

## 1. FRAMEWORK SCHEDULE 4: LETTER OF APPOINTMENT AND CALL-OFF TERMS

### Part 1: Letter of Appointment

LOT 6 – Creative Development and Delivery

NHS Digital  
Trevelyan Square  
Boar Lane  
Leeds  
LS1 6AE

Dear Sirs

### Letter of Appointment

This letter of Appointment is issued in accordance with the provisions of the Framework Agreement (RM3796) between CCS and the Agency.

Capitalised terms and expressions used in this letter have the same meanings as in the Call-Off Terms unless the context otherwise requires.

Order Number:	[ ]
From:	NHS Digital Trevelyan Square Boar Lane Leeds LS1 6AE
To:	Kindred Agency Ltd Dean Bradley House 52 Horseferry Road London SW1P 2AF

Effective Date:	4 <sup>th</sup> March 2019
Expiry Date:	End date of Initial Period 31 <sup>st</sup> May 2019

RM3796 – Communication Services  
Letter of Appointment  
Attachment 4  
Revised 07-03-2018


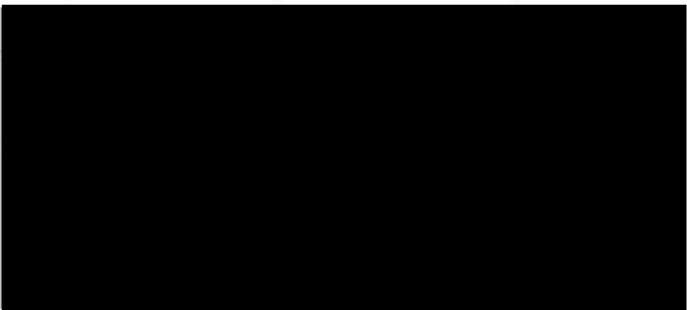
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	<p>End date of Maximum Extension Period 31<sup>st</sup> July 2019.</p> <p>Minimum written notice to Agency in respect of extension:1 week</p>
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Relevant Lot:	6 Creative Development and Delivery
Services required:	<p>Set out in Section 2 (Services offered) and refined by: the Client's Brief attached at Annex A and the Agency's Proposal attached at Annex B; and</p> <p>1 The following requirements shall take priority above all terms, conditions and specifications set out in this Call-Off Contract (including without limitation any embedded documents and terms), and the Agency shall ensure that the software licences meet and conform with the following requirements:</p> <p>1.1 The Client shall be entitled, free of charge, to sub licence the software to any contractor and/or Sub-Contractor of the Client who is working towards and/or is providing services to the Client.</p> <p>1.2 The Client's role as national information and technology partner to the NHS and social care bodies involves the Client buying services for or on behalf of the NHS and social care entities. Nothing in the licences for any of the software shall have the effect of restricting the Client from discharging its role as the national information and technology partner for the health and care system, which includes the ability of the Client to offer software and services to the NHS and social care entities. Specifically, any software licensing clause prohibiting 'white labelling', 'provision of outsourcing services' or similar, shall not be interpreted as prohibiting the Client's services.</p> <p>1.3 The Client shall be entitled to deploy the software at any location from which the Client and/or any contractor and/or Sub-Contractor of the Client is undertaking services pursuant to which the software is being licenced.</p> <p>1.4 Any software licenced to the Client on a named user basis shall permit the transfer from one user to another user, free of charge provided that the Agency is notified of the same (including without limitation to a named user who is a contractor and/or Sub-Contractor of the Client).</p> <p>1.5 The Agency shall ensure that the Client shall be entitled to assign or novate all or any of the software licences</p>

	<p>free of charge to any other central government entity, by giving the licensor prior written notice.</p> <p>1.6 The Agency shall notify the Client in advance if any software or service permits the Agency or any third party remote access to the software or systems of the Client.</p> <p>1.7 Where the Agency is responsible for the calculation of the appropriate number of users for software, and it is later shown there is a shortfall of licences, the Agency shall be responsible for all costs of the Client.</p>
Statement of Work	The Parties may enter into such Statements of Work as are agreed between the Parties under Clause 1.2

Key Individuals:	
[Guarantor(s)]	[ ]

Call Off Contract Charges (including any applicable discount(s), but excluding VAT):	
Insurance Requirements	<p>Additional public liability insurance to cover all risks in the performance of the Call-Off Contract, with a minimum limit of £1 million for each individual claim</p> <p>Additional employers' liability insurance with a minimum limit of £1 million] indemnity</p> <p>Additional professional indemnity insurance adequate to cover all risks in the performance of the Call-Off Contract with a minimum limit of indemnity of £1 million for each individual claim</p> <p>Product liability insurance cover all risks in the provision of Deliverables under the Call-Off Contract, with a minimum limit of £1 million for each individual claim</p>
Client billing address for invoicing:	<p>1.1   </p>

	<div data-bbox="671 210 1018 459" style="background-color: black; width: 217px; height: 111px; margin-bottom: 10px;"></div> <div data-bbox="608 488 655 517">1.2.</div> <div data-bbox="608 586 655 616">1.3.</div> <div data-bbox="608 819 655 848">1.4.</div> <div data-bbox="671 474 1385 1182" style="background-color: black; width: 447px; height: 316px;"></div>
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Alternative and/or additional provisions:	<p><i>The following provisions in relation to the Processing of Personal Data shall replace Clause 29 (Data Protection, Security and Publicity) of the Call-Off Contract:</i></p> <p><b>29. Data Protection, Security and Publicity</b></p> <p><b>Data Protection</b></p> <p>29.1 Where any Personal Data are Processed in connection with the exercise of the Parties' rights and obligations under this Call-Off Contract, the Parties acknowledge that the Agency shall be acting as a Processor on behalf of the Client as the Controller. The only Processing that the Agency is authorised to do is listed in Clause 29.13 and may not be determined by the Agency. The Controller could be the Client and/or other parties and therefore all references to the Client in this Clause 29 shall be interpreted to extend to any other Controller as if they were a party to this Call-Off Contract.</p>
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	<p>29.2 The Agency shall provide all reasonable assistance to the Client in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Client, include:</p> <p>29.2.1 a systematic description of the envisaged Processing operations and the purpose of the Processing;</p> <p>29.2.2 an assessment of the necessity and proportionality of the Processing operations in relation to the Services;</p> <p>29.2.3 an assessment of the risks to the rights and freedoms of Data Subjects; and</p> <p>29.2.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.</p> <p>29.3 The Agency shall, and shall procure that its agents, Sub-Processors and employees shall:</p> <p>29.3.1 Process the Personal Data only in accordance with instructions from the Client (which may be specific instructions or instructions of a general nature as set out in this Call-Off Contract, or as otherwise notified by the Client to the Agency in writing from time to time) and Clause 29.13, unless the Agency is required to do otherwise by Law. If it is so required the Agency shall promptly notify the Client before Processing the Personal Data unless prohibited by Law;</p> <p>29.3.2 notify the Client immediately if it considers that any of the Client's instructions infringe the Data Protection Laws;</p> <p>29.3.3 ensure that at all times it has in place appropriate technical and organisational measures (which are consistent with Article 32 of the GDPR) which the Client may reasonably reject (but failure to reject shall not amount to approval by the Client of the adequacy of the technical and organisational measures), to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data, such measures to ensure a level of security commensurate with the risks associated with the Processing having taken account of the:</p> <p>(a) nature of the data to be protected;</p> <p>(b) harm that might result from a Personal Data Breach;</p>
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	<ul style="list-style-type: none"> <li>(c) state of technological development; and</li> <li>(d) cost of implementing any measures;</li> </ul>
	<p>29.3.4 notify the Client immediately upon becoming aware of a Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the Client with sufficient information to meet any obligations to report a Personal Data Breach under the Data Protection Laws. Such notification shall as a minimum:</p> <ul style="list-style-type: none"> <li>(a) describe the nature of the Personal Data Breach, the categories and numbers of Data Subjects concerned, and the categories and numbers of Personal Data records concerned;</li> <li>(b) communicate the name and contact details of the data protection officer or other relevant contact from whom more information may be obtained;</li> <li>(c) describe the likely consequences of the Personal Data Breach; and</li> <li>(d) describe the measures taken or proposed to be taken to address the Personal Data Breach;</li> </ul>
	<p>29.3.5 co-operate with the Client and take such reasonable steps as are directed by the Client to assist in the investigation, mitigation and remediation of a Personal Data Breach;</p>
	<p>29.3.6 not disclose the Personal Data to any Agency staff unless necessary for the provision of the Services;</p>
	<p>29.3.7 other than where specifically authorised under this Call-Off Contract, not appoint any third party sub-contractor to Process the Personal Data ("<b>Sub-Processor</b>") without the prior written consent of the Client. In all cases where a Sub-Processor is appointed:</p> <ul style="list-style-type: none"> <li>(a) the contract between the Agency and the Sub-Processor shall include terms which are substantially the same as those set out in this Clause 29;</li> <li>(b) the Agency shall provide the Client with such information regarding the Sub-Processor as the Client may reasonably require;</li> <li>(c) the Agency shall remain fully liable to the Client for any failure by a Sub-Processor</li> </ul>

	<p>to fulfil its obligations in relation to the Processing of any Personal Data; and</p> <p>(d) the use of the Sub-Processor shall be otherwise in accordance with Clause 29;</p> <p>29.3.8 take reasonable steps to ensure the reliability and integrity of any Agency staff who have access to the Personal Data, ensuring in each case that access is strictly limited to those individuals who need to access the relevant Personal Data, as strictly necessary to perform the Services in the context of that individual's duties to the Agency, and ensure that the Agency staff:</p> <p>(a) are aware of and comply with the Agency's obligations under this Clause 29 together with any obligations pertaining to confidentiality or data protection which are set out in this Call-Off Contract;</p> <p>(b) are subject to confidentiality undertakings or other contractual or professional or statutory obligations of confidentiality;</p> <p>(c) 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 writing to do so by the Client or as otherwise permitted by this Call-Off Contract; and</p> <p>(d) have undergone adequate training in the use, care, protection and handling of Personal Data;</p> <p>29.3.9 notify the Client immediately if it receives:</p> <p>(a) from a Data Subject (or third party on their behalf):</p> <p>(i) a Data Subject Access Request (or purported Data Subject Access Request);</p> <p>(ii) a request to rectify any inaccurate Personal Data;</p> <p>(iii) a request to have any Personal Data erased or blocked;</p> <p>(iv) a request to restrict the Processing of any Personal Data;</p> <p>(v) a request to obtain a portable copy of Personal Data, or to</p>
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	<p>transfer such a copy to any Third Party; or</p> <p>(vi) an objection to any Processing of Personal Data;</p> <p>(b) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data under this Call-Off Contract;</p> <p>(c) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or</p> <p>(d) any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;</p> <p>(each a "<b>Relevant Communication</b>").</p> <p>29.3.10 taking into account the nature of the Processing, provide the Client with full cooperation and assistance (within the timescales reasonably required by the Client, and in any case within sufficient time for the Client to comply with any relevant timescales prescribed by the Data Protection Laws) in relation to any Relevant Communications (whether received by the Agency or by the Client directly) including by implementing such technical and organisational measures as may be reasonably required by the Client and by promptly providing:</p> <p>(a) the Client with full details and copies of the Relevant Communication (where received by the Agency);</p> <p>(b) the Client, on request by the Client, with any Personal Data it holds in relation to a Data Subject; and</p> <p>(c) assistance as requested by the Client with respect to any request from the Information Commissioner's Office, or any consultation by the Client with the Information Commissioner's Office;</p> <p>29.3.11 allow for audits (including inspections) of its data Processing activity by the Client or the Client's mandated auditor, and if requested by the Client, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 29 and provide to the Client copies of all</p>
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	<p>documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.</p> <p>29.3.12 cease Processing the Personal Data immediately upon the earlier of the (i) termination or expiry of this Call-Off Contract, or (ii) the cessation of the Services, and as soon as reasonably practicable thereafter, at the Client's option, either return, or securely and irrevocably delete from its systems (so that such Personal Data cannot be recovered or reconstructed), the Personal Data and any copies of it or of the information it contains; and</p> <p>29.3.13 designate a data protection officer if required by the Data Protection Laws.</p>
29.4	<p>The Agency shall not Process or otherwise transfer, or permit the transfer, of any Personal Data in or to any Restricted Country without obtaining the prior written consent of the Client (unless the transfer is required by EU or member state law to which the Agency is subject, and if this is the case then the Agency shall inform the Client of that requirement before Processing the Personal Data, unless a Law prohibits such information being provided on important grounds of public interest).</p>
29.5	<p>In respect of any Processing in, or transfer of Personal Data to, any Restricted Country permitted in accordance with Clause 29.4, the Agency shall, when requested by the Client, promptly enter into an agreement with the Client or any service recipient including or on such provisions as the Standard Contractual Clauses and/or such variation as a regulator or the Client might require which terms shall, in the event of any conflict, take precedence over those in this Clause 29, and the Agency shall comply with any reasonable instructions notified to it in advance by the Client with respect to the transfer of the Personal Data;</p>
29.6	<p>Subject to the Client providing the Agency with all information reasonably required by the Agency to comply with this Clause 29.6, create and maintain a register setting out:</p> <p>29.6.1 the types of Personal Data and categories of Data Subject whose Personal Data are Processed during the provision of the Services; and</p> <p>29.6.2 a general description of the technical and organisational security measures adopted by the Agency to protect the Personal Data in accordance with Clause 29.3.3.</p>
29.7	<p>The Agency shall use its reasonable endeavours to assist the Client to comply with any obligations under the Data Protection Laws and shall not perform its obligations</p>

	<p>under this Call-Off Contract in such a way as to cause the Client to breach any of the Client's obligations under the Data Protection Laws to the extent the Agency is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.</p>
29.8	Both the Client and the Agency shall comply with their respective obligations under the GDPR in relation to this Call-Off Contract, including by adhering to any relevant codes of conduct published pursuant to Article 40 of the GDPR.
29.9	Both the Client and the Agency shall comply with their respective obligations under any relevant law implementing or otherwise giving effect to the NIS Regulations. In response to the obligations created by any law implementing or otherwise giving effect to the NIS Regulations, the Client may elect to produce a report setting out the steps to be reasonably followed by both parties in relation to their compliance with the NIS Regulations in the context of the Services, and the Agency shall comply with the terms of any such report.
29.10	Notwithstanding any other provision in this Call-Off Contract relating to amendments or variations to this Call-Off Contract, the Client may, at anytime on not less than 30 Working Days' notice, revise this Clause 29 by replacing it with 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).
29.11	The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Client may on not less than 30 Working Days' notice to the Agency amend this Call-Off Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
29.12	<p>If following the date of this Call-Off Contract:</p> <p>29.12.1 any codes of practice, codes of conduct, regulatory guidance, standard clauses and any other related laws arising from the GDPR or from the NIS Regulations are published; or</p> <p>29.12.2 the UK ceases to be a Member State of the European Union, then the Client may require the Agency to take such further reasonable actions, or enter into such further contractual terms, in each case as necessary to take account of these developments.</p>
29.13	The table below sets out the agreed description of the Processing being undertaken in connection with the exercise of the Parties' rights and obligations under this Call-Off Contract. The Agency shall comply with any

further written instructions with respect to Processing given by the Client and any such further instructions shall be incorporated into this table:

Description	Details
<b>Identity of the Controller and Processor</b>	N/A
Subject matter of the Processing	N/A
Duration of the Processing	N/A
Nature and purposes of Processing	N/A
Type of Personal Data being Processed	N/A
Categories of Data Subjects	N/A
Plan for return of the data once the Processing is complete unless requirement under union or member state law to preserve that type of data	N/A
Data Protection Officer	N/A

29.15 The Agency will use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software (or as otherwise agreed between the Parties).

29.16 Notwithstanding Clause 29.9, if Malicious Software is found, the Parties will co-operate to reduce its impact. If Malicious Software causes loss of operational efficiency or loss or corruption of Client Data, the Parties will assist each other to mitigate any losses and to restore the provision of the Services.

#### **Client Data**

29.11 Client Data except as necessary to perform its obligations under this Call-Off Contract or as otherwise Approved by the Client.



	<p>29.12 If any Client Data is held and/or Processed by the Agency, the Agency must supply that Client Data to the Client, at the time and in the format the Client requests.</p> <p>29.13 The Agency is responsible for preserving the integrity of any Client Data it holds or processes, and preventing its corruption or loss.</p> <p>29.14 The Agency will perform secure back-ups of all Client Data and ensure that such back-ups are available to the Client (or to such other person as the Client may direct) on request.</p> <p>29.15 The Agency will ensure that any system it uses to holds any Client Data, including back-up data, is secure. This system must comply with any security requirements and any government security requirement policy relating to this Client Data.</p> <p>29.16 If any time the Agency suspects or has any reason to believe that the Client Data is corrupted, lost or sufficiently degraded in any way, then the Agency must notify the Client immediately. This notification must contain information detailing the remedial action the Agency proposes to take.</p> <p><b>Publicity and Branding</b></p> <p>29.17 The Agency may not make any press announcements or publicise this Call-Off Contract or use the Client's name or brand in any promotion or marketing or announcement of orders without Approval from the Client.</p> <p>29.18 The Agency will seek the Client's prior Approval before marketing their involvement in any Deliverable or draft Deliverable or entering into any industry awards or competition which will involve the disclosure of all or any part of any Deliverable or draft Deliverable.</p> <p><i>Within the scope of the Call-Off Contract, the following clauses will be added to the Call-Off Terms:</i></p> <p><b>13A. Supply Chain Protection</b></p> <p>The Agency shall ensure that each material Sub-Contract shall include:</p> <ul style="list-style-type: none"> <li>a) a right under Contracts (Rights of Third Parties) Act 1999 for the Client to enforce any provisions under the Sub-Contract which confer a benefit upon the Client;</li> <li>b) a provision enabling the Client to enforce the Sub-Contract as if it were the Agency; and</li> </ul>
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	<p>c) obligations no less onerous on the Sub-Contractor than those imposed on the Agency under this Call-Off Contract.</p> <p><b>13B. Assignment and Novation</b></p> <p>The Client may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under the Call-Off Contract and/or any associated licences to the Department of Health, NHS England and / or any Central Government Body and the Agency shall, at the Client's request, enter into a novation agreement in such form as the Client shall reasonably specify in order to enable the Client to exercise its rights pursuant to this Clause 13B.</p> <p><b>21A. Corporate Social Responsibility Conduct and Compliance</b></p> <p>21A.1 The Client conducts its activity based on corporate and social responsibility values which are consistent with government policy regarding social responsibility, environmental responsibility, and ethical and human rights.</p> <p>21A.2 The Agency represents and warrants that it:</p> <ul style="list-style-type: none"> <li>(a) complies with all CSR Laws;</li> <li>(b) requires its Sub-Contractors and any person under its control, to comply with all CSR Laws; and</li> <li>(c) has adopted a written corporate and social responsibility policy that sets out its values for activity and behaviour (including, without limitation, employees, clients, stakeholders and communities impacted by the Agency's business activities and the environment).</li> </ul> <p>21A.3 The Agency shall notify the Client in the event that its corporate and social responsibility policies conflict with, or do not cover the same subject matter in an equivalent level of detail as is in, the CSR Policies.</p> <p><b>21B Modern Slavery</b></p> <p>21B.1 The Agency represents and warrants that at the Effective Date neither the Agency, nor any of its officers and employees:</p> <ul style="list-style-type: none"> <li>(a) have been convicted of any offence involving slavery and human trafficking; and</li> </ul>
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	<p>(b) having made reasonable enquiries, so far as it is aware, have been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.</p> <p>21B.2 The Agency shall implement due diligence procedures for its Sub-Contractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.</p> <p>21B.3 The Agency shall prepare and deliver to the Client each year, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.</p> <p><b>29A. Cyber Security Requirements</b></p> <p>The Agency warrants and represents that it has complied with and throughout the Call Off Contract Period will continue to comply with the Cyber Security Requirements.</p> <p><b>33.8 Execution and Counterparts</b></p> <p>This Call-Off Contract may be executed in counterparts, each of which when executed shall constitute an original but all counterparts together shall constitute one and the same instrument. Execution of this Call-Off Contract may be carried out in accordance with EU Directive 99/93 (Community framework for electronic signatures) and the Electronic Communications Act 2000, and in such situation, this Call-Off Contract shall be formed on the date on which both Parties have communicated acceptance of its terms.</p> <p><i>For the purposes of incorporation of Schedule 1 (Definitions and Interpretations) into the Call-Off Contract the following definitions shall be added (and where such terms are already defined, such definitions shall be replaced with the corresponding definitions below):</i></p> <p><b>"Client Personal Data"</b> means the Personal Data supplied by the Client to the Agency for purposes of, or in connection with, the Call-Off Contract;</p> <p><b>"Controller" or "Data Controller"</b> has the meaning given to it in the Data Protection Laws;</p>
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	<p><b>"CSR Laws"</b> means Laws relating to corporate social responsibility issues (e.g. anti-bribery and corruption, health and safety, the environmental and sustainable development, equality and diversity), including but not limited to the Modern Slavery Act 2015, the Public Services (Social Value) Act 2012; the Public Contracts Regulations 2015 and Article 6 of the Energy Efficiency Directive 2012/27/EU, from time to time in force;</p> <p><b>"CSR Policies"</b> means the Client's policies, including, without limitation, anti-bribery and corruption, health and safety, the environmental and sustainable development, equality and diversity, and any similar policy notified to the Agency by the Client from time to time, and "CSR Policy" shall mean any one of them;</p> <p><b>"Cyber Security Requirements"</b> means:</p> <ul style="list-style-type: none"> <li>a. compliance with the DSP Toolkit;</li> <li>b. any other cyber security requirements relating to the Services notified to the Agency by the Client from time to time;</li> </ul> <p><b>"Data Protection Impact Assessment"</b> means an assessment by the Client of the impact of the envisaged processing on the protection of Personal Data;</p> <p><b>"Data Protection Laws"</b> means applicable legislation protecting the fundamental rights and freedoms of individuals, in respect of their right to privacy and the processing of their personal data, as amended from time to time, including, Regulation (EU) 2016/679, 'the General Data Protection Regulation' ("<b>GDPR</b>") and the Data Protection Act 2018) and the Privacy and Electronic Communications Regulations 2003, together with decisions, guidelines, guidance notes and codes of practice issued from time to time by courts, data protection authorities and other applicable Government authorities;</p> <p><b>"Data Subject"</b> has the meaning given to it in the Data Protection Laws;</p> <p><b>"Data Subject Access Request"</b> means a request made by a Data Subject in accordance with rights granted pursuant to the Data Protection Laws to access his or her Personal Data;</p> <p><b>"DSP Toolkit"</b> means the data security and protection toolkit, an online self-assessment tool that allows organisations to measure their performance against the National Data Guardian's 10 data security standards and supports key requirements of the GDPR, which can be accessed from <a href="https://www.dsptoolkit.nhs.uk/">https://www.dsptoolkit.nhs.uk/</a>, as may be amended or replaced by the Client or the Department of Health and Social Care from time to time;</p>
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	<p><b>"NIS Regulations"</b> means The Network and Information Systems Regulations 2018 and any guidelines, guidance notes, codes of practice and codes of conduct issued from time to time by a competent authority;</p> <p><b>"Personal Data"</b> has the meaning given to it in the Data Protection Laws, and applies to personal data which is Processed by the Agency or any Sub-Contractor on behalf of the Customer or a Central Government Body pursuant to or in connection with this Call-Off Contract;</p> <p><b>"Personal Data Breach"</b> means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed;</p> <p><b>"Process"</b> has the meaning given to it in the Data Protection Laws, and <b>"Processed"</b> and <b>"Processing"</b> shall be construed accordingly;</p> <p><b>"Restricted Country"</b> means any country which is not (i) a member of the European Economic Area; (ii) the United Kingdom; (iii) deemed adequate by the European Commission pursuant to article 25(6) of Directive 95/46/EC or article 45(3) of the General Data Protection Regulation;</p> <p><b>"Standard Contractual Clauses"</b> means the standard contractual clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of protection as set out in Commission Decision C (2010) 593 and reference to the standard contractual clauses shall be to the clauses as updated, amended, replaced or superseded from time to time by the European Commission; and</p> <p><b>"Sub-Processor"</b> has the meaning given to it in Clause 29.3.7.</p>
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#### FORMATION OF CALL OFF CONTRACT

**BY SIGNING AND RETURNING THIS LETTER OF APPOINTMENT (which may be done by electronic means) the Agency agrees to enter a Call-Off Contract with the Client to provide the Services in accordance with the terms of this letter and the Call-Off Terms.**

**The Parties hereby acknowledge and agree that they have read this letter and the Call-Off Terms.**

**The Parties hereby acknowledge and agree that this Call-Off Contract shall be formed when the Client acknowledges (which may be done by electronic means) the receipt of the signed copy of this letter from the Agency within two (2) Working Days from such receipt.**



For and on behalf of the Agency: **FINANCE**  
Name and Title: **ROSS GARAVAND** **DIRECTOR**  
Signature:   
Date: **05/03/2019**

For and on behalf of the Client:  
Name and Title: **Victoria Eaton, Commercial Lead**  
Signature: **Victoria Eaton**  
Date: **4/3/19**

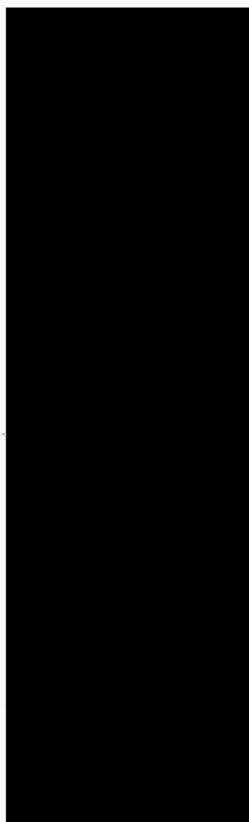
## **ANNEX A**

### **Client Brief**



Workforce cyber  
security comms camp

**ANNEX B**  
**Agency Proposal**



**ANNEX C**  
**Statement of Works**

**Statement of Work-**

**This Statement of Work is issued under and in accordance with the Call-Off Contract entered into between the parties dated *[insert date of signature of Call-Off Contract.]***

<b>Project:</b>	To produce a toolkit of engaging communications materials that can be used by health and care organisations as an integrated staff-facing cyber/data security awareness campaign. We anticipate that organisations will run the campaign at different times of the year therefore it should be stand alone and work for any length of time or at any time of the year.													
<b>Project start Date</b>	4 <sup>th</sup> March 2019													
<b>Notice period for cancellation</b>														
<b>[Project Notice Period]:</b>														
<b>Overarching Brand/Campaign</b>	Utilises NHS Digital branding guidelines													
<b>Services &amp; Deliverables:</b>	As detailed in the Design Brief in Annex A of Letter of Appointment. Client's use of the Deliverables will be "subject to any third party usage rights which are notified to the Client in accordance with this Call-Off Contract".													
<b>Inclusion of Additional Schedules</b>	<div>The following Schedules are incorporated into this Statement of Work</div> <table><tr><th>Schedule Name</th><th>Incorporated (Mark with 'X' if incorporated)</th></tr><tr><td>Creative Advertising Services (online and/or offline)</td><td></td></tr><tr><td>Social Media Services</td><td></td></tr><tr><td>Public Relations</td><td></td></tr><tr><td>Simple Software/website/app development</td><td></td></tr><tr><td>Below the line/experiential</td><td></td></tr></table>		Schedule Name	Incorporated (Mark with 'X' if incorporated)	Creative Advertising Services (online and/or offline)		Social Media Services		Public Relations		Simple Software/website/app development		Below the line/experiential	
Schedule Name	Incorporated (Mark with 'X' if incorporated)													
Creative Advertising Services (online and/or offline)														
Social Media Services														
Public Relations														
Simple Software/website/app development														
Below the line/experiential														



<b>Project Plan:</b>	As detailed in ITT.
<b>asContract Charges:</b>	<i>The Client shall pay the Agency the sum of [REDACTED] plus VAT for delivery of these Services, payable in monthly instalments. For the avoidance of doubt, the Contract Charges shall be inclusive of all third party costs</i>
<b>Client Materials:</b>	<i>As detailed in Kindred Agency tender submission detailed in Annex B of Letter of Appointment.</i>
<b>International locations</b>	N/A
<b>Client Affiliates:</b>	<i>Affiliates as detailed in Design Brief in Annex A of Letter of Appointment.</i>
<b>Special Terms:</b>	<p><i>The following provisions in relation to the Processing of Personal Data shall replace Clause 29 (Data Protection, Security and Publicity) of the Call-Off Contract:</i></p> <p><b>29. Data Protection, Security and Publicity</b></p> <p><b>Data Protection</b></p> <p>29.1 Where any Personal Data are Processed in connection with the exercise of the Parties' rights and obligations under this Call-Off Contract, the Parties acknowledge that the Agency shall be acting as a Processor on behalf of the Client as the Controller. The only Processing that the Agency is authorised to do is listed in Clause 29.13 and may not be determined by the Agency. The Controller could be the Client and/or other parties and therefore all references to the Client in this Clause 29 shall be interpreted to extend to any other Controller as if they were a party to this Call-Off Contract.</p> <p>29.2 The Agency shall provide all reasonable assistance to the Client in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Client, include:</p> <p>29.2.1 a systematic description of the envisaged Processing operations and the purpose of the Processing;</p>

- 29.2.2 an assessment of the necessity and proportionality of the Processing operations in relation to the Services;
  - 29.2.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 29.2.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 29.3 The Agency shall, and shall procure that its agents, Sub-Processors and employees shall:
- 29.3.1 Process the Personal Data only in accordance with instructions from the Client (which may be specific instructions or instructions of a general nature as set out in this Call-Off Contract, or as otherwise notified by the Client to the Agency in writing from time to time) and Clause 29.13, unless the Agency is required to do otherwise by Law. If it is so required the Agency shall promptly notify the Client before Processing the Personal Data unless prohibited by Law;
  - 29.3.2 notify the Client immediately if it considers that any of the Client's instructions infringe the Data Protection Laws;
  - 29.3.3 ensure that at all times it has in place appropriate technical and organisational measures (which are consistent with Article 32 of the GDPR) which the Client may reasonably reject (but failure to reject shall not amount to approval by the Client of the adequacy of the technical and organisational measures), to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data, such measures to ensure a level of security commensurate with the risks associated with the Processing having taken account of the:
    - (a) nature of the data to be protected;
    - (b) harm that might result from a Personal Data Breach;
    - (c) state of technological development; and
    - (d) cost of implementing any measures;
  - 29.3.4 notify the Client immediately upon becoming aware of a Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the Client with sufficient information to meet any obligations to report a Personal Data Breach under the Data Protection Laws. Such notification shall as a minimum:
    - (a) describe the nature of the Personal Data Breach, the categories and numbers of Data Subjects concerned, and the categories and numbers of Personal Data records concerned;

- (b) communicate the name and contact details of the data protection officer or other relevant contact from whom more information may be obtained;
  - (c) describe the likely consequences of the Personal Data Breach; and
  - (d) describe the measures taken or proposed to be taken to address the Personal Data Breach;
- 29.3.5 co-operate with the Client and take such reasonable steps as are directed by the Client to assist in the investigation, mitigation and remediation of a Personal Data Breach;
- 29.3.6 not disclose the Personal Data to any Agency staff unless necessary for the provision of the Services;
- 29.3.7 other than where specifically authorised under this Call-Off Contract, not appoint any third party sub-contractor to Process the Personal Data ("**Sub-Processor**") without the prior written consent of the Client. In all cases where a Sub-Processor is appointed:
- (a) the contract between the Agency and the Sub-Processor shall include terms which are substantially the same as those set out in this Clause 29;
  - (b) the Agency shall provide the Client with such information regarding the Sub-Processor as the Client may reasonably require;
  - (c) the Agency shall remain fully liable to the Client for any failure by a Sub-Processor to fulfil its obligations in relation to the Processing of any Personal Data; and
  - (d) the use of the Sub-Processor shall be otherwise in accordance with Clause 29;
- 29.3.8 take reasonable steps to ensure the reliability and integrity of any Agency staff who have access to the Personal Data, ensuring in each case that access is strictly limited to those individuals who need to access the relevant Personal Data, as strictly necessary to perform the Services in the context of that individual's duties to the Agency, and ensure that the Agency staff:
- (a) are aware of and comply with the Agency's obligations under this Clause 29 together with any obligations pertaining to confidentiality or data protection which are set out in this Call-Off Contract;
  - (b) are subject to confidentiality undertakings or other contractual or professional or statutory obligations of confidentiality;



(c) 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 writing to do so by the Client or as otherwise permitted by this Call-Off Contract; and

(d) have undergone adequate training in the use, care, protection and handling of Personal Data;

29.3.9 notify the Client immediately if it receives:

(a) from a Data Subject (or third party on their behalf):

(i) a Data Subject Access Request (or purported Data Subject Access Request);

(ii) a request to rectify any inaccurate Personal Data;

(iii) a request to have any Personal Data erased or blocked;

(iv) a request to restrict the Processing of any Personal Data;

(v) a request to obtain a portable copy of Personal Data, or to transfer such a copy to any Third Party; or

(vi) an objection to any Processing of Personal Data;

(b) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data under this Call-Off Contract;

(c) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

(d) any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;

(each a "**Relevant Communication**").

29.3.10 taking into account the nature of the Processing, provide the Client with full cooperation and assistance (within the timescales reasonably required by the Client, and in any case within sufficient time for the Client to comply with any relevant timescales prescribed by the Data Protection Laws) in relation to any Relevant Communications (whether received by the Agency or by the Client directly) including by implementing such technical and organisational measures as may be



reasonably required by the Client and by promptly providing:

- (a) the Client with full details and copies of the Relevant Communication (where received by the Agency);
- (b) the Client, on request by the Client, with any Personal Data it holds in relation to a Data Subject; and
- (c) assistance as requested by the Client with respect to any request from the Information Commissioner's Office, or any consultation by the Client with the Information Commissioner's Office;

29.3.11 allow for audits (including inspections) of its data Processing activity by the Client or the Client's mandated auditor, and if requested by the Client, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 29 and provide to the Client copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

29.3.12 cease Processing the Personal Data immediately upon the earlier of the (i) termination or expiry of this Call-Off Contract, or (ii) the cessation of the Services, and as soon as reasonably practicable thereafter, at the Client's option, either return, or securely and irrevocably delete from its systems (so that such Personal Data cannot be recovered or reconstructed), the Personal Data and any copies of it or of the information it contains; and

29.3.13 designate a data protection officer if required by the Data Protection Laws.

29.4 The Agency shall not Process or otherwise transfer, or permit the transfer, of any Personal Data in or to any Restricted Country without obtaining the prior written consent of the Client (unless the transfer is required by EU or member state law to which the Agency is subject, and if this is the case then the Agency shall inform the Client of that requirement before Processing the Personal Data, unless a Law prohibits such information being provided on important grounds of public interest).

29.5 In respect of any Processing in, or transfer of Personal Data to, any Restricted Country permitted in accordance with Clause 29.4, the Agency shall, when requested by the Client, promptly enter into an agreement with the Client or any service recipient including or on such provisions as the Standard Contractual Clauses and/or such variation as a regulator or the Client might require which terms shall, in the event of any conflict, take precedence over those in this Clause 29, and the Agency shall

- comply with any reasonable instructions notified to it in advance by the Client with respect to the transfer of the Personal Data;
- 29.6 Subject to the Client providing the Agency with all information reasonably required by the Agency to comply with this Clause 29.6, create and maintain a register setting out:
- 29.6.1 the types of Personal Data and categories of Data Subject whose Personal Data are Processed during the provision of the Services; and
- 29.6.2 a general description of the technical and organisational security measures adopted by the Agency to protect the Personal Data in accordance with Clause 29.3.3.
- 29.7 The Agency shall use its reasonable endeavours to assist the Client to comply with any obligations under the Data Protection Laws and shall not perform its obligations under this Call-Off Contract in such a way as to cause the Client to breach any of the Client's obligations under the Data Protection Laws to the extent the Agency is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.
- 29.8 Both the Client and the Agency shall comply with their respective obligations under the GDPR in relation to this Call-Off Contract, including by adhering to any relevant codes of conduct published pursuant to Article 40 of the GDPR.
- 29.9 Both the Client and the Agency shall comply with their respective obligations under any relevant law implementing or otherwise giving effect to the NIS Regulations. In response to the obligations created by any law implementing or otherwise giving effect to the NIS Regulations, the Client may elect to produce a report setting out the steps to be reasonably followed by both parties in relation to their compliance with the NIS Regulations in the context of the Services, and the Agency shall comply with the terms of any such report.
- 29.10 Notwithstanding any other provision in this Call-Off Contract relating to amendments or variations to this Call-Off Contract, the Client may, at anytime on not less than 30 Working Days' notice, revise this Clause 29 by replacing it with 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).
- 29.11 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Client may on not less than 30 Working Days' notice to the Agency amend this Call-Off Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 29.12 If following the date of this Call-Off Contract:
- 29.12.1 any codes of practice, codes of conduct, regulatory guidance, standard clauses and any other related laws arising from the GDPR or from the NIS Regulations are published; or



29.12.2 the UK ceases to be a Member State of the European Union, then the Client may require the Agency to take such further reasonable actions, or enter into such further contractual terms, in each case as necessary to take account of these developments.

29.13 The table below sets out the agreed description of the Processing being undertaken in connection with the exercise of the Parties' rights and obligations under this Call-Off Contract. The Agency shall comply with any further written instructions with respect to Processing given by the Client and any such further instructions shall be incorporated into this table:

Description	Details
<b>Identity of the Controller and Processor</b>	N/A
Subject matter of the Processing	N/A
Duration of the Processing	N/A
Nature and purposes of Processing	N/A
Type of Personal Data being Processed	N/A
Categories of Data Subjects	N/A
Plan for return of the data once the Processing is complete unless requirement under union or member state law to preserve that type of data	N/A
Data Protection Officer	N/A

29.15 The Agency will use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software (or as otherwise agreed between the Parties).

29.16 Notwithstanding Clause 29.9, if Malicious Software is found, the Parties will co-operate to reduce its impact. If Malicious Software causes loss of operational efficiency or loss or corruption of Client

Data, the Parties will assist each other to mitigate any losses and to restore the provision of the Services.

#### **Client Data**

- 29.11 Client Data except as necessary to perform its obligations under this Call-Off Contract or as otherwise Approved by the Client.
- 29.12 If any Client Data is held and/or Processed by the Agency, the Agency must supply that Client Data to the Client, at the time and in the format the Client requests.
- 29.13 The Agency is responsible for preserving the integrity of any Client Data it holds or processes, and preventing its corruption or loss.
- 29.14 The Agency will perform secure back-ups of all Client Data and ensure that such back-ups are available to the Client (or to such other person as the Client may direct) on request.
- 29.15 The Agency will ensure that any system it uses to holds any Client Data, including back-up data, is secure. This system must comply with any security requirements and any government security requirement policy relating to this Client Data.
- 29.16 If any time the Agency suspects or has any reason to believe that the Client Data is corrupted, lost or sufficiently degraded in any way, then the Agency must notify the Client immediately. This notification must contain information detailing the remedial action the Agency proposes to take.

#### **Publicity and Branding**

- 29.17 The Agency may not make any press announcements or publicise this Call-Off Contract or use the Client's name or brand in any promotion or marketing or announcement of orders without Approval from the Client.
- 29.18 The Agency will seek the Client's prior Approval before marketing their involvement in any Deliverable or draft Deliverable or entering into any industry awards or competition which will involve the disclosure of all or any part of any Deliverable or draft Deliverable.

*Within the scope of the Call-Off Contract, the following clauses will be added to the Call-Off Terms:*

#### **13A. Supply Chain Protection**

The Agency shall ensure that each material Sub-Contract shall include:

- d) a right under Contracts (Rights of Third Parties) Act 1999 for the Client to enforce any provisions under the Sub-Contract which confer a benefit upon the Client;



- e) a provision enabling the Client to enforce the Sub-Contract as if it were the Agency; and
- f) obligations no less onerous on the Sub-Contractor than those imposed on the Agency under this Call-Off Contract.

### **13B. Assignment and Novation**

The Client may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under the Call-Off Contract and/or any associated licences to the Department of Health, NHS England and / or any Central Government Body and the Agency shall, at the Client's request, enter into a novation agreement in such form as the Client shall reasonably specify in order to enable the Client to exercise its rights pursuant to this Clause 13B.

### **21A. Corporate Social Responsibility Conduct and Compliance**

21A.1 The Client conducts its activity based on corporate and social responsibility values which are consistent with government policy regarding social responsibility, environmental responsibility, and ethical and human rights.

21A.2 The Agency represents and warrants that it:

- (d) complies with all CSR Laws;
- (e) requires its Sub-Contractors and any person under its control, to comply with all CSR Laws; and
- (f) has adopted a written corporate and social responsibility policy that sets out its values for activity and behaviour (including, without limitation, employees, clients, stakeholders and communities impacted by the Agency's business activities and the environment).

21A.3 The Agency shall notify the Client in the event that its corporate and social responsibility policies conflict with, or do not cover the same subject matter in an equivalent level of detail as is in, the CSR Policies.

### **21B Modern Slavery**

21B.1 The Agency represents and warrants that at the Effective Date neither the Agency, nor any of its officers and employees:

- (a) have been convicted of any offence involving slavery and human trafficking; and
- (b) having made reasonable enquiries, so far as it is aware, have been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

21B.2 The Agency shall implement due diligence procedures for its Sub-Contractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

21B.3 The Agency shall prepare and deliver to the Client each year, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.

## **29A. Cyber Security Requirements**

The Agency warrants and represents that it has complied with and throughout the Call Off Contract Period will continue to comply with the Cyber Security Requirements.

## **33.8 Execution and Counterparts**

This Call-Off Contract may be executed in counterparts, each of which when executed shall constitute an original but all counterparts together shall constitute one and the same instrument. Execution of this Call-Off Contract may be carried out in accordance with EU Directive 99/93 (Community framework for electronic signatures) and the Electronic Communications Act 2000, and in such situation, this Call-Off Contract shall be formed on the date on which both Parties have communicated acceptance of its terms.

*For the purposes of incorporation of Schedule 1 (Definitions and Interpretations) into the Call-Off Contract the following definitions shall be added (and where such terms are already defined, such definitions shall be replaced with the corresponding definitions below):*

**"Client Personal Data"** means the Personal Data supplied by the Client to the Agency for purposes of, or in connection with, the Call-Off Contract;

**"Controller"** or **"Data Controller"** has the meaning given to it in the Data Protection Laws;

**"CSR Laws"** means Laws relating to corporate social responsibility issues (e.g. anti-bribery and corruption, health and safety, the environmental and sustainable development, equality and diversity), including but not limited to the Modern Slavery Act 2015, the Public Services (Social Value) Act 2012, the Public Contracts Regulations 2015 and Article 6 of the Energy Efficiency Directive 2012/27/EU, from time to time in force;

**"CSR Policies"** means the Client's policies, including, without limitation, anti-bribery and corruption, health and safety, the environmental and sustainable development, equality and diversity, and any similar policy

notified to the Agency by the Client from time to time, and "CSR Policy" shall mean any one of them;

**"Cyber Security Requirements"** means:

- c. compliance with the DSP Toolkit;
- d. any other cyber security requirements relating to the Services notified to the Agency by the Client from time to time;

**"Data Protection Impact Assessment"** means an assessment by the Client of the impact of the envisaged processing on the protection of Personal Data;

**"Data Protection Laws"** means applicable legislation protecting the fundamental rights and freedoms of individuals, in respect of their right to privacy and the processing of their personal data, as amended from time to time, including, Regulation (EU) 2016/679, 'the General Data Protection Regulation' ("**GDPR**") and the Data Protection Act 2018) and the Privacy and Electronic Communications Regulations 2003, together with decisions, guidelines, guidance notes and codes of practice issued from time to time by courts, data protection authorities and other applicable Government authorities;

**"Data Subject"** has the meaning given to it in the Data Protection Laws;

**"Data Subject Access Request"** means a request made by a Data Subject in accordance with rights granted pursuant to the Data Protection Laws to access his or her Personal Data;

**"DSP Toolkit"** means the data security and protection toolkit, an online self-assessment tool that allows organisations to measure their performance against the National Data Guardian's 10 data security standards and supports key requirements of the GDPR, which can be accessed from <https://www.dsptoolkit.nhs.uk/>, as may be amended or replaced by the Client or the Department of Health and Social Care from time to time;

**"NIS Regulations"** means The Network and Information Systems Regulations 2018 and any guidelines, guidance notes, codes of practice and codes of conduct issued from time to time by a competent authority;

**"Personal Data"** has the meaning given to it in the Data Protection Laws, and applies to personal data which is Processed by the Agency or any Sub-Contractor on behalf of the Customer or a Central Government Body pursuant to or in connection with this Call-Off Contract;

**"Personal Data Breach"** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed;



**"Process"** has the meaning given to it in the Data Protection Laws, and **"Processed"** and **"Processing"** shall be construed accordingly;

**"Restricted Country"** means any country which is not (i) a member of the European Economic Area; (ii) the United Kingdom; (iii) deemed adequate by the European Commission pursuant to article 25(6) of Directive 95/46/EC or article 45(3) of the General Data Protection Regulation;

**"Standard Contractual Clauses"** means the standard contractual clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of protection as set out in Commission Decision C (2010) 593 and reference to the standard contractual clauses shall be to the clauses as updated, amended, replaced or superseded from time to time by the European Commission; and

**"Sub-Processor"** has the meaning given to it in Clause 29.3.7.

**Key Individuals :**

[REDACTED]

**Authorised Agency  
Approver:**

[REDACTED]

**Authorised Client  
Approver:**

[REDACTED]



## Part 2: Call-Off Terms



RM 3796 Call Off  
Terms and Conditions

