

**RM6100 Technology Services 3  
Framework Schedule 4 Annex 1  
Lot 1 Order Form**

## **Order Form**

This Order Form is issued in accordance with the provisions of the Technology Services 3 Framework Agreement RM6100 between the Supplier (as defined below) and the Minister for the Cabinet Office (the "**Framework Agreement**") and should be used by Buyers after making a direct award or conducting a further competition under the Framework Agreement.

The Contract, referred to throughout this Order Form, means the contract between the Supplier and the Buyer (as defined below) (entered into pursuant to the terms of the Framework Agreement) consisting of this Order Form and the Call-Off Terms. The Call-Off Terms are substantially the terms set out in Annex 2 to Schedule 4 to the Framework Agreement and copies of which are available from the Crown Commercial Service website. The agreed Call-Off Terms for the Contract being set out as the Annex 1 to this Order Form.

The Supplier shall provide the Services and Deliverables specified in this Order Form (including any attachments to this Order Form) to the Buyer on and subject to the terms of the Contract for the duration of the Contract Period.

In this Order Form, capitalised expressions shall have the meanings set out in Schedule (Definitions) of the Call-Off Terms.

This Order Form shall comprise:

1. This document headed "Order Form";
2. Attachment 1 – Services Specification;
3. Attachment 2 – Schedule of Processing, Personal Data and Data Subjects;
4. Attachment 3 – Transparency Reports; and
5. Annex 1 – Call-Off Terms.

The Order of Precedence shall be:

- a) the Framework, except Framework Schedule 18 (Tender);
- b) the Order Form and its Attachments;
- c) Schedule S4 (NHS Digital Provisions)
- d) the Call-Off Terms; and
- e) Framework Schedule 18 (Tender).

## **Section A**

## General information

### Contract Details

<b>Contract Reference:</b>	C111111
<b>Contract Title:</b>	VMware NSX-V Upgrade
<b>Contract Description:</b>	Services to plan and deliver the upgrade of VMware NSX-V to VMware NSX
<b>Commencement Date:</b>	23 January 2023

### Buyer details

#### Buyer organisation name

Health and Social Care Information Centre, known as NHS Digital

#### Billing address

Your organisation's billing address - please ensure you include a postcode

The Leeds Government Hub, 7&8 Wellington Place, Leeds, LS1 4AP .

#### Buyer representative name

The name of your point of contact for this Order

[REDACTED]

#### Buyer representative contact details

Email and telephone contact details for the Buyer's representative. This must include an email for the purpose of Clause 34.2 of the Contract.

[REDACTED]

#### Buyer Project Reference

Please provide the customer project reference number.

[Click here to enter text.](#)

### Supplier details

#### Supplier name

The supplier organisation name, as it appears in the Framework Agreement

Xtravirt Ltd

#### Supplier address

Supplier's registered address

Riverbridge House, Guildford Road, Leatherhead, Surrey, Kt22 9AD

#### Supplier representative name

The name of the Supplier point of contact for this Order

[Click here to enter text.](#)

#### Supplier representative contact details

Email and telephone contact details of the supplier's representative

[REDACTED]

**Order reference number or the Supplier's Catalogue Service Offer Reference Number**

A unique number provided by the supplier at the time of the Further Competition Procedure. Please provide the order reference number, this will be used in management information provided by suppliers to assist CCS with framework management. If a Direct Award, please refer to the Supplier's Catalogue Service Offer Reference Number.

[REDACTED]

## Section B

### Part 1 - The Services Requirement

**Commencement Date**

23 January 2023

**Contract Period**

Up to 4 months

**Services**

The Supplier shall provide the following Services to the Buyer:

Design and plan the migration of VMware NSX® Data Center for vSphere® platform to VMware NSX-T Data Center encompassing the following major steps

Migration Preparation  
Greenfield Deployment of VMware NSX-T  
Workload Migration from NSX-V to NSX-T

The Services are more particularly described in Attachment 1 (Services Specification).

**Deliverables**

The Supplier shall provide the following Deliverables to the Buyer as part of the Services:

- NSX-V to NSX-T Migration planning workshops delivered
- NSX-V to NSX-T transition process document (expected in Adobe PDF format)
- NSX-T configuration to support the migration of up to [REDACTED] identified virtual machines (across up to [REDACTED])
- Up to [REDACTED] virtual machines ([REDACTED]) migrated and tested on an NSX-T based platform

*The Supplier shall not be responsible for providing technical training or knowledge transfer relating to operational management responsibilities for the*

The Deliverables are more particularly described in Attachment 1 (Services Specification)

**Sites for the provision of the Services**

The Supplier shall provide the Services and/or Deliverables from the following Sites:

**Buyer Premises:**

Not Applicable

**Supplier Premises:**

Riverbridge House, Guildford Rd, Fetcham, Leatherhead, England KT22 9AD  
Remote working

**Third Party Premises:**

Not Applicable

**Additional Standards**

The Supplier to provide the Services in accordance with good industry practice. The Supplier and Buyer to jointly communicate and engage in accordance with good industry practice

See Clause 7 (Standards) and the definition of Standards in Schedule 1 of the Call-Off Terms

**Key Supplier Personnel**

Not Applicable

**Buyer Property**

Not Applicable

**Buyer Security Policy**

Not Applicable

**Buyer Enhanced Security Requirements**

The Supplier warrants and represents that it has complied with and will continue to comply with the Cyber Security Requirements.

For the purposes of this section,

**'Cyber Security Requirements'** means:

- a) compliance with the DSP Toolkit or any replacement of the same; and
- b) any other cyber security requirements relating to the Services notified to the Supplier by the Buyer from time to time; and

**'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 Buyer or the Department of Health and Social Care from time to time;

**Insurance**

Third Party Public Liability Insurance (£) – 5,000,000

Professional Indemnity Insurance (£) - 5,000,000

Employers' liability insurance (£) – 5,000,000

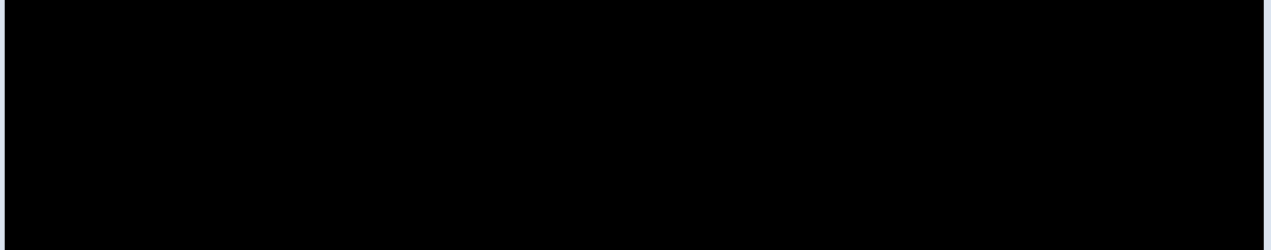
Product liability insurance (£) – 5,000,000

### Key Sub-Contractors

Not Applicable

## Part 2 – Charges, Payment and Invoicing

### Contract Charges (excluding VAT)

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Total

£53,160

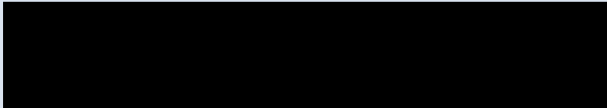
The charges quoted are fixed price for the deliverables as defined in Appendix 1

Project will be delivered remotely, no expenses to be incurred by the Supplier

All Charges shall be payable by the Buyer in accordance with the Payment Profile set out below.

### Payment Profile

Payment shall be made upon the following milestones

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Project will be delivered remotely, no expenses to be incurred by the Supplier

### Invoice Details

The Supplier will issue Electronic Invoices in accordance with the agreed Payment Profile.

All invoices must be sent to:

Any queries regarding outstanding payments should be directed to NHS Digital's Accounts Payable section by email at [Sbs-w.payables@nhs.net](mailto:Sbs-w.payables@nhs.net).

Invoices should clearly quote the purchase order number, be addressed to NHS Digital, T56 Payables A125, Phoenix House, Topcliffe Lane, Wakefield, WF3 1WE and be sent as a PDF attachment by email to the following email address; [sbs.invoicing@nhs.net](mailto:sbs.invoicing@nhs.net) (one invoice per PDF) and emails must not exceed 10Mb and quote, 'T56 Invoice Scanning' in subject line or alternatively invoices can be sent via post to the above address.

All invoices must include:

- (a) the date of the invoice;

- (b) a unique invoice number;
- (c) the Service period or other period(s) to which the relevant Charge(s) relate;
- (d) the correct reference for this Contract;
- (e) the reference number of the purchase order to which it relates (if any);
- (f) the dates between which the Services subject of each of the Charges detailed on the invoice were performed;
- (g) a description of the Services;
- (h) the pricing mechanism used to calculate the Charges (such as Guaranteed Maximum Price with Target Cost, Fixed Price, Time and Materials etc.);
- (i) any payments due in respect of achievement of a milestone (if applicable);
- (j) the total Charges gross and net of any applicable deductions and, separately, the amount of any reimbursable expenses properly chargeable to the Buyer under the terms of this Contract, and, separately, any VAT or other sales tax payable in respect of each of the same;
- (k) details of any service credits or delay payments or similar deductions that shall apply to the Charges detailed on the invoice;
- (l) reference to any reports required by the Buyer in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by the Buyer, then to any such reports as are validated by the Buyer in respect of the Services);
- (m) a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries;
- (n) the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number); and
- (o) where the Services have been structured into separate Service lines, the information at (a) to (n) of this paragraph **Error! Reference source not found.** shall be broken down in each invoice per Service line.

### Method of Payment

The payment method for this Contract is BACS

**Contract Anticipated Potential Value:** £53,160

## Part 3 – Additional and Alternative Buyer Terms

**Additional Schedules and Alternative Clauses** (see Annex 3 of Framework Schedule 4)

*This Annex can be found on the RM6100 CCS webpage. The document is titled RM6100 Additional and Alternative Terms and Conditions Lot 1.*

### Additional Schedules

Additional Schedules	Tick as applicable
S1: Business Continuity and Disaster Recovery	<input type="checkbox"/>
S2: Continuous Improvement	<input type="checkbox"/>
S3: Supply Chain Visibility	<input type="checkbox"/>
S4: NHS Digital Provisions	<input checked="" type="checkbox"/>

Where selected above the Additional Schedules set out in document RM6100 Additional Terms and Conditions Lot 1 shall be incorporated into this Contract.

### Alternative Clauses

The following Alternative Clauses will apply:

Alternative Clauses	Tick as applicable
Scots Law	<input type="checkbox"/>
Northern Ireland Law	<input type="checkbox"/>

Where selected above the Alternative Clauses set out in document RM6100 Additional and Alternative Terms and Conditions Lot 1 shall be incorporated into this Contract.

### Liability

The limitation of liability set out in Clause 12.1 of the Call-Off Terms shall be amended to read:

- 12.1.1 The Supplier's total aggregate liability in each Contract Year under this Contract (whether in tort, contract or otherwise) shall not exceed the greater of one million pounds (£1,000,000) (or such greater sum (if any) as may be specified in the Order Form) or one hundred and fifty per cent (150%) of the Charges paid and/or due to be paid in that Contract Year.
- 12.1.2 The Buyer's total aggregate liability in each Contract Year under this Contract (whether in tort, contract or otherwise) shall not exceed the greater of one million pounds (£1,000,000) (or such greater sum (if any) as may be specified in the Order Form) or one hundred per cent (100%) of the Charges paid and/or due to be paid in that Contract Year.

### Termination for Convenience

The notice period for termination of convenience is set out in Clause 19.1 of the Call-Off Terms and states 30 Working Days. For the avoidance of doubt, pursuant to clause 19.7, the Buyer's right to terminate for convenience shall apply to the Contract and/or the Services in whole and in part.



## Section C

### Supplier response

#### **Commercially Sensitive information**

Any confidential information that the Supplier considers sensitive for the duration of an awarded Contract should be included here. Please refer to definition of Commercially Sensitive Information in the Contract – *use specific references to sections rather than copying the relevant information here.*

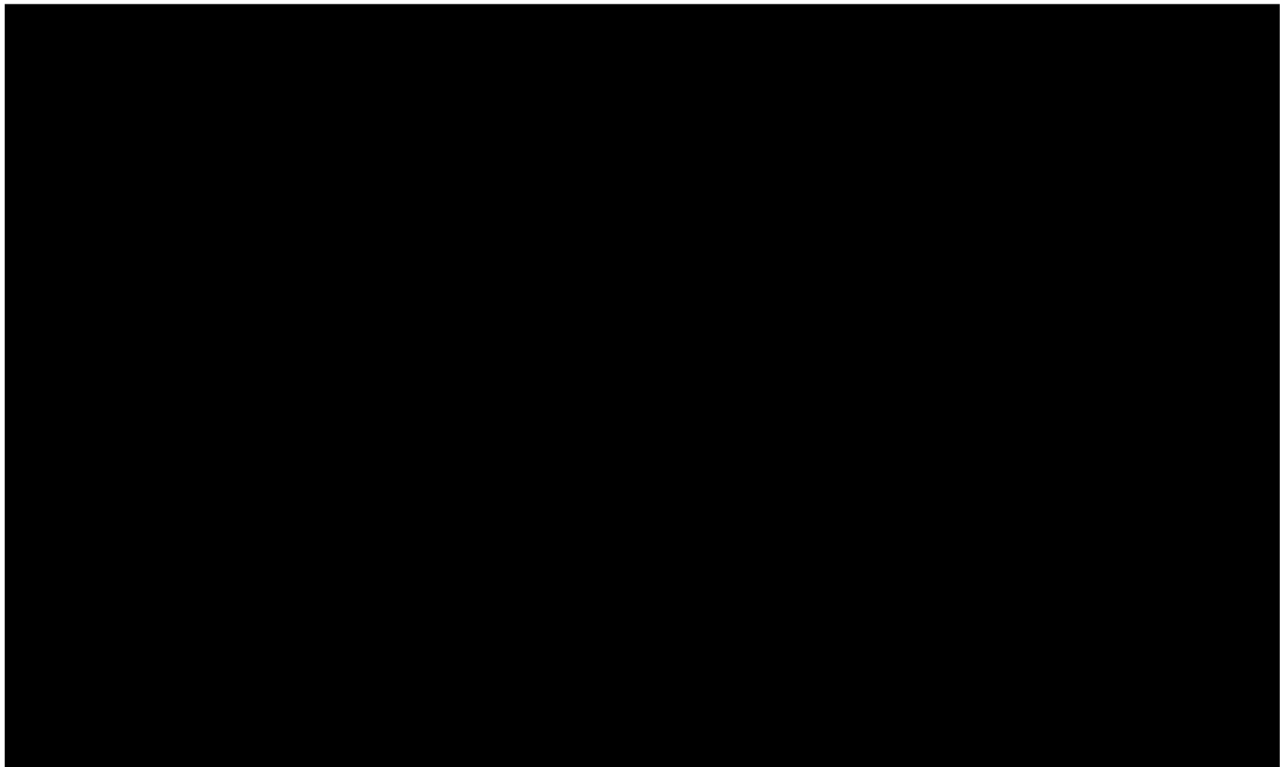
Not Applicable

## Section D

### Contract award

This Contract is awarded in accordance with the provisions of the Technology Services 3 Framework Agreement RM6100.

#### **SIGNATURES**

























## Attachment 2 – Schedule of Processing, Personal Data and Data Subjects

This Attachment 2 shall be completed by the Buyer, who may take account of the view of the Supplier, however the final decision as to the content of this Attachment 2 shall be with the Buyer at its absolute discretion.

1. The contact details of the Buyer's Data Protection Officer are: Corporate Data Protection Officer NHS Digital NHSSigital.DPO@nhs.net.
2. The contact details of the Supplier's Data Protection Officer are: **[Insert Contact details]**.
3. The Supplier shall comply with any further written instructions with respect to processing by the Buyer.
4. Any such further instructions shall be incorporated into this Attachment 2.

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Buyer is the Controller and the Supplier is the Processor in accordance with Clause 18 of the Contract.
Subject matter of the processing	<b>[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract. Example: The processing is needed in order to ensure that the Supplier can effectively deliver the contract to provide a service to members of the public. ]</b>
Duration of the processing	<b>[Clearly set out the duration of the processing including dates]</b>
Nature and purposes of the processing	<b>[Please be as specific as possible, but make sure that you cover all intended purposes. The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment etc.]</b>
Type of Personal Data being Processed	<b>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.]</b>
Categories of Data Subject	<b>[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.]</b>

### Attachment 3 – Transparency Reports

Title	Content	Format	Frequency
[Performance]	[ ]	[ ]	[ ]
[Charges]	[ ]	[ ]	[ ]
[Key Sub-Contractors]	[ ]	[ ]	[ ]
[Technical]	[ ]	[ ]	[ ]
[Performance management]	[ ]	[ ]	[ ]

## **Annex 1 – Call-Off Terms and Additional Schedules and Alternative Clauses**

### **1. Lot 1 Call Off Terms**

The Call-Off Terms are substantially the terms set out in Annex 2 to Schedule 4 to the Framework Agreement and copies of which are available from the Crown Commercial Service website.

### **2. Additional Schedules and Alternative Clauses**

#### **ALTERNATIVE CLAUSES**

Scots Law  
Northern Ireland Law

#### **ADDITIONAL SCHEDULES**

	<del>Business Continuity and Disaster</del>
S1	<del>Recovery</del>
S2	<del>Continuous Improvement</del>
S3	<del>Supply Chain Visibility</del>
S4	NHS Digital Provisions

Unless there is a clear adjustment to an existing provision of the Contract, new definitions for the Schedule (Definitions) of the Call-Off Terms will have the effect of being inserted alphabetically into the table therein and associated schedules will have the effect of being inserted sequentially immediately after the Schedule (Definitions) of the Call-Off Terms

## 1. Definitions

<b>"Buyer Data"</b>	<p>(a) 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> <p>(i) supplied to the Supplier by or on behalf of the Buyer; and/or</p> <p>(ii) which the Supplier is required to generate, process, store or transmit pursuant to this Contract; or</p> <p>(b) any Personal Data for which the Buyer is the Data Controller;</p>
<b>"Buyer Background IPRs"</b>	<p>(a) IPRs owned by the Buyer before the Commencement Date, including IPRs contained in any of the Buyer's Know-How, documentation, processes and procedures;</p> <p>(b) IPRs created by the Buyer independently of this Contract; and/or</p> <p>(c) Crown Copyright which is not available to the Supplier otherwise than under this Contract;</p> <p>but excluding IPRs owned by the Buyer subsisting in the Buyer's software;</p>
<b>"Contractor"</b>	means any individual delivering the Services (or any part of them);
<b>"Intermediary"</b>	means any "intermediary" (as defined in section 61M ITEPA) in respect of which any of Conditions A – C within section 61N ITEPA are met;
<b>"ITEPA"</b>	Income Tax (Earnings and Pensions) Act 2003;
<b>"Medical Device"</b>	means any Deliverable, software or Service that falls under the definition of a medical device in accordance with guidance published by the Medicines and Healthcare Products Regulatory Agency;
<b>"Off-Payroll Working Rules"</b>	means the provisions of Chapter 10 of Part 2 ITEPA relating to the engagement of workers through intermediaries and the provisions of Social Security Contributions (Intermediaries) Regulations 2000/727 (or,

in each case, any other provisions under any law having like effect);

**“Open Source”**

means computer software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as open source;

**“Project IPRs”**

**Specific**

(a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Contract and updates and amendments of these items including (but not limited to) database schema; and/or

(b) Intellectual Property Rights arising as a result of the performance of the Supplier's obligations under this Contract;

but shall not include the Supplier Background IPRs;

**“Supplier Background IPRs”**

(a) Intellectual Property Rights owned by the Supplier before the Commencement Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or

(b) Intellectual Property Rights created by the Supplier independently of this Contract,

which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in any Supplier software;

**"Tax"**

means income tax, employee national insurance contributions and employer national insurance contributions (in each case whether or not required to be accounted for under the PAYE rules of the United Kingdom) and any equivalent tax, contribution or similar obligations elsewhere, together, in each case, with all related penalties and interest;

## **2. Intellectual Property Rights**

2.1 In respect of all Buyer Data, the Buyer shall be the owner of all such Buyer Data and any Buyer Background IPRs and Project Specific IPRs in such Buyer Data and any modifications, updates and amendments in relation to the same. The Supplier may not



assign, license or otherwise deal with any Buyer Data or IPRs in such Buyer Data without the Buyer's specific written consent.

- 2.2 All Project Specific IPRs shall vest in the Buyer absolutely, and the Supplier hereby assigns to the Buyer, absolutely with full title guarantee (and free from all third party rights), any and all of its right, title and interest in and to all the Project Specific IPRs and shall procure that any third party owner of the Project Specific IPRs assigns them to the Buyer on the same basis to the fullest extent permitted by law.
- 2.3 The assignment under paragraph 2.2 shall be a present assignment for future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs as appropriate.
- 2.4 The Supplier shall waive or procure a waiver of any moral rights in any copyright works assigned to the Buyer under the Contract.
- 2.5 The Supplier grants the Buyer a non-exclusive, transferable, perpetual, irrevocable, royalty-free and global licence to use, sub-license and/or commercially exploit use any Supplier Background IPRs or IPRs owned by a third party used to provide the Services including those that are embedded within or which are an integral part of the Project Specific IPRs and to the extent required to enjoy the full benefit of ownership of the Project Specific IPRs. The Buyer shall have the right to grant to any person a sub-licence of any licence granted pursuant to this paragraph.
- 2.6 Unless the Supplier specifically identifies and discloses in writing the Supplier Background IPRs which shall be provided, used or incorporated by the Supplier in the provision of the Services, the default position shall be that all items and Deliverables shall be assigned to the Buyer as Project Specific IPR as if there is no Supplier Background IPRs.
- 2.7 Each Party undertakes that it shall without charge to the other Party promptly execute all documents, make all applications, give all assistance and do or procure the doing of all acts and things as may be necessary or desirable to give full effect to the assignment of the Project Specific IPRs described in paragraph 2.2 in, and to register ownership of the Project Specific IPRs in, the name of the Buyer (to the extent that registration of rights is available) and/or to give full effect to the licences granted under this paragraph 2 or clause 13 of the Call-Off Terms. The Supplier shall procure that any third party owner of the Project Specific IPRs does so on the same basis.
- 2.8 The Buyer shall grant to the Supplier a transferable, perpetual, irrevocable, non-exclusive, royalty-free and global licence to use, sub-license and/or commercially exploit the Project Specific IPRs. The Supplier shall inform the Buyer of any such use, sub-licence or exploitation prior to it occurring.
- 2.9 If the Supplier wishes to use Open Source software then the Supplier shall:
  - 2.9.1 notify the Buyer in writing giving details of the licence terms and whether there are alternative software providers which the Supplier could seek to use;
  - 2.9.2 identify all items of Open Source software used and proposed to be used in an up to date register of open source software; and
  - 2.9.3 provide copies of the Open Source register and the licences upon request by the Buyer.

### **3. Medical Devices**

If and to the extent any software, Deliverable or part of the Services constitutes a Medical Device, the Supplier warrants and represents that it has all consents, registrations, approvals, licences and permissions relating to Medical Devices as

recommended or stipulated by any materials published by the Medicines and Healthcare Products Regulatory Agency.

#### **4. IR35**

- 4.1 The Buyer and the Supplier agree and acknowledge that this Contract represents a contract for a fully contracted out service and, as a result, the Off-Payroll Working Rules shall not apply to the Buyer in relation to the provision of the Services (or any part of them) and / or to any arrangements involving the performance of any services by any Contractor.
- 4.2 Notwithstanding paragraph 4.1, the Supplier warrants and undertakes to the Buyer that, where any Contractor is or will be delivering their services through an Intermediary, prior to the commencement of the delivery of any services by that Contractor, the Supplier will give written notice to the Buyer, and shall procure that such Contractor shall not be involved in the delivery of the Services (or any part of them) by the Supplier without the prior written consent of the Buyer.
- 4.3 The Supplier warrants and undertakes to the Buyer that it shall manage the delivery of the Services (and any part of them) and shall do or not do (as the case may be) all such things as are necessary, in each case, to ensure that the Off-Payroll Working Rules shall not apply to the Buyer in relation to the provision of the Services (or any part of them) and / or to any arrangements involving the performance of any services by any Contractor.
- 4.4 The Supplier shall immediately inform the Buyer if, at any time, it becomes aware of any new or additional fact, matter or circumstance, or any change in any fact, matter or circumstance, in each case, from which it appears that the Off-Payroll Working Rules could apply to the Buyer in relation to the provision of the Services (or any part of them) and / or to any arrangements involving the performance of any services by any Contractor.
- 4.5 Promptly upon request from the Buyer, the Supplier shall provide (or procure provision) to the Buyer of all such evidence, information and assistance as the Buyer reasonably requires:
  - 4.5.1 in order to confirm that the warranties and undertakings given by the Supplier in paragraphs 4.2 and 4.3 are, and remain, true, accurate and correct in all respects; and
  - 4.5.2 in connection with the Off-Payroll Working Rules (including, but not limited to, such information or assistance as the Buyer reasonably requires in order to assess whether or not the Off-Payroll Working Rules apply to the provision of the Services (or any part of them) and/or to any arrangements involving the performance of any services by any Contractor or to comply with any other requirement or obligation it may have as a result of or in connection with the application of the Off-Payroll Working Rules).
- 4.6 The Supplier shall, at all times, comply with any and all requirements or obligations it may have as a result of or in connection with the application of the Off-Payroll Working Rules to the provision of the Services (or any part of them) and / or to any arrangements involving the performance of any services by any Contractor, including, but not limited, to any obligation to make any deductions for Tax, and shall procure the compliance of

all other parties involved (directly or indirectly) in the supply of the Services (or any part of them).

4.7 The Buyer shall be entitled to make any deductions in respect of Tax, from any payments to the Supplier, which it reasonably considers are required to be made as a result of, or connection with, the application of the Off-Payroll Working Rules.

4.8 The Supplier shall indemnify the Buyer, on demand and on an after-Tax basis, against:

- 4.8.1 any and all proceedings, claims or demands by any third party (including, but without limitation, HM Revenue & Customs and any successor, equivalent or related body);
- 4.8.2 any and all Tax and any other liabilities, losses, deductions, contributions or assessments; and
- 4.8.3 any and all reasonable costs or expenses and any penalties, fines or interest incurred or payable,

in each case, which arise as a result of, in consequence of, or otherwise in connection with:

(i) the application of the Off-Payroll Working Rules to the provision of the Services (or any part of them) and / or to any arrangements involving the performance of any services by any Contractor; and/or

(ii) the Supplier, at any time, being in breach of any of the warranties or undertakings given in paragraphs 4.2, 4.3 and 4.10.

4.9 The Buyer may at its option satisfy the indemnity given under paragraph 4.8 (in whole or in part) by way of deduction from payments due to the Supplier.

4.10 The Supplier warrants to the Buyer that it is not, nor will it prior to the cessation of this Contract become, a “managed service company”, within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003.

## **5. Security of Supplier Personnel**

5.1 Supplier Personnel shall be subject to pre-employment checks that include, as a minimum: verification of identity, employment history, unspent criminal convictions and right to work, as detailed in the HMG Baseline Personnel Security Standard (<https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>), as may be amended or replaced by the Government from time to time.

5.2 The Supplier shall agree on a case by case basis which Supplier Personnel roles which require specific government National Security Vetting clearances (such as ‘SC’) including system administrators with privileged access to IT systems which store or process Buyer Data. The Supplier shall provide and maintain a breakdown of the security clearance held for each Supplier Personnel role and shall work with the Buyer to propose any necessary amendments to these in order to provide the Services.

5.3 The Supplier shall prevent Supplier Personnel who have not yet received or are unable to obtain the security clearances required by this paragraph from accessing systems which store, process, or are used to manage Buyer Data, or from accessing Buyer Premises, except where agreed with the Buyer in writing.

5.4 All Supplier Personnel that have the ability to access Buyer Data or systems holding Buyer Data shall undergo regular training on secure information management principles. Unless otherwise agreed with the Buyer in writing, this training must be undertaken

annually, and the Supplier must be able to demonstrate the completion of the training for all in scope staff.

- 5.5 Where Supplier Personnel are granted the ability to access Buyer Data or systems holding Buyer Data, those Supplier Personnel shall be granted only those permissions necessary for them to carry out their duties. When staff no longer need such access but remain employed by the Supplier's organisation, their access rights shall be revoked by the close of business on the following Working Day. When staff no longer need such access and they leave the Supplier's organisation, their access rights shall be revoked by the close of business on the same Working Day.

## **6. Data Controller Third Party Rights**

- 6.1 Further to Clause 18 (*Protection of Personal Data*), where in Attachment 2 (Schedule of Processing, Personal Data and Data Subjects) of the Order Form there is a third-party public sector Controller listed, the named third party public sector Controller will have CRTPA rights in relation to Data Protection Legislation obligations.
- 6.2 Where the third party public sector Controller wishes to exercise its rights pursuant to paragraph 6.1, the Buyer shall notify the Supplier that the rights are to be exercised.
- 6.3 The enforcement rights granted by paragraph 6.1 are subject to the following restrictions and qualifications:
- 6.3.1 the Parties may vary, terminate or rescind the Contract without the consent of any third party; and
  - 6.3.2 the Buyer may, as agent or trustee, enforce any term of the Contract on behalf of another such relevant third party to whom rights have been granted.

## **7. Data Protection Indemnity**

The Supplier shall indemnify the Buyer, and keep the Buyer indemnified, against damages, compensation, costs, claims, demands, expenses, professional costs, and/or charges arising from enforcement action by the Information Commissioner or any regulatory authority and/or assertion of rights by Data Subjects, arising from a breach by the Supplier of the Data Protection Legislation and/or the data processing conditions set out in this Contract.

## **8. Execution and Counterparts**

- 8.1 This Contract may be executed in any number of counterparts (including by electronic transmission), each of which when executed shall constitute an original but all counterparts together shall constitute one and the same instrument.
- 8.2 Execution of this Contract may be carried out in accordance with the Electronic Identification and Trust Services for Electronic Transactions Regulations 2016 (SI 2016/696) and the Electronic Communications Act 2000. In the event each Party agrees to sign this Contract by electronic signature (whatever form the electronic signature takes) it is confirmed that this method of signature is as conclusive of each Party's intention to be bound by this Contract as if signed by each Party's manuscript signature. In such situation, this Contract shall be formed on the date on which both

Parties have electronically signed the Contract as recorded in the Buyer's electronic contract management system.

## 9. Subcontracting

9.1 For the purposes of this Call-Off Contract, excluding in relation to clause 22.1, all references to Sub-Contractors shall be interpreted as references to Key Sub-Contractors. Clause 22.2 shall be interpreted as applying without the requirement for the written consent of CCS.

## 10. Flexible Resource Model

10.1 From the Commencement Date, the Supplier shall provide the Initial Services set out in Attachment 1 of the Order Form using the number of resources agreed in writing between the Supplier and the Buyer, with the relevant start date of each of those resources also subject to agreement.

10.2 The Buyer may amend the resourcing requirements of this Contract in accordance with the following process (the "**Flexible Resource Model**"):

### 10.2.1 Requirement for Additional Resources:

- a) The Buyer may require the Supplier to increase the number of Supplier Personnel (each an "**Additional Resource**") providing Services under the Contract by issuing a notice to the Supplier (the "**Increased Resource Notice**").
- b) The Increased Resource Notice shall set out:
  - I. the number of Additional Resources required by the Buyer to provide Services set out in Attachment 1 of the Order Form;
  - II. the breakdown of the required SFIA grades for each of the Additional Resources;
  - III. the date from which the Additional Resources are required, which shall be no less than 10 Working Days from the date the Increased Resource Notice is issued by the Buyer to the Supplier;
  - IV. the period of time for which the Buyer requires the provision of the Additional Resources; and
  - V. confirmation of the anticipated costs for such Additional Resources which shall be calculated using the rate card set out in the Order Form.
- c) In the event the Supplier is unable to provide the Additional Resources at the required SFIA grades, the Supplier shall provide Additional Resources up to one higher grade with no additional cost to the Buyer. For the avoidance of doubt, such resources shall be charged to the Buyer at the rate for the SFIA grade specified within the Increased Resource Notice.
- d) In the event the Supplier is unable to meet the request set out in the Increased Resource Notice, despite the mechanism set out in paragraph

10.2.1(c) above, the Supplier will notify the Buyer of the relevant elements of the Increased Resource Notice it is unable to comply with.

**10.2.2 Requirement to Decrease Resources:**

- a) The Buyer may reduce the number of Supplier Personnel providing Services at any time by giving the Supplier 5 Working Days written notice (the **"Decreased Resource Notice"**).
- b) The Decreased Resource Notice shall set out:
  - I. the number of members of Supplier Personnel to be removed from the provision of Services (each a **"Removed Resource"**);
  - II. the SFIA grade of each of the Removed Resources;
  - III. the date from which the Removed Resources are to be removed from the provision of Services, which shall be no earlier than 5 Working Days from the date of the Decreased Resource Notice.

**10.3 The Buyer shall:**

10.3.1 only pay the Charges, in accordance the rate card set out in the Order Form, for the Additional Resources who are the subject of an Increased Resource Notice for the period in which they provide the Services; and

10.3.2 not be liable to pay the Charges for any member of Supplier Personnel from the date of removal set out in any applicable Decreased Resource Notice.

10.4 The Supplier acknowledges that the Buyer's resourcing requirements shall only be amended in accordance with the Flexible Resource Model and agrees that it shall comply with the requirements set out in each Increased Resource Notice and Decreased Resource Notice that has been issued by the Buyer in accordance with the provisions set out above.

10.5 The Flexible Resource Model shall only amend the number of Supplier Personnel providing the Services and no other term or provision of the Contract shall be amended by an Increased Resource Notice or Decreased Resource Notice.

10.6 The Buyer shall have the right to approve all Additional Resources and Removed Resources that the Supplier is proposing to add or remove (as applicable) from the Contract (in accordance with an Increase Resource or Decreased Resource Notice).

10.7 Prior to any member of Supplier Personnel beginning to provide Services under the Contract, the Parties shall agree the applicable SFIA grade that applies to such Supplier Personnel. In the event the Parties cannot agree the SFIA grade of each applicable member of Supplier Personnel, acting reasonably, the lower of the grades suggested by the Parties shall apply.

10.8 In addition to the Flexible Resource Model set out above, the Buyer shall have the right to require the Supplier to remove any specific named member of Supplier Personnel, if in the Buyer's sole discretion and reasonable opinion:

10.8.1 the member of Supplier Personnel is not performing the Services to a suitable standard or in accordance with the Buyer's requirements set out in Attachment 1; or

10.8.2 the Supplier is charging the member of Supplier Personnel at a SFIA grade which is over and above the Services that member of Supplier Personnel is performing.



## ALTERNATIVE CLAUSES

### SCOTS LAW

#### 1. Governing Law and Jurisdiction (Clause 37.1 and 37.4)

- (a) Reference to “*laws of England and Wales*” in the original Clause 37.1 of the Contract (Governing Law, Jurisdiction and Dispute Resolution) shall be replaced with “*laws of Scotland*”.
- (b) Where legislation is expressly mentioned in the Contract, the adoption of Clause (a) shall have the effect of substituting the equivalent Scots legislation.
- (c) Reference to “the courts of England and Wales” in the original Clause 37.4 of the Contract (Governing Law, Jurisdiction and Dispute Resolution) shall be replaced with “the Court of Session”.

#### 2. Definitions (Working Day)

- (a) Reference to “England and Wales” in the definition of Working Day shall be replaced with “Scotland”.

#### 3. Definitions (Insolvency Event)

- (a) Reference to “Assignment” in the definition of Insolvency Event shall be replaced with “Assignment”.

#### 4. Definitions (Losses)

- (a) Reference to “tort” in the definition of Losses shall be replaced with “delict”.

### NORTHERN IRELAND LAW

#### 1. Governing Law and Jurisdiction (Clause 37.1 and 37.4)

- (a) Reference to “laws of England and Wales” in the original Clause 37.1 of the Contract (Governing Law, Jurisdiction and Dispute Resolution) shall be replaced with “laws of Northern Ireland”.
- (b) Where legislation is expressly mentioned in the Contract the adoption of Clause (a) shall have the effect of substituting the equivalent Northern Ireland legislation.
- (c) Reference to “the courts of England and Wales” in the original Clause 37.4 of the Contract (Governing Law, Jurisdiction and Dispute Resolution) shall be replaced with “the Courts of Northern Ireland”.

#### 2. Definitions (Working Day)

- (a) Reference to “England and Wales” in the definition of Working Day shall be replaced with “Northern Ireland”.

#### 3. (Definitions) Insolvency Event



- (a) Reference to "section 123 of the Insolvency Act 1986" in limb f) of the definition of Insolvency Event shall be replaced with "Article 103 of the Insolvency (NI) Order 1989".