Recovery incident.
- 1.3 Given the variety of potential scenarios that may require a Business Continuity or Disaster Recovery response there are situations where the Service Provider cannot provide any guarantees that the Service Provider's Business Continuity or Disaster Recovery arrangements will provide full cover, a mass loss of staff due to pandemic being an example of this.
- 1.4 In a pandemic situation there is the possibility that absence levels, due to infection or symptoms of an infection, hit a point where BAU operations are impacted, even with the implementation of the Service Provider's Business Continuity plan and full Disaster Recovery invocation would not address remedy the situation.
- 1.5 As part of the Service Provider's Business Continuity and Disaster Recovery plan, the Service Provider uses a client matrix to identify critical clients and the critical services for those clients. In the event of a disruptive incident (for example, a Business Continuity or Disaster Recovery incident) this matrix is referenced to identify critical clients and services to ensure these are prioritised upon invocation of the Business Continuity and Disaster Recovery plan. The Services provided under this Call Off Contract is one of those critical services identified and the Customer is a critical client.

## **2 BUSINESS CONTINUITY OR DISASTER RECOVERY ARRANGEMENTS**

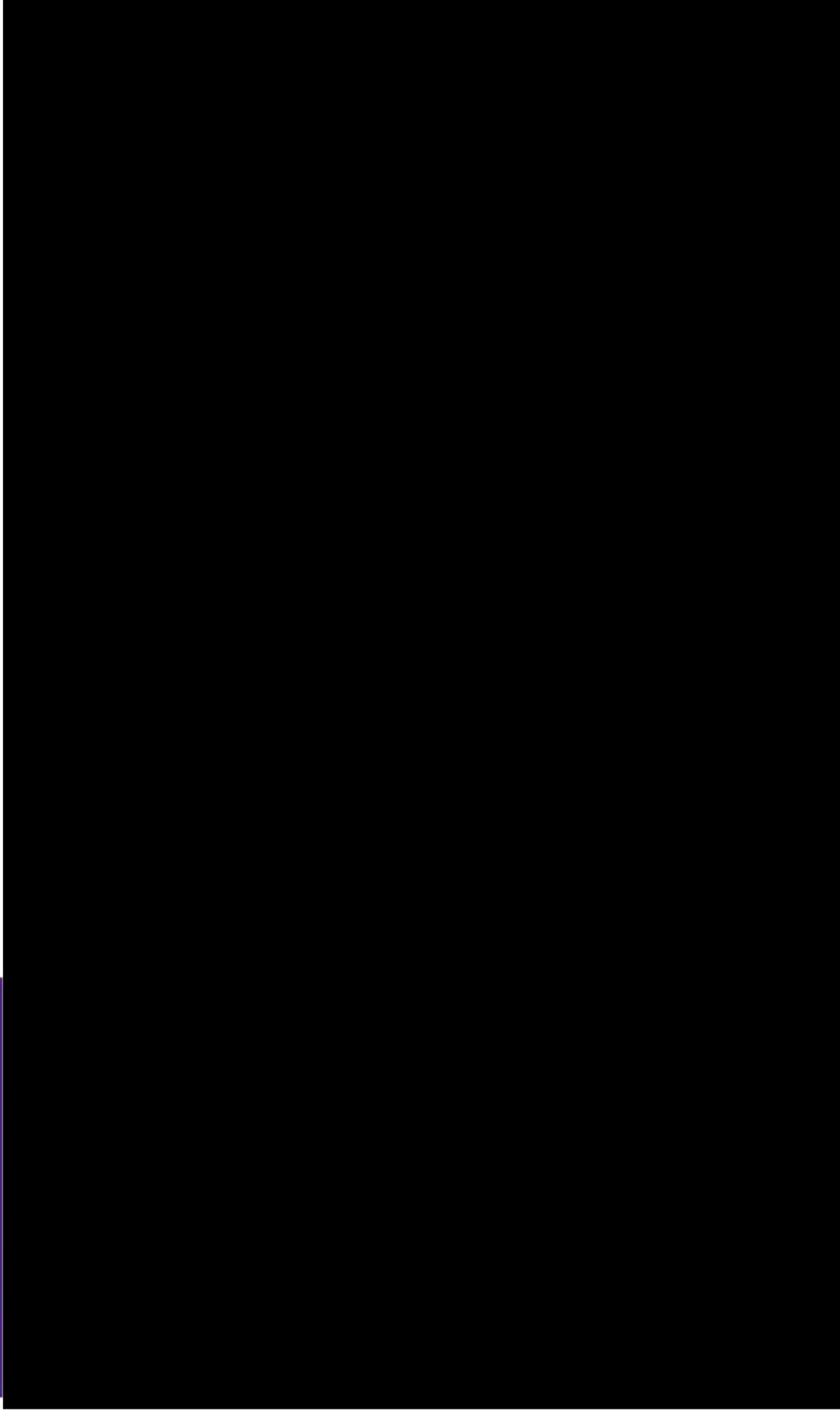
- 2.1 The Service Provider has contracts with two Business Continuity and Disaster Recovery providers:
  - Critical Mail Continuity Services Limited (a company incorporated and registered in England and Wales with company number 03369486 whose registered office is at Tower Close, Huntingdon, Cambridgeshire, PE29 7YD), Droitwich
  - Business Continuity Limited (a company incorporated and registered in England and Wales with company number 02103026 whose registered office is at 20 Havelock Road, Hastings, England, TN34 1BP), Northampton
- 2.2 Both providers referred to in paragraph 2.1 above operate secure, dedicated, stand-alone Business Continuity and Disaster Recovery sites for the mailing industry and hold appropriate certifications and accreditations, including CPAS accreditation for personalisation and infilling of cheques.
- 2.3 The Business Continuity and Disaster Recovery providers' staff are familiarised with the Service Provider's requirements during regular testing so can commence recovery on the Service Provider's behalf, following which it is intended that Service Provider operators would relocate to fulfil the bulk of the BAU contracted work.
- 2.4 It is important that the Controller is aware of the Service Provider's arrangements and has authorised the migration of the work to the Service Provider's Business Continuity and Disaster Recovery providers in advance. The Service Provider shall therefore notify the Controller of its arrangements and seek such authorisation where there is an event of

Business Continuity and/or Disaster Recovery. If there is a loss of production/site incident at the Mansfield Location we shall, in order to meet the requirements of the Data Protection Legislation, recover only that work for which the Service Provider has the appropriate Controller's permission, via the Service Provider's Business Continuity and Disaster Recovery providers where applicable.

- 2.5 Where Customers' work is subject to annual testing at the sites referred to in paragraph 2.2 above, the rules for anonymisation/pseudonymisation of the test data apply except where the Controller has granted explicit permission for use of the live data.
- 2.6 Ad-hoc work that might usually be fulfilled at the Mansfield Location is not included in the Service Provider's Business Continuity and Disaster Recovery contracts. The Service Provider will liaise with the Customer to agree how this work will be managed.
- 2.7 The Service Provider is able to provide an outsourcing service via our established print management team. Alternatively, the Customer may, for the duration of the Business Continuity and Disaster Recovery incident, repatriate the management of the Business Continuity and Disaster Recovery incident or outsource the management of the Business Continuity and Disaster Recovery incident to other providers. The requirements for Controller authorisation are the same as for movement of the work to the Service Provider's two Business Continuity and Disaster Recovery providers and Controllers may request the detail of any/all third-party organisations involved in the fulfilments.
- 2.8 Owing to the possible sensitivity and personnel issues associated with the loss of the Service Provider's Mansfield Location, the Service Provider will not send "round robin" type communications in the event of an incident.
- 2.9 The Service Provider shall contact the Authorised Officer in the event that the Service Provider needs to contact the Customer to inform the Customer that it has invoked Business Continuity and Disaster Recovery.
- 2.10 Depending on the Business Continuity and Disaster Recovery incident that has occurred, relevant stakeholders (including, but not limited to representatives from the Service Provider, the Customer, and representatives from the providers referred to at paragraph 2.1 above) may convene a working group to help make collective decisions, to ensure that the Business Continuity and Disaster Recovery incident is responded to in the best possible manner.

# CAPITA

Intelligent Communications



## **SCHEDULE 16**

### **APPROVED SUB-CONTRACTORS**

- Whistl/TNT
- Royal Mail
- Critical Mail Continuity Services Limited
- Business Continuity Limited

**SCHEDULE 17****PROCESSING, PERSONAL DATA AND DATA SUBJECTS**

Description	Details
Subject matter of the processing	Data is processed to enable printing and postage of appointment invitations and reminders, and notification of results from screening tests.
Duration of the processing	Processing will commence on the date of execution by the parties and run for a period of 12 months to 31 March 2025.
Nature and purpose of the processing	Personal data is subject to automated processes in order to invite women in England to book medical testing appointments and provide outcomes from the tests as part of the Cervical Screening Programme.
Type of Personal Data	The Supplier will be using names and addresses in communications, and in some cases special personal health data in reporting test outcomes.
Categories of Data Subject	The data subjects will be women in England between the ages of 25 and 64. [Examples include: Staff (including volunteers, agents and temporary workers) customers/clients, suppliers, patients, students/pupils, members of the public, users of a particular website etc]
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	Suppliers are required to comply with the extant guidance from Public Health England in its Cervical screening: call and recall Record retention schedule.