

DATED 27TH MARCH 2017

CONTRACT C-629-0417-COMM

FOR

**THE EXPERT DESIGN AND LAYOUT SERVICES FOR A SET OF
SEVEN CULTURE PUBLICATIONS AND REVISIONS OF THE
EXISTING CULTURE TOOLKIT**

Between

MONITOR,

and

TOMLINSON DESIGNS LIMITED (TRADING AS TDL-CREATIVE)

PARTIES

MONITOR the body corporate continuing under section 61 of the Health and Social Care Act 2012 whose office is at Wellington House, 133-155 Waterloo Road, London SE1 8UG (**Monitor**); and

Tomlinson Designs Limited whose registered address is 2, Lakeview Stables, Lower St Clere, Kemsling, Sevenoaks, Kent TN15 6NL (**Contractor**).

BACKGROUND

Monitor wish to be supplied expert design and layout services.

The Contractor is a competent provider of the services and agrees to accept the appointment on the terms and conditions set out in this Contract and in the attached Schedules.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this Contract.

1.1. Definitions:

“Contract” means this contract and the attached Schedules;

“Schedules” means the schedules attached to the Contract;

“Service Levels” means the service levels set out in Part 2 of the attached Service Order;

“Service Order” means the service order attached at Schedule B;

“Services” means those services set out in Part 1 of the Service Order;

“Terms and Conditions” means the terms and conditions attached at Schedule A;

- 1.2. Clause, Schedule and paragraph headings shall not affect the interpretation of the Contract.
- 1.3. A reference to any party shall include that party's personal representatives, successors and permitted assignees.
- 1.4. In the event of any conflict between the Contract and the Schedules, the Contract shall take precedence. In the event of any conflict between the Terms and Conditions and the Service Order, the Service Order shall take precedence.

2. COMMENCEMENT AND DURATION

The Contract shall be deemed to have commenced on 27th March 2017 and shall continue, unless terminated earlier in accordance with the Terms and upon completion of all deliverables when it shall terminate automatically without notice.

3. THE SERVICES

- 3.1. The Contractor shall provide the Services in accordance with the Timetable, the Service Levels and the Terms and Conditions.
- 3.2. The Services shall be provided by the following individuals unless agreed otherwise in writing by the parties:
 - Craig Melvin
 - Niki Banados
 - Tom Howse
- 3.3. The Services shall be delivered at the contractors offices and at such other locations as are necessary or appropriate.

4. TERMS AND CONDITIONS

The Terms and Conditions shall apply to the provision of the Services.

5. ADDRESS FOR INVOICES

For the purposes of clause 9(1) of the Terms and Conditions, invoices must be sent to the following address unless directed otherwise in writing:

Monitor
Finance Team
Wellington House
133 – 155 Waterloo Road
London SE1 8UG
Finance@Monitor.gov.uk.

6. NOTICES

The addresses for service of a notice or other communication under the Contract are the following:

Monitor:

Address: 133-155 Waterloo Road, London, SE1 8UG

Contact: Jo Vigor

Email: jovigor@nhs.net

Contractor:

Address: 3rd floor, 3 The Square, Richmond, Surrey, TW9 1DY

Contact: Tom Howse

Email: tom.howse@tdl-creative.com

Signed by

for and on behalf of MONITOR



Name:

JO VIGOR

Title:

SENIOR DEVELOPMENT ADVISOR.

Date:

27/03/17

Signed by

for and on behalf of TDL ^{CREATIVE} London TM MJS



Name:

TOM MONSE

Title:

SENIOR DESIGNER

Date:

20/04/17

SCHEDULE A – TERMS AND CONDITIONS

1. Definitions and Interpretation

(1) In these terms and conditions of contract for Services ("Conditions"):

- "Background" means IP not created in the course of work under this Contract;
- "Confidential Information" means all information in whatever form obtained by the Contractor from Monitor whether or not relating to and connected with the Contract and the Services, including but not limited to the Contract itself and the provisions of the Contract;
- "Contract" has the meaning set out in the main body of the contract concluded between Monitor and the Contractor for the supply of Services and incorporates these Conditions;
- "Contractor" means the person who agrees to supply the Services and includes any person to whom all or part of the Contractor's obligations are assigned pursuant to Condition 3;
- "Contractor Foreground" means that part of the Foreground which is not Monitor Foreground;
- "Contract Price" means the price agreed in respect of the Services, excluding expenses and any Value Added Tax set out in the Contract or otherwise in writing by Monitor;
- "Deliverable" means the item/service or (as the case may be) each item/services deliverable to Monitor under this Contract together with any information and any computer software necessary to access a Deliverable;
- "Deliverable Contractor Background" means Background owned by the Contractor and incorporated in a Deliverable or required to Use a Deliverable;
- "Foreground" means all IP created in the course of work under this Contract;
- "IP" means intellectual property and comprises inventions, models, prototypes and other articles, know-how, information, trade secrets, designs, reports and other written material, drawings, semi-conductor mask works, database material, computer software and associated documentation and information;
- "IPR" means intellectual property rights and comprises legal protection for and rights in IP under laws relating to patents, petty patents, design rights (whether registrable or not), trade marks, service marks, copyright, database rights and semi-conductor chip protection, semi-conductor topography rights, together with other legal rights associated therewith arising under common law, trade secret law and competition law in any country, including but not limited to, the United Kingdom;
- "Liability" means costs, claims, demands, liabilities, expenses, damages or losses (including any direct or indirect financial loss, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses);
- "Monitor" means the sector regulator for health care services;
- "Monitor Background" means Background owned by Monitor;
- "Monitor Foreground" means all Foreground other than intellectual ideas, methodologies, designs, know-how and computer software provided that these are not specified to be a Deliverable;
- "Monitor Premises" means any land or buildings or premises owned or occupied by Monitor;

- "Monitor Property" means anything issued or otherwise furnished in connection with the Contract by or on behalf of Monitor, including but not limited to information, schedules, documents, papers and other materials provided in whatever form;
- "Monitor Purposes" means each and every purpose for which Monitor was established, as amended from time to time;
- "Phase End" means the date on which Monitor deems that the completion of all relevant Services and the provision of all applicable Deliverables required under a Phase (as set out in the Service Order) by the Contractor has taken place;
- "Phases" means, in relation to each Service Order, the separate phases of work for completing the Services as identified in that Service Order;
- "Relevant Claim" means a claim against, or notification of an intention to make a claim against, either the Contractor or Monitor which may reasonably be considered as likely to give rise to a liability under the indemnity in Condition'23.8;
- "Replacement Services" means services, substantially similar to any of the Services, received (or to be received in a subsequent Phase) by Monitor in substitution for any of the Services following termination of the Contract;
- "Replacement Supplier" means a replacement supplier or a third party service provider of Replacement Services appointed by Monitor from time to time;
- "Services" means the services to be supplied under the Contract;
- "Third Party Background" means Background not owned by Monitor or the Contractor;
- "Use" means use, sub-license, transfer, exploit, transfer physically, amend, modify, enhance, prepare derivative works, reproduce or disclose to the public free of charge and without time limit.
- "User Organisation" means an organisation or entity which operates within the UK health sector.

(2) The interpretation and construction of the Contract shall be subject to the following provisions:

- a. a reference to any statute, enactment, order, regulation or similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended or re-enacted;
- b. the headings in these Conditions are for ease of reference only and shall not affect the interpretation or construction of the Contract;
- c. references to "person" includes, where the context allows, an individual, firm, company, corporation or unincorporated association.

2. Acts by Monitor

- (1) Any decision, act or thing which Monitor is required or authorised to take or do under the Contract may be taken or done by any person so authorised, either generally or specifically, by Monitor.
- (2) Nothing in this Contract shall have the effect of making the Contractor the agent or employee of Monitor.

3. Assignment and Sub-contracting

- (1) The Contractor shall not give, bargain, sell, deal, charge, transfer, assign, sub-contract or otherwise dispose of the Contract or any part thereof (or purport to do any of the foregoing) without the previous agreement in writing of Monitor.

- (2) The Contractor shall not use the services of self-employed individuals in connection with the Contract without the previous agreement in writing of Monitor.
- (3) Subject to Conditions 3(1) and 3(2), if the Contractor uses a sub-contractor for the purpose of performing the Services or any part of them, the Contractor shall include in the relevant contract a provision which requires the Contractor to pay the sub-contractor for those goods or services within 30 days of the Contractor receiving a correct invoice from the sub-contractor.
- (4) The Contractor shall be responsible for the acts and omissions of any sub-contractors as if they were its own.

4. Monitor Property

- (1) All Monitor Property shall remain the property of Monitor and shall be provided and used by the Contractor solely for the purpose of performing its obligations under the Contract and for no other purpose whatsoever, except with the prior agreement in writing of Monitor.
- (2) All Monitor Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies Monitor to the contrary within 5 days or such other time as is specified in the Contract.
- (3) The Contractor undertakes to return any and all Monitor Property upon the Contract ending (howsoever terminated) or upon any earlier request by Monitor.
- (4) The Contractor shall, except as otherwise provided for in the Contract, repair or replace or, at the option of Monitor, pay compensation for all loss, destruction or damage occurring to any Monitor Property caused by the acts or omissions of the Contractor, or by its employees, agents or sub-contractors, whether or not arising from their performance of the Contract and wherever occurring.
- (5) Condition 4(4) shall not apply where the Contractor is able to show that any such loss, destruction or damage was not caused or contributed to by its negligence or default or the negligence or default of its employees, agents or sub-contractors.

5. Waiver

- (1) The failure or delay by either party to exercise any right or remedy under the Contract or these Conditions shall not constitute a waiver of that right or remedy.
- (2) No waiver shall be effective unless it is communicated to the other party in writing.
- (3) A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

6. Severability

- (1) If any Condition, clause or provision of the Contract not being of a fundamental nature is held to be unlawful, invalid or unenforceable by a court in any proceedings relating to the Contract, the validity or enforceability of the remainder of the Contract shall not be affected.

7. Confidentiality

- (1) The Contractor agrees not to disclose any Confidential Information to any third party without the prior written consent of Monitor. To the extent that it is necessary for the Contractor to disclose Confidential Information to its staff, agents and sub-contractors, the Contractor shall ensure that such staff, agents and sub-contractors are subject to the same obligations as the Contractor in respect of all Confidential Information.

- (2) Condition 7(1) shall not apply to information which:
 - a. is or becomes public knowledge (otherwise than by breach of the Contract or these Conditions);
 - b. is in the possession of the Contractor, without restriction as to its disclosure, before receiving it from Monitor;
 - c. is required by law to be disclosed.
- (3) The obligations contained in this Condition 7 shall continue to apply for a period of six years after the expiry or termination of the Contract.
- (4) The Contractor shall not handle or examine or use or remove from Monitor's Premises any Monitor Property or any other document or thing which relates to Monitor's functions or activities without the prior written consent of Monitor.
- (5) Except with the prior consent in writing of Monitor, the Contractor shall not make use of the Contract or any Confidential Information otherwise than for the purposes of carrying out the Services.

8. Amendments and Variations

- (1) No amendment or variation to the terms of the Contract shall be valid unless agreed in writing between Monitor and the Contractor.

9. Invoices and Payment

- (1) The Contractor shall submit invoices at times or intervals specified by Monitor in the Contract or otherwise. The Contractor shall ensure that any invoice it submits sets out the Monitor contract number, the Contract Price and, where not all of the Services have been completed, the relevant part of the Contract Price with an appropriate breakdown of time worked, the part of the Services completed (if all the Services have not been completed) and the period to which the invoice relates, and its confirmation that the Services (or relevant part of the Services referred to on the invoice) have been fully performed.
- (2) In consideration for the provision of the Services by the Contractor, Monitor shall pay the Contract Price after receiving a correctly submitted invoice as set out in Condition 9(1). Such payment shall normally be made within 30 days of receipt of the correctly submitted invoice.
- (3) The Contractor shall not be entitled to charge for the provision of any services that are not part of the Services agreed within the Contract, unless the Contract has been properly varied in advance in accordance with Condition 8.
- (4) Monitor may reduce, set-off, deduct or withhold payment in respect of any Services that the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of Monitor.

10. Accounts

- (1) The Contractor shall keep full and proper accounts, records and vouchers relating to all expenditure reimbursed by Monitor and all payments made by Monitor in respect of the Services.
- (2) The Contractor shall permit Monitor by its officers, employees, agents, advisers, independent auditor or other person duly authorised by Monitor on request and at all reasonable times to examine all accounts, records and vouchers at the offices of the Contractor or at such other places as Monitor shall direct, and to take copies of such accounts, records and vouchers and the Contractor shall provide Monitor or its independent auditor with such explanations relating to that expenditure as Monitor may request.

- (3) The Contractor shall ensure that the said accounts, records and vouchers are available for a period of two years after termination or expiry of the Contract.

11. Recovery of Sums Due

- (1) Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor, such sum may be deducted from any amount then due from Monitor, or which at any time thereafter may become due, to the Contractor under the Contract or any other agreement or arrangement with Monitor.
- (2) Any over-payment by Monitor to the Contractor whether in respect of the Contract Price or Value Added Tax or expenses shall be a sum of money recoverable from the Contractor pursuant to Condition 11(1) above or otherwise.

12. Value Added Tax

- (1) Monitor shall pay to the Contractor, in addition to the Contract Price, a sum equal to any Value Added Tax chargeable on the value of the Services in accordance with the Contract.
- (2) The Contractor shall, if so requested by Monitor, furnish such information as may reasonably be required by Monitor relating to the amount of Value Added Tax chargeable on the Services.

13. Provision of the Services

- (1) The Contractor shall provide the Services in accordance with and as specified in the Contract to the satisfaction of Monitor. Monitor shall have the power to inspect and examine the performance of the Services on Monitor's premises and at the Contractor's premises at any reasonable time or, provided that Monitor gives reasonable notice to the Contractor, at any other premises where any part of the Services is being performed.
- (2) If Monitor informs the Contractor that Monitor considers all or any part of the Services to be inadequate or in any way differing from the Services required under the Contract, and this is other than as a result of default or negligence on the part of Monitor, then the Contractor shall at its own expense re-schedule and re-perform the Services correctly within such reasonable time as may be specified by Monitor.
- (3) If the performance of the Contract by the Contractor is delayed by reason of any act on the part of Monitor or by industrial dispute (other than by an industrial dispute occurring within the Contractor's or its sub-contractor's organisations) or any other cause which the Contractor could not have prevented because they were events beyond its reasonable control, then the Contractor shall be allowed a reasonable extension of time for completion, to be determined by Monitor, subject to the Contractor both immediately notifying Monitor of the act or cause of delay in question and taking all steps to overcome the circumstances as far as possible. For the purposes of this Condition, the Contractor will be deemed to have been able to prevent causes of delay that are within the reasonable control of the Contractor's staff, agents and sub-contractors.
- (4) Where stated in the Contract, timely provision of the Services shall be of the essence of the Contract, including in relation to commencing the provision of the Services within the time agreed or on a date specified by Monitor.
- (5) The Contractor warrants that it shall provide the Services with all due skill, care and diligence, and in accordance with good industry practice.
- (6) Without prejudice to the provisions of Condition 11, the Contractor shall reimburse Monitor for all reasonable costs incurred by Monitor which have arisen as a direct consequence of the Contractor's failure or delay in the performance of the Contract (which the Contractor had

failed to remedy after being given reasonable notice by Monitor), provided always that Monitor shall take all reasonable steps to minimise the need to incur such costs.

- (7) The decision of Monitor regarding anything in Conditions 13(1)-(4) shall be final, binding and conclusive.
- (8) In performing the Services, the Contractor shall comply with all relevant legislation, including but not limited to the Data Protection Act 1998 and the Regulation of Investigatory Powers Act 2000.

14. Progress Report

- (1) Where formal progress reports are required by Monitor, the Contractor shall render such reports at such time and in such form as may be specified by Monitor.
- (2) The submission and acceptance of progress reports shall not prejudice any rights of Monitor under the Contract.

15 Contractor's Personnel

- (1) Monitor reserves the right to refuse to admit to Monitor's Premises any person employed by the Contractor or its sub-contractors whose admission would be undesirable in the opinion of Monitor.
- (2) If and when requested by Monitor, the Contractor shall provide a list of the names and addresses of all persons who may at any time require admission in connection with the performance of the services to Monitor's Premises, specifying the capacity in which each such person is connected to the Contractor and giving such other particulars as Monitor may require.
- (3) If the Contractor fails to comply with Condition 15(2) and if Monitor decides that such failure is prejudicial to its interests, then Monitor may immediately terminate the Contract by notice in writing to the Contractor, provided that such termination shall be without prejudice to any accrued rights of, or to any rights that shall accrue thereafter to, Monitor.

16. Indemnities and Insurance

- (1) The Contractor shall indemnify and hold Monitor harmless on demand against the Contractor's breach of contract or duty (whether arising in negligence, tort, statute or otherwise and whether direct or indirect) or that of its employees, agents or sub-contractors in respect of:
 - a. any losses incurred due to death or personal injury;
 - b. any loss, damage, destruction, injury or expense suffered by Monitor (including but not limited to loss or destruction of or damage to Monitor's Premises or Monitor's Property, including data);
 - c. all claims, demands, proceedings, actions, damages, costs (including legal costs), losses, charges, expenses suffered by or brought against Monitor, including claims made by Monitor's staff or agents or by third parties; and
 - d. any other loss, destruction or damage, including but not limited to financial losses arising.
- (2) The Contractor shall indemnify Monitor against all claims, demands, proceedings, actions, damages, costs (including legal costs), losses, charges, expenses and any other liabilities arising from or incurred by reason of any infringement or alleged infringement of any third party's Intellectual Property Rights used by or on behalf of the Contractor for the purpose of the Contract, provided that any such infringement or alleged infringement is not knowingly caused by, or contributed to, by any act of Monitor.
- (3) The Contractor shall effect with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred

by the Contractor in respect of the indemnities provided under the Contract, which in any event shall not be less than £1,000,000 per incident or series of related incidents, and shall at the request of Monitor produce the relevant policy or policies, together with receipt or other evidence of payment of the latest premium due thereunder.

- (4) Nothing in these Conditions or in any part of the Contract shall impose any liability on any member of the staff of Monitor or its representatives in their personal capacity.
- (5) Nothing in these Conditions excludes Monitor's liability for fraudulent misrepresentation or for death or personal injury resulting from its negligence.
- (6) Monitor agrees to give the Contractor prompt notice in writing of any claim known to it that will be made or is threatened or is being brought against it in respect of the indemnities provided under these conditions, and to take all reasonable steps to mitigate the amount of its loss and its consequent claim under such indemnities

17 Termination for Insolvency or Change of Control.

- (1) The Contractor shall notify Monitor in writing immediately upon the occurrence of any of the following events:
 - a. where the Contractor is an individual, if a petition is presented for his/her bankruptcy, or he/she makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his/her affairs; or
 - b. where the Contractor is not an individual but is a firm or a number of persons acting together, if any event in Condition 17(1)(a) or (c) occurs in respect of any partner in the firms or any of those persons, or if a petition is presented for the Contractor to be wound up as an unregistered company; or
 - c. where the Contractor is a company, if the company ceases or threatens to cease trading or if the company passes a resolution to wind up or takes any steps to place the company into administration (including filing of papers with a court of competent jurisdiction) or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager is appointed by a creditor or by the court over the whole or any part of its assets or undertaking, or possession is taken of any of its property under the terms of a floating charge; or
 - d. the Contractor undergoes a change of control, where "control" has the meaning given in section 416 of the Income and Corporation Taxes Act 1998.
- (2) After receipt of the notice under Condition 17(1) or on earlier discovery by Monitor of the occurrence of any of the events described in Condition 17(1), Monitor may, by notice in writing to the Contractor, terminate the Contract with immediate effect without compensation to the Contractor and without any prejudice to any right or action or remedy which may accrue to Monitor thereafter.
- (3) Monitor's right to terminate the Contract under Condition 17(2) in respect of a notice received under Condition 17(1)(d) will exist until the end of a period of six months starting from receipt of the notice provided by the Contractor pursuant to Condition 17(1), or such other period as is agreed by the parties.

18. Termination for Breach of Contract

- (1) If either party commits a material breach of the Contract which is either not capable of remedy, or, if it is capable of remedy, the party fails to remedy such breach within 28 days of being notified by the other party in writing to do so, that other party shall be entitled to terminate the Contract with immediate effect by notice in writing to the party that committed the material breach and without prejudice to any other rights or remedies of either party in respect of the breach concerned or any other breach of the Contract.

- (2) Termination of the Contract, howsoever caused, shall be without prejudice to any accrued rights or obligations of either party.

19. Cancellation

- (1) Monitor shall be entitled to cancel the Contract, or to cancel the provision of any part of the Services at any time, by giving to the Contractor not less than 28 days' notice in writing to that effect, without prejudice to any rights or remedies of the Contractor for breach of contract. Once it has given such notice, Monitor may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Contractor during the period of extension.

20. Dispute Resolution

- (1) Subject to specific provisions within the Contract which provide for the determination of disputes, the parties shall attempt in good faith to negotiate a settlement to any other dispute between them arising out of or in connection with the subject matter of the Contract.
- (2) If the parties cannot resolve the dispute pursuant to Condition 20(1), either party may at any time serve written notice on the other, stating that a dispute exists and setting out the matters in dispute and the dispute may then, by agreement between the parties, be referred to mediation pursuant to Condition 20(4).
- (3) The performance of the Services shall not cease or be delayed by the reference of a dispute to mediation pursuant to Condition 20(2).
- (4) If the parties agree to refer the dispute to mediation:
 - a. in order to determine the person who shall mediate the dispute (the "Mediator") the parties shall by agreement choose a neutral adviser or mediator within 30 days after agreeing to refer the dispute to mediation;
 - b. the parties shall within 14 days of the appointment of the Mediator meet with the Mediator in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure;
 - c. unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings;
 - d. if the parties reach agreement on the resolution of the dispute within 60 days of the Mediator being appointed, or such longer period as may be agreed between the parties, the agreement shall be reduced to writing and shall be binding on the parties once it is signed by both Monitor and the Contractor;
 - e. failing agreement within 60 days of the Mediator being appointed, or such longer period as may be agreed between the parties, either of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a 'without prejudice' basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both parties;
- (5) If the parties do not agree to refer the dispute to mediation within 30 days of receipt of the notice described in Condition 20(2), or if, having agreed to refer the dispute to mediation the parties fail to reach agreement as to who shall mediate the dispute pursuant to Condition 20(4)(a) within 30 days of agreeing to refer the dispute to mediation or if they fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts.

21. Conflict of Interest

- (1) The Contractor shall ensure that there is no conflict of interest as to be likely to prejudice its independence and objectivity in performing the Services and complying with its obligations under the Contract and undertakes that upon becoming aware of any such conflict of interest during the performance of the Contract (whether the conflict existed before the award of the Contract or arises during its performance) it shall immediately notify Monitor in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as Monitor may reasonably require.
- (2) Where Monitor is of the opinion that the conflict of interest notified to it under Condition 21(1) is capable of being avoided or removed, Monitor may require the Contractor to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict and:
 - a. if the Contractor fails to comply with Monitor's requirements in this respect; or
 - b. if, in the opinion of Monitor, purported compliance does not avoid or remove the conflict,

Monitor may terminate the Contract immediately and recover from the Contractor the amount of any loss resulting from such termination.

- (3) Notwithstanding Condition 21(2), where Monitor is of the opinion that the conflict of interest which existed at the time of the award of the Contract could have been discovered with the application by the Contractor of due diligence and ought to have been disclosed as required by the tender documents pertaining to the granting of the Contract to the Contractor, Monitor may terminate the Contract immediately for breach of a fundamental condition of the Contract and, without prejudice to any other rights, recover from the Contractor the amount of any loss resulting from such termination.

22. Service of Notice

- (1) Any notice that either party gives under the Contract shall be made by hand-delivered or recorded first class letter. A notice shall be deemed to be duly given or made in the case of a hand-delivered letter on delivery, or in the case of a letter sent by recorded first-class mail on the next working day after posting.

23. Intellectual Property Rights

- (1) All Monitor Foreground and IP in Deliverables shall vest in Monitor upon creation of the rights and the Contractor hereby irrevocably assigns to Monitor with full title guarantee all such IP.
- (2) The Contractor grants Monitor a non-exclusive, world-wide, royalty-free, perpetual and irrevocable licence to Use the Contractor Foreground and Deliverable Contractor Background for Monitor Purposes and/or to the extent that this is necessary for the purpose of the using, amending, modifying, enhancing or exploiting a Deliverable or Monitor Foreground.
- (3) The Contractor shall, upon request from Monitor, grant to any User Organisation or Replacement Supplier as required by Monitor a non-exclusive, world-wide, royalty-free, perpetual and irrevocable licence to Use the Contractor Foreground and Deliverable Contractor Background for Monitor Purposes and/or to the extent that this is necessary for the purpose of using, amending, modifying, enhancing or exploiting a Deliverable or Monitor Foreground.
- (4) IPR in reports, drawings and other documentation embodied in the Deliverable or, as the case may be, each Deliverable shall vest in Monitor.

- (5) The Contractor shall not incorporate any Third Party Background in any Deliverable without ensuring that Monitor is free to Use it for Monitor Purposes.
- (6) The Contractor warrants and undertakes as follows:
- a. that it has the right to enter into the Contract and is the sole, absolute and unencumbered legal and beneficial owner of the Contractor Foreground and Deliverable Contractor Background;
 - b. promptly to pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Deliverable Contractor Background or any part of any of them that are necessary for the upkeep of the IPR in the Deliverable Contractor Background;
 - c. to obtain all necessary certificates, licences, permits and authorisations from time to time required for the protection of the IPR in the Deliverable Contractor Background;
 - d. to do all in its power to protect and preserve the IPR in the Deliverable Contractor Background.
- (7) Monitor grants to the Contractor a royalty-free, revocable licence to Use the Monitor Background only where necessary for performance of the Services. Hence on termination, cancellation or expiry of the Contract, this licence shall immediately cease.
- (8) The Contractor agrees to indemnify and keep indemnified Monitor and any User Organisation granted a licence under Condition 23(3) from and against all Liability incurred by Monitor and any applicable User Organisation arising out of or in connection with Contractor Foreground and Deliverable Contractor Background.
- (9) If any third party makes a Relevant Claim, either the Contractor or Monitor shall:
- a. as soon as is reasonably practicable give written notice of that matter to the other, specifying in reasonable detail the nature of the Relevant Claim;
 - b. not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the other (such consent not to be unreasonably withheld or delayed);
 - c. give the other and the other's professional advisers reasonable access to its premises and personnel and to any relevant documents, records and/or software within its power or control, so as to enable the other and the other's professional advisers to examine such documents, records and/or software and to take copies of the documents and records at their own expense for the purpose of assessing the merits of the Relevant Claim.
- (10) For the avoidance of doubt the Contractor shall not acquire any right to Use the Monitor Foreground.

24. Equipment

- (1) If Monitor reimburses the Contractor for the cost of any equipment, such equipment shall become the property of Monitor, and the Contractor shall on request deliver such equipment to Monitor. The Contractor shall keep an inventory of such equipment and shall deliver that inventory to Monitor on request, and on completion of the Services.

25. Terms Applicable

- (1) These Conditions shall apply to all contracts for the purchase of Services by Monitor to the exclusion of all other terms and conditions, including any terms or conditions which the Contractor may purport to apply under any sales offer, standard terms of sale, acknowledgement of order or similar documentation.

- (2) Monitor will not be liable for any orders for Services or amendments thereto other than those issued or confirmed on the Purchase Order and signed by a representative of Monitor with authority to enter into contracts on behalf of Monitor.

26. Rights of Third Parties

- (1) It is not intended that the Contract, either expressly or by implication, confers any benefit on any person who is not a party to the Contract and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply.

27. Freedom of Information Act 2000

- (1) Monitor is obliged to meet its statutory obligations relating to the disclosure of information under the Freedom of Information Act 2000. All information provided to Monitor under this Contract may need to be disclosed by Monitor in response to a request for information under that Act. Therefore, nothing in this Contract prevents Monitor from complying with its statutory obligations under that Act.

28. Law and Jurisdiction

The Contract shall be governed by and construed in accordance with English Law, and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

SCHEDULE B: SERVICE ORDER

Contract Number: C-629-0417-COMM

To be quoted on all correspondence relating to this Order.

1. THE SERVICES

1.1. The functions to be carried out by the Contractor will be to:

Main Deliverable 1:

- Phase One revisions of existing toolkit - Design support to revise (and reduce) content in existing toolkit, re-brand where appropriate to match new NHSI brand.

Main Deliverable 2:

- Phase 2 External design support, including multiple graphics. This is the publication to guide providers through phase 2 of the programme, by the end of which they will have developed a leadership strategy.
- 7 short guides. The first five short guides compliment the phase 1 toolkit. They will make the overall content more accessible, enabling spread and adopt of the programme.

2. SERVICE LEVELS

2.1.1 The documentation will be of high quality, with clearly laid out and readable diagrams and where relevant written in plain English in such a way that it is accessible and of practical use to a number of different stakeholders at end of the contract without recourse to support from the supplier.

2.2 The successful contractor will work with NHS Improvements team prior to the completion of the documentation to ensure that the approach to drafting is in line with the requirements of the deliverables; and
To ensure the quality of outputs, the Contractor will report on their progress on a weekly basis in London, to the NHS Improvement project lead.

2.3 Upon agreed notice and agreement, one or both parties may put into effect this break clause following completion of revisions to the phase 1 document and short

guides 1 and 2 of the contract agreement, with both parties reviewing progress and agreeing whether to continue after completion of phase one.

2.4 If the scope requirements of the work change over the course of the project, the original quote will be revised.

3 THE CONTRACT PRICE

3.3 The Contract Price shall be fixed at a grand total of £8806.08 (not including printing costs estimated to be £1701.00 excluding VAT) inclusive of expenses and including VAT as set out in full below:

Quote breakdown

MONTH 1 — March 27 th - 31 st (Possible additional time April 3 rd - 7 th)					
Wk -1/2	Designed Elements	Size	Pages	Time (hrs)	Cost Based on
	Modification of phase 1 toolkit template to bring inline with NHSI guidelines	A4	N/A	4	£220 N/A
	Reduction and reformatting of toolkit 1	A4	100	20	£1,100 N/A
	Design of A5 template for short guides	A5	12	6	£330 N/A
	Creation of short guide 1&2 from toolkit 1	A5	24	8	£440 N/A
	Contingency	N/A	N/A	8	£440 N/A
Design Total					£2,530
Other Costed Activities					
	Review meeting (on-site)			2	£180.00
	Travel			2	£17.80
	Oliver* - Quality checking			0.5	£45.00
	Tom supervising			1	£55.00
Other Costs Total					£227.80
Sub Total					£2,757.80
Total including VAT (20%)					£3,309.36

MONTH 2 — April (Design work on hold while content is being completed by NHSI team)

MONTH 3 to 8 — May to Sept					
	Designed Elements	Size	Pages	Time (hrs)	Cost Based on
	Setup of phase 2 toolkit template based on modified version used for phase 1	A4	N/A	3	£165 N/A
	Design and formatting of phase 2 toolkit	A4	100	20	£1,100 N/A
	Creation of short guide 3,4,5, from toolkit 1 and short guide 6&7 from toolkit 2	A5	60	18	£990 N/A
	Simple diagrams x10	A4	N/A	8	£440 N/A
	Contingency	N/A	N/A	8	£440 N/A
Design Total					£3,135
Other Costed Activities					
	Review meeting (Call)			15	£825.00
	Review meeting (on-site)			5	£275.00
	Travel			5	£35.60
	Oliver* - Quality checking (monthly)			2	£90.00
	Tom supervising			4	£220.00
Other Costs Total					£1,445.60
Sub Total					£4,580.60
Total including VAT (20%)					£5,496.72
Printing Costs					
	7 short guides	A5	12	N/A	£1701
Total including VAT (20%)					£2,041.20
Grand Total including VAT (20%)					£10,847.28

Note: All figures are based on a mid-weights hourly rate with exception of *Oliver

TOTAL
£10,847.28

PAYMENT TERMS

- 3.4 The payment terms for the Charges will be upon the completion of deliverables/milestones to the standards set out in this Service Order. The following milestone payments apply:
- 3.5 The Contractor will issue an invoice for the relevant payment amount by Deliverable (as indicated in the Payment Table within Section 3 above) upon receipt of confirmation from Monitor that the respective milestone and associated Deliverable has been completed to a satisfactory standard, confirmed in writing by Monitor.

Deliverable/Milestone Payments	Cost (excluding VAT)
Main Deliverable 1	2757.80
Main Deliverable 2	4580.60
Total Cost	£7338.40

Estimated printing costs for whole project circa £1701.00 (excluding VAT), dependent on quote offered at time of printing.

4 TIMETABLE

- 4.3 The milestone/key deliverables scheduled delivery dates are set out below;

Milestone/Key Deliverables	Scheduled Delivery Date
Main Deliverable 1 : a) Revised toolkit, b) short guides 1 & 2 and printing	31 st March 2017
Main Deliverable 2: Phase 2 publication a) Phase 2 publication b) Short guides 3-7 and printing	September 2017

Please note if the timelines are altered by Monitor, the contractor will not be held to the deadlines specified in the table above