



Shared Business Services

NHS SHARED BUSINESS SERVICES FRAMEWORK AGREEMENT FOR THE SUPPLY OF GOODS AND / OR THE PROVISION OF SERVICES

| | |
|---------------------------------|---|
| The Authority | NHS Shared Business Services Limited a company registered in England and Wales under company number 05280446 whose registered office is at Three, Cherry Trees Lane, Hemel Hempstead, Hertfordshire, HP2 7AH (acting as an agent on behalf of its Approved Organisations) |
| The Supplier | [Insert name, and address] a company registered in [England and Wales] under company number [O] whose registered office is at [O] |
| Date | [Insert date when signed by both parties] |
| Type of Goods and / or Services | |

This Framework Agreement is made on the date set out above subject to the terms set out in the schedules and appendix listed below ("**Schedules**"). The Authority and the Supplier undertake to comply with the provisions of the Schedules in the performance of this Framework Agreement.

The Definitions in Schedule 4 apply to the use of all capitalised terms in this Framework Agreement.

Schedules

| Framework Agreement provisions | |
|------------------------------------|---|
| Schedule 1 | Key Provisions |
| Schedule 2 | General Terms and Conditions |
| Schedule 3 | Information and Data Provisions |
| Schedule 4 | Definitions and Interpretations |
| Schedule 5 | Specification, Selection Questionnaire (SQ) and Bid |
| Schedule 6 | Commercial Schedule |
| Schedule 7 | Ordering Procedure, Award Criteria and Order Form |
| Schedule 8 | Approved Organisations |
| Error! Reference source not found. | Management Information |
| Schedule 10 | Contract Change Notice |
| Schedule 11 | Corporate Social Responsibility |
| Schedule 12 | NCIS Fee and Indexation |



Shared Business Services

Signed by the authorised representative of THE AUTHORITY

| | | | |
|-----------|-------|------------|-------|
| Name: | | Signature: | |
| Position: | | Date: | |

Signed by the authorised representative of THE SUPPLIER

| | | | |
|-----------|-------|-----------|-------|
| Name: | | Signature | |
| Position: | | Date: | |

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Schedule 1

Key Provisions

Standard Key Provisions

1 Application of the Key Provisions

- 1.1 The standard Key Provisions at Clauses 1 to 11 of this Schedule 1 shall apply to this Framework Agreement.
- 1.2 The optional Key Provisions at Clauses 8 to 11 of this Schedule 1 shall only apply to this Framework Agreement where they have been checked and information completed as applicable.
- 1.3 Extra Key Provisions shall only apply to this Framework Agreement where such provisions are set out at the end of this Schedule 1.

2 Term

- 2.1 The Term of this Framework Agreement shall be **[X]** years from the Commencement Date and may be extended in accordance with Clause 15.2 of Schedule 2 provided that the duration of this Framework Agreement shall be no longer than 4 years in total.

3 Contract Managers

- 3.1 The Contract Managers at the commencement of this Framework Agreement are:

3.1.1 for the Authority:

[#####], Category Manager

3.1.2 for the Supplier:

[insert name and role].

4 Names and addresses for notices

- 4.1 Notices served under this Framework Agreement are to be delivered to:

4.1.1 for the Authority:

[#####], Category Manager, NHS SBS

Procurement

Three Cherry Trees Lane, Hemel Hempstead HP2 7AH

4.1.2 for the Supplier:

[complete name and/or role, email address, and address].

5 levels for escalation and dispute resolution

5.1 The management levels at which a Dispute will be dealt with are as follows:

| Level | Authority representative | Supplier representative |
|-------|--|-------------------------|
| 1 | [#####] - Category Manager | [Contract Manager] |
| 2 | [#####] - Head of Category - Digital & IT | [insert role] |
| 3 | [#####] - Head of Procurement Services | [insert role] |

6 Order of precedence

6.1 Subject always to Clause 6.2 of this Schedule 1, should there be a conflict between any other parts of this Framework Agreement the order of priority shall be:

- 6.1.1 the provisions on the front page of this Framework Agreement;
- 6.1.2 Schedule 1: Key Provisions;
- 6.1.3 Schedule 5: Specification, Selection Questionnaire (SQ) and Bid (but only in respect of the Authority's requirements);
- 6.1.4 Schedule 2: General Terms and Conditions;
- 6.1.5 Schedule 6: Commercial Schedule;
- 6.1.6 Schedule 12 (NCIS Fee and Indexation)
- 6.1.7 Schedule 3: Information Governance Provisions;
- 6.1.8 Schedule 4: Definitions and Interpretations;
- 6.1.9 the order in which all subsequent schedules, if any, appear; and
- 6.1.10 any other documentation forming part of the Framework Agreement in the date order in which such documentation was created with the more recent documentation taking precedence over older documentation to the extent only of any conflict.

6.2 Where there is a conflict between the Supplier's responses to the Authority's requirements (the Supplier's responses being set out in Schedule 5) and any other part

of this Framework Agreement, such other part of this Framework Agreement shall prevail.

- 6.3 For the avoidance of doubt, the Specification, Selection Questionnaire and Bid shall include, without limitation, the Authority's requirements in the form of its specification and other statements and requirements, the Supplier's responses, proposals and/or method statements to meet those requirements, and any clarifications to the Supplier's responses, proposals and/or method statements as included as part of Schedule 5. Should there be a conflict between these parts of the Specification, Selection Questionnaire and Bid, the order of priority shall be (1) the Authority's requirements; (2) any clarification to the Supplier's responses, proposals and/or method statements, and (3) the Supplier's responses, proposals and/or method statements.

7 NCIS Fee Rate

- 7.1 For the purposes of this Framework Agreement, the NCIS Fee Rate shall be **TBC** of Total Supplier Charges.

Optional Key Provisions

- 8 **Quality assurance standards** ☐ (only applicable to the Framework Agreement if this box is checked and the standards are listed)

- 8.1 The following quality assurance standards shall apply, as appropriate, to the manufacture, supply and/or installation of the Goods and/or provision of the Services: **[as detailed within the specification]**.

- 9 **Different levels and/or types of insurance** ☐ (only applicable to the Framework Agreement if this box is checked and the table sets out the requirements)

- 9.1 The Supplier shall put in place and maintain in force the following insurances with the following minimum cover per claim:

| Type of insurance required | Minimum cover |
|--|---------------|
| [Employer's liability insurance] | £5M |
| [Public liability insurance] | £5M |
| [Product liability] | £5M |
| [Professional indemnity insurance] | £5M |
| [Insert other types of insurance as appropriate] | [] |

- 10 Guarantee ☐ (only applicable to the Framework Agreement if this box is checked)**
- 10.1 Promptly following the execution of this Framework Agreement and in any event by no later than ten (10) Business Days following the execution of this Framework Agreement, the Supplier shall, if it has not already delivered an executed Deed of Guarantee to the Authority, deliver the executed Deed of Guarantee to the Authority as required by the procurement process followed by the Authority. Failure to comply with this Key Provision shall be an irremediable breach of this Framework Agreement.
- 11 Data Protection Liability Cap ☐ (only applicable to the Framework Agreement if this box is checked and the value of the limit of liability is listed)**
- 11.1 The Supplier's aggregate liability in respect of loss of or damage to Authority Data or Losses incurred by the Authority due to breach of Data Protection Legislation that is caused by Default of the Supplier occurring in each and any Contract Year shall in no event exceed [insert appropriate number].

Extra Key Provisions

Schedule 2

General Terms and Conditions

Contents

1. Supplier's appointment
2. Supplier's commitments
3. Ordering procedures / Approved Organisations
4. Reasonable assistance
5. Supplier Performance and Lifescience Industry Accredited Credentialing Register
6. Business continuity
7. The Authority's obligations
8. Contract management
9. Price and payment
10. Warranties
11. Statutory compliance
12. Independence of Approved Organisations
13. Limitation of liability
14. Insurance
15. Term and termination
16. Consequences of expiry or early termination of this Framework Agreement
17. Suspension of Supplier's appointment
18. Complaints
19. Sustainable development
20. Electronic product and services information
21. Change management
22. Dispute resolution
23. Force majeure
24. Records retention and right of audit
25. Conflicts of interest and the prevention of fraud
26. Equality and human rights
27. Notice

- 28. Assignment, novation and Sub-contracting
- 29. Supply Chain Management
- 30. Prohibited Acts
- 31. General

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1 Supplier's appointment

- 1.1 The Authority appoints the Supplier as a potential supplier of the Goods and Services and subject to Clause 2.2 of this Schedule 2, the Supplier shall be eligible to be considered for the award of Orders during the Term.
- 1.2 In consideration of the Authority agreeing to appoint the Supplier to this Framework Agreement in accordance with Clause 1.1 of this Schedule 2 and the mutual exchange of promises and obligations under this Framework Agreement, the Supplier undertakes to supply the Goods and / or to provide the Services under Orders placed with the Supplier:
- 1.2.1 of the exact quality, type and as otherwise specified in the Specification, Selection Questionnaire and Bid;
 - 1.2.2 at the Contract Price calculated in accordance with the Commercial Schedule; and
 - 1.2.3 in such quantities and to such extent and at such times and at such locations as may be specified in an Order.
- 1.3 The Supplier agrees that the Call-Off Terms and Conditions for the Supply of Goods and / or the Provision of Services shall apply to all Goods and / or Services provided by the Supplier to an Approved Organisation pursuant to this Framework Agreement. The Supplier agrees that it will not in its dealings with an Approved Organisation seek to impose or rely on any other contractual terms which in any way vary or contradict the relevant Call-Off Contract and to the extent that the Supplier does seek to impose or rely on any other contractual terms which in any way vary or contradict the relevant Call-Off Contract then such terms shall be void.
- 1.4 The Supplier shall comply fully with its obligations set out in this Framework Agreement, the Specification, Selection Questionnaire and Bid, the Call-off Terms and Conditions for the Supply of Goods and / or the Provision of Services and any other provisions of contracts entered into under and in accordance with this Framework Agreement (to include, without limitation, the KPIs and all obligations in relation to the quality, performance characteristics, supply, delivery and installation and training in relation to use of the Goods).
- 1.5 If there are any quality, performance and/or safety related reports, notices, alerts or other communications issued by the Supplier or any regulatory or other body in relation to the Goods, the Supplier shall promptly provide the Authority with a copy of any such reports, notices, alerts or other communications.
- 1.6 Upon receipt of any such reports, notices, alerts or other communications pursuant to Clause 1.5 of this Schedule 2, the Authority shall be entitled to request further information from the Supplier and/or a meeting with the Supplier, and the Supplier shall cooperate fully with any such request.

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- 1.7 In complying with its obligations under this Framework Agreement, the Supplier shall, and shall procure that all Staff shall, act in accordance with the NHS values as set out by the NHS from time to time.

2 Supplier's commitments

- 2.1 Unless otherwise set out in the Commercial Schedule, the Supplier acknowledges that:
- 2.1.1 there is no obligation on the Authority or on any other Approved Organisations to purchase any Goods or Services from the Supplier during the Term;
 - 2.1.2 no undertaking or any form of statement, promise, representation or obligation has been made by the Authority and/or any other Approved Organisations in respect of the total quantities or volumes or value of the Goods or Services to be ordered by them pursuant to this Framework Agreement and the Supplier acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation;
 - 2.1.3 in entering this Framework Agreement, no form of exclusivity has been granted by the Authority and/or other Approved Organisations;
 - 2.1.4 the Authority and/or other Approved Organisations are at all times entitled to enter into other contracts and agreements with other suppliers for the provision of any or all goods or services which are the same as or similar to the Goods or Services; and
 - 2.1.5 the Authority is acting for and on behalf of the Approved Organisations.
- 2.2 If the requirement for the Supplier to have in place at all times valid ISO 9001 and ISO 14001 certificates or an equivalent certification is referenced in the Specification, Selection Questionnaire and Bid, the Supplier's right to be considered for the award of Orders during the Term is conditional on the Supplier having at all times such valid ISO 9001 and ISO 14001 certificates or an equivalent certification and providing evidence of such certifications to the Authority following the Authority's written request.
- 2.3 If the Supplier provides an equivalent certification in accordance with Clause 2.2 of this Schedule 2 then the Supplier shall provide evidence to the Authority that such a certification is equivalent to the relevant ISO standard to the Authority's satisfaction.
- 2.4 To the extent that the Supplier is required to work with another supplier in delivering any of the Goods and/or Services then the Supplier shall work in a collaborative manner with the other supplier.
- 2.5 By no later than five (5) Business Days following the execution of an Order Form by the Approved Organisation and the Supplier, the Supplier shall send a copy of the executed version of the Order Form to the Authority's Contract Manager.

3 Ordering procedure and Approved Organisations

- 3.1 Any Approved Organisation may enter into Call-Off Contracts by placing an Order in accordance with the Ordering Procedure.
- 3.2 The Approved Organisations that are entitled to place Orders are set out in Schedule 8 (Approved Organisations).
- 3.3 For the avoidance of doubt, any successor bodies of any Approved Organisation shall be entitled to place Orders and shall be deemed Approved Organisations for the purposes of this Framework Agreement.

4 Reasonable assistance

- 4.1 Upon the written request of the Authority or any Approved Organisation, the Supplier shall provide the Authority or such Approved Organisation with any reasonable and proportionate information that it holds about the Goods and/or Services it supplies under this Framework Agreement including, without limitation, the compatibility and interoperability of such Goods and/or Services with other products alongside other related services, to enable the Approved Organisation to complete any necessary due diligence before purchasing such Goods and/or Services, or any connected or replacement Goods and/or Services.

5 Supplier Performance and Lifescience Industry Accredited Credentialing Register

- 5.1 The Supplier shall perform all Call-Off Contracts entered into under this Framework Agreement by the Authority or any other Approved Organisation in accordance with:
 - 5.1.1 the requirements of this Framework Agreement; and
 - 5.1.2 the provisions of the respective Call-Off Contracts.
- 5.2 Unless otherwise confirmed by the Authority in writing, the Supplier shall ensure full compliance (to include with any implementation timelines) with any Guidance issued by the Department of Health and Social Care and/or any requirements and/or Policies issued by the Authority (to include as may be set out as part of any procurement documents leading to the award of this Framework Agreement) in relation to the adoption of, and compliance with, any scheme or schemes to verify the credentials of Supplier representatives that visit NHS premises (to include use of the Lifescience Industry Accredited Credentialing Register). Once compliance with any notified implementation timelines has been achieved by the Supplier, the Supplier shall, during the Term, maintain the required level of compliance in accordance with any such Guidance, requirements and Policies.

6 Business continuity

- 6.1 Throughout the Term, the Supplier will ensure its Business Continuity Plan provides for continuity during a Business Continuity Event. The Supplier confirms and agrees

such Business Continuity Plan details and will continue to detail robust arrangements that are reasonable and proportionate to:

6.1.1 the criticality of this Framework Agreement to the Approved Organisations; and

6.1.2 the size and scope of the Supplier's business operations,

regarding continuity of the supply of Goods and/or the provision of the Services during and following a Business Continuity Event.

6.2 The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Framework Agreement to Approved Organisations and the size and scope of the Supplier's business operations. The Supplier shall promptly provide to the Authority, at the Authority's written request, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that the Supplier tests its Business Continuity Plan in accordance with the requirements of this Clause 6.2 of this Schedule 2 and reasonable and proportionate information regarding the outcome of such tests. The Supplier shall provide to the Authority a copy of any updated or revised Business Continuity Plan within ten (10) Business Days of any material update or revision to the Business Continuity Plan.

6.3 The Authority may suggest reasonable and proportionate amendments to the Supplier regarding the Business Continuity Plan at any time. Where the Supplier, acting reasonably, deems such suggestions made by the Authority to be relevant and appropriate, the Supplier will incorporate into the Business Continuity Plan all such suggestions made by the Authority in respect of such Business Continuity Plan. Should the Supplier not incorporate any suggestion made by the Authority into such Business Continuity Plan it will explain the reasons for not doing so to the Authority.

6.4 Should a Business Continuity Event occur at any time, the Supplier shall implement and comply with its Business Continuity Plan and provide regular written reports to the Authority on such implementation.

6.5 During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to fulfil its obligations in accordance with this Framework Agreement.

7 The Authority's obligations

7.1 The Authority shall provide reasonable cooperation to the Supplier and shall, as appropriate, provide copies of or give the Supplier access to such of the Policies that are relevant to the Supplier complying with its obligations under this Framework Agreement.

7.2 The Authority shall comply with the Authority's Obligations, if any.

8 Contract management

- 8.1 Each Party shall appoint and retain a Contract Manager who shall be the primary point of contact for the other Party in relation to matters arising from this Framework Agreement. Should the Contract Manager be replaced, the Party replacing the Contract Manager shall promptly inform the other Party in writing of the name and contact details for the new Contract Manager. Any Contract Manager appointed shall be of sufficient seniority and experience to be able to make decisions on the day-to-day operation of the Framework Agreement. The Supplier confirms and agrees that it will be expected to work closely and cooperate fully with the Authority's Contract Manager.
- 8.2 Each Party shall ensure that its representatives (to include, without limitation, its Contract Manager) shall attend review meetings on a regular basis to review the performance of the Supplier under this Framework Agreement and to discuss matters arising generally under this Framework Agreement. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day-to-day operation of the Framework Agreement. Review meetings shall take place at the frequency specified in the Specification. Should the Specification not state the frequency, then the first such meeting shall take place on a date to be agreed on or around the end of the first month after the Commencement Date. Subsequent meetings shall take place at quarterly intervals or as may otherwise be agreed in writing between the Parties.
- 8.3 Ten (10) Business Days prior to each review meeting (or at such time and frequency as may be specified in the Specification) the Supplier shall provide a written contract management report to the Authority regarding the supply of Goods, the provision of the Services and the operation of this Framework Agreement. Unless otherwise agreed by the Parties in writing, such contract management report shall contain:
- 8.3.1 details of the performance of the Supplier under this Framework Agreement and any Call-Off Contracts when assessed in accordance with the KPIs, as relevant to the Framework Agreement and any Call-Off Contracts, since the last such performance report;
 - 8.3.2 details of any complaints by Approved Organisations in relation to the supply of Goods or the provision of the Services, their nature and the way in which the Supplier has responded to such complaints since the last review meeting written report;
 - 8.3.3 the information specified in the Specification as being relevant to the operation of this Framework Agreement;
 - 8.3.4 a status report in relation to the implementation of any current Remedial Proposals by either Party; and
 - 8.3.5 such other information as reasonably required by the Authority.

- 8.4 Unless specified otherwise in the Specification, Selection Questionnaire and Bid, the Authority shall take minutes of each review meeting and shall circulate draft minutes to the Supplier within a reasonable time following such review meeting. The Supplier shall inform the Authority in writing of any suggested amendments to the minutes within five (5) Business Days of receipt of the draft minutes. If the Supplier does not respond to the Authority within such five (5) Business Days the minutes will be deemed to be approved. Where there are any differences in interpretation of the minutes, the Parties will use their reasonable endeavours to reach agreement. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the dispute resolution process set out in Clause 5 of the Key Provisions and Clause 22.3 of this Schedule 2.
- 8.5 The Supplier shall provide at no charge, provide full, accurate and complete Management Information to the Authority, in the format and frequency set out in Schedule 9 (Management Information). The Supplier shall send the Management Information to the Authority by no later than the 7th (seventh) Business Day of the following month the relevant Management Information is due.
- 8.6 The Supplier shall provide such information as the Authority may request from time to time within five (5) Business Days of the date of the request ("**Contract Management Information**"). The Supplier shall supply the Management Information and/or the Contract Management Information to the Authority in such form as may be specified by the Authority and, where requested to do so, the Supplier shall also provide such Management Information and/or the Contract Management Information to another Contracting Authority, whose role it is to analyse such information in accordance with UK government policy (to include, without limitation, for the purposes of analysing public sector expenditure and planning future procurement activities) ("**Third Party Body**"). The Supplier confirms and agrees that the Authority may itself provide the Third Party Body with Management Information and/or the Contract Management Information relating to the Goods and/or the Services ordered and any payments made under this Framework Agreement or any Contracts and any other information relevant to the operation of this Framework Agreement.
- 8.7 Upon receipt of Management Information and/or the Contract Management Information supplied by the Supplier to the Authority and/or the Third Party Body, or by the Authority to the Third Party Body, the Parties hereby consent to the Third Party Body and the Authority:
- 8.7.1 storing and analysing the Management Information and the Contract Management Information and producing statistics; and
 - 8.7.2 sharing the Management Information and the Contract Management Information, or any statistics produced using the Management Information or the Contract Management Information with any other Contracting Authority.
- 8.8 If the Third Party Body and/or the Authority shares the Management Information or the Contract Management Information, any Contracting Authority receiving the Management Information or the Contract Management Information shall, where such

Management Information and Contract Management Information is subject to obligations of confidence under this Framework Agreement and such Management Information and Contract Management information is provided direct by the Authority to such Contracting Authority, be informed of the confidential nature of that information by the Authority and shall be requested by the Authority not to disclose it to any body that is not a Contracting Authority (unless required to do so by Law).

- 8.9 The Authority may make changes to the type of Management Information and the Contract Management Information which the Supplier is required to supply and shall give the Supplier at least one (1) month's written notice of any changes.
- 8.10 The Supplier shall be in breach of this Framework Agreement (such that the Authority may elect to apply the process in clause 15.3) if:
- 8.10.1 there is any failure by the Supplier to provide the Management Information or the Contract Management Information in accordance with the timeframes set out in this Clause 8 (Contract Management) or Schedule 9 (Management Information); and/or
 - 8.10.2 there is any material error(s) and/or material omission(s) in the Management Information and/or the Contract Management Information.
- 8.11 The Supplier shall be liable for any loss suffered by the Authority including (but not limited to) any miscalculation of the NCIS Fee that arises as a result of any breach referred to in clause 8.10 above.
- 8.12 By no later than five (5) Business Days following execution of the Call-off Contract and Order Form the Supplier shall:
- 8.12.1 notify the Authority in writing that it has entered into the Call-off Terms and Conditions and Order Form with an Approved Organisation;
 - 8.12.2 send the executed version of the Order Form and the associated Call-off Terms and Conditions to the Authority.
- 8.13 If the Supplier fails to supply any information requested by the Authority, including but not limited to the Management Information and/or the Contract Management Information, after two (2) separate Authority written requests (the "**Initial Requests**"), then the Authority reserves the right to charge the Supplier £100 plus VAT (to address administrative cost incurred by the Authority in relation to the Additional Requests) associated with for any additional Authority written requests for the information (the "**Additional Requests**") in excess of the two (2) Initial Requests.
- 8.14 Any Additional Requests shall be issued no earlier than five (5) Business Days after the previous request.
- 8.15 By no later than the anniversary of the Commencement Date each and every year during the Term, the Parties shall meet to review the appropriateness of the KPIs (the "**KPI Meeting**").

- 8.16 By no later than ten (10) Business Days prior to the KPI Meeting, the Supplier shall provide the Authority with proposals for new or revised KPIs to facilitate and promote continuous improvement.
- 8.17 The Parties shall consider and discuss the Supplier's proposals (as set out in clause 8.16) at the KPI Meeting and seek to agree (both Parties to act reasonably) the KPIs for the subsequent year.
- 8.18 If the Parties fail to agree the KPIs at the KPI Meeting then the matter shall be a Dispute and be resolved in accordance with clause 22 (Dispute Resolution).

9 Price and payment

- 9.1 The Contract Price for all Call-Off Contracts shall be calculated as set out in the Commercial Schedule and the payment provisions for all Call-Off Contracts shall be as set out in the relevant Call-off Terms and Conditions for the Supply of Goods and / or the Provision of Services.
- 9.2 Without prejudice to Clause 9.3, where any payments are to be made under this Framework Agreement by either Party in addition to any payments to be made by Approved Organisations under any Call-Off Contracts, the details of such payments and the invoicing arrangements shall be set out in the Commercial Schedule.
- 9.3 In consideration of the establishment and management of this Framework Agreement in accordance with the terms of this Framework Agreement, the Supplier shall pay the NCIS Fee as agreed and as set out in Schedule 12 (NCIS Pricing and Indexation).
- 9.4 Where the Authority is entitled to receive any sums (including, without limitation, any costs, charges or expenses) from the Supplier under this Framework Agreement, the Authority may invoice the Supplier for such sums. Such invoices shall be paid by the Supplier within 30 days of the date of such invoice.
- 9.5 If a Party fails to pay any undisputed sum properly due to the other Party under this Framework Agreement, the Party due such sum shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 9.6 Unless set out in the Commercial Schedule as a chargeable item and subject to Clause 31.6 of this Schedule 2, the Supplier shall bear the cost of complying with its obligations under this Framework Agreement.

10 Warranties

- 10.1 The Supplier warrants and undertakes that:
- 10.1.1 it will comply with the terms of all Call-Off Contracts entered into by Approved Organisations under this Framework Agreement;

- 10.1.2 it will fully and promptly respond to all requests for information and/or requests for answers to questions regarding this Framework Agreement, any Call-Off Contracts, the Goods, the provision of the Services, any complaints and any Disputes at the frequency, in the timeframes and in the format as requested by the Authority from time to time (acting reasonably);
- 10.1.3 all information included within the Supplier's responses to any documents issued by the Authority as part of the procurement relating to the award of this Framework Agreement (to include, without limitation, as referred to in Specification, Selection Questionnaire and Bid and Commercial Schedule) and all accompanying materials is accurate;
- 10.1.4 it has and shall as relevant maintain all rights, consents, authorisations, licences and accreditations required to enter into and comply with its obligations under this Framework Agreement;
- 10.1.5 it has the right and authority to enter into this Framework Agreement and that it has the capability and capacity to fulfil its obligations under this Framework Agreement;
- 10.1.6 it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Framework Agreement and the documents referred to in this Framework Agreement;
- 10.1.7 all necessary actions to authorise the execution of and performance of its obligations under this Framework Agreement have been taken before such execution;
- 10.1.8 there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Supplier;
- 10.1.9 there are no material agreements existing to which the Supplier is a party which prevent the Supplier from entering into or complying with this Framework Agreement;
- 10.1.10 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Framework Agreement;
- 10.1.11 it has satisfied itself as to the nature and extent of the risks assumed by it under this Framework Agreement and has gathered all information necessary to perform its obligations under this Framework Agreement and all other obligations assumed by it;
- 10.1.12 it shall comply with all relevant Law and Guidance and shall use Good Industry Practice to ensure that there is no slavery or human trafficking in its supply chains; and

- 10.1.13 it shall at all times conduct its business in a manner that is consistent with any anti-slavery Policy of the Authority and shall provide to the Authority any reports or other information that the Authority may request as evidence of the Supplier's compliance with this Clause 10.1.13 and/or as may be requested or otherwise required by the Authority in accordance with its anti-slavery Policy.
- 10.2 The Supplier warrants that all information, data and other records and documents required by the Authority as set out in the Specification, Selection Questionnaire and Bid shall be submitted to the Authority in the format and in accordance with any timescales set out in the Specification, Selection Questionnaire and Bid.
- 10.3 The Supplier warrants and undertakes to the Authority that it shall comply with any eProcurement Guidance as it may apply to the Supplier and shall carry out all reasonable acts required of the Supplier to enable the Authority to comply with such eProcurement Guidance.
- 10.4 The Supplier warrants and undertakes to the Authority that, as at the Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance. If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 10.4.1 notify the Authority in writing of such fact within two (2) Business Days of its occurrence; and
- 10.4.2 promptly provide to the Authority:
- (i) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- 10.5 The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that any of the warranties set out in Clause 10 of this Schedule 2 have been breached or there is a risk that any warranties may be breached.
- 10.6 Any warranties provided under this Framework Agreement are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.
- 11 Statutory compliance**
- 11.1 The Supplier shall comply with all Law and Guidance relevant to its obligations under this Framework Agreement and any Call-Off Contracts.

- 11.2 Without limitation to Clause 11.1 of this Schedule 2, the Supplier shall be responsible for obtaining any statutory licences, authorisations, consents or permits required in connection with its performance of its obligations under this Framework Agreement and any Call-Off Contracts.

12 Independence of Approved Organisations

- 12.1 The Supplier acknowledges that each Approved Organisation is independently responsible for the conduct of its award of Call-Off Contracts under this Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:
- 12.1.1 the conduct of Approved Organisations other than the Authority in relation to the operation of this Framework Agreement; or
 - 12.1.2 the performance or non-performance of any Approved Organisations other than the Authority under any Call-Off Contracts between the Supplier and such other Approved Organisations entered into under this Framework Agreement.

13 Limitation of liability

- 13.1 Nothing in this Framework Agreement shall exclude or restrict the liability of either Party:
- 13.1.1 for death or personal injury resulting from its negligence;
 - 13.1.2 for fraud or fraudulent misrepresentation;
 - 13.1.3 in any other circumstances where liability may not be limited or excluded under any applicable law;
 - 13.1.4 breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or sections 2 or 11B of the Supply of Goods and Services Act 1982;
 - 13.1.5 to make any payments agreed in accordance with Clause 9 (Price and Payment) of this Schedule 2; or
 - 13.1.6 pursuant to Clause 2.5 of Schedule 3.
- 13.2 Subject to Clauses 13.1, 13.3 and 13.5 of this Schedule 2 and any other limits of liability that may be specified in the Key Provisions, the total liability of each Party to the other under or in connection with this Framework Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to five hundred thousand GBP (£500,000).
- 13.3 There shall be no right to claim losses, damages and/or other costs and expenses under or in connection with this Framework Agreement whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of

statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged.

- 13.4 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which that Party is entitled to bring a claim against the other pursuant to this Framework Agreement.
- 13.5 The liability of the Supplier and any Approved Organisation under any Call-Off Contracts entered into pursuant to this Framework Agreement shall be as set out in the Call-off Terms and Conditions for the Supply of Goods and / or the Provision of Services forming part of such Call-Off Contracts.

14 Insurance

- 14.1 Subject to Clauses 14.2 and 14.3 of this Schedule 2 and unless otherwise confirmed in writing by the Authority, as a minimum level of protection, the Supplier shall put in place and/or maintain in force at its own cost with a reputable commercial insurer, insurance arrangements in respect of employer's liability, public liability and professional indemnity and product liability in accordance with Good Industry Practice with the minimum cover per claim of the greater of five million pounds (£5,000,000) or any sum as required by Law unless otherwise agreed with the Authority in writing. These requirements shall not apply to the extent that the Supplier is a member and maintains membership of each of the indemnity schemes run by NHS Resolution.
- 14.2 Without limitation to any insurance arrangements as required by Law, the Supplier shall put in place and/or maintain the different types and/or levels of indemnity arrangements explicitly required by the Authority, if specified in the Key Provisions.
- 14.3 Provided that the Supplier maintains all indemnity arrangements required by Law, the Supplier may self-insure in order to meet other relevant requirements referred to at Clauses 14.1 and 14.2 of this Schedule 2 on condition that such self-insurance arrangements offer the appropriate levels of protection and are approved by the Authority in writing prior to the Commencement Date.
- 14.4 The amount of any indemnity cover and/or self-insurance arrangements shall not relieve the Supplier of any liabilities under this Framework Agreement. It shall be the responsibility of the Supplier to determine the amount of indemnity and/or self-insurance cover that will be adequate to enable it to satisfy its potential liabilities under this Framework Agreement. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover and/or self-insurance arrangement is insufficient to cover the settlement of any claim.
- 14.5 The Supplier warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which its insurance cover may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances repayable in whole or in part.

14.6 The Supplier shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to the Authority that insurance arrangements taken out by the Supplier pursuant to Clause 14 of this Schedule 2 and the Key Provisions are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.

14.7 Upon the expiry or earlier termination of this Framework Agreement, the Supplier shall ensure that any ongoing liability it has or may have arising out of this Framework Agreement shall continue to be the subject of appropriate indemnity arrangements for the period of six (6) years from termination or expiry of this Framework Agreement or until such earlier date as that liability may reasonably be considered to have ceased to exist.

15 **Term and termination**

15.1 This Framework Agreement shall commence on the Commencement Date and, unless terminated earlier in accordance with the terms of this Framework Agreement or the general law, shall continue until the end of the Term (as set out in Schedule 1 (Key Provisions)).

15.2 The Authority shall be entitled to extend the Term on one or more occasions by giving the Supplier written notice no less than one (1) month prior to the date on which this Framework Agreement would otherwise have expired, provided that the duration of this Framework Agreement shall be no longer than the total term specified in the Key Provisions.

15.3 In the case of a breach of any of the terms of this Framework Agreement by either Party that is capable of remedy (including any failure to pay any sums due under this Framework Agreement), the non-breaching Party may, without prejudice to its other rights and remedies under this Framework Agreement, issue a Breach Notice and shall allow the Party in breach the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Party in breach ("**Remedial Proposal**") before exercising any right to terminate this Framework Agreement in accordance with Clause 15.4.2 of this Schedule 2. Such Remedial Proposal must be agreed with the non-breaching Party (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Party in breach in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Party in breach to:

15.3.1 put forward and agree a Remedial Proposal with the non-breaching Party in relation to the relevant default or breach within a period of five (5) Business Days (or such other period as the non-breaching Party may agree in writing) from written notification of the relevant default or breach from the non-breaching Party;

15.3.2 comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be thirty (30) Business Days unless otherwise agreed between the Parties); and/or

15.3.3 remedy the default or breach notwithstanding the implementation of such Remedial Proposal in accordance with the agreed timescales for implementation,

shall be deemed, for the purposes of Clause 15.4.2 of this Schedule 2, a material breach of this Framework Agreement by the Party in breach not remedied in accordance with an agreed Remedial Proposal.

- 15.4 Either Party may terminate this Framework Agreement by issuing a Termination Notice to the other Party if such other Party commits a material breach of any of the terms of this Framework Agreement which is:
- 15.4.1 not capable of remedy; or
 - 15.4.2 in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal.
- 15.5 If a Party commits a material breach that is capable of remedy (and for these purposes a material breach may be a single material breach or a number of breaches or repeated breaches (whether of the same or different obligations and regardless of whether such breaches are remedied) which taken together constitute a material breach) then the provisions of Clause 15.3 and 15.4 of this Schedule 2 shall apply.
- 15.6 A material breach for the purposes of Clause 15.4 of this Schedule 2 of this Framework Agreement shall include (but not be limited to) any breach of the following clauses:
- 15.6.1 Clause 1 (NCIS Fee) of Schedule 12;
 - 15.6.2 Any social value commitments that the Supplier has included in Schedule 5 (Specification, Selection Questionnaire and Bid);
 - 15.6.3 Clause 9 (Price and Payment) of this Schedule 2;
 - 15.6.4 Schedule 6 (Commercial Schedule);
 - 15.6.5 Clause 30.6 of the Call-Off Contract;
 - 15.6.6 Clause 8.5 (Management Information) of this Schedule 2;
 - 15.6.7 Clause 24 (Records Retention and Right of Audit) of this Schedule 2;
 - 15.6.8 Clause 20.1.1 (Electronic product and services information) of this Schedule 2;
 - 15.6.9 Clauses 6.7 to 6.9 (Staff and Life science Industry Accredited Credentialing Register) of Schedule 2 of the Call-Off Contract; or
 - 15.6.10 Clause 11.1.22 (Warranties) of Schedule 2 of the Call-Off Contract.

- 15.7 The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier if:
- 15.7.1 the Supplier, or any third party guaranteeing the obligations of the Supplier under this Framework Agreement, ceases or threatens to cease carrying on its business; suspends making payments on any of its debts or announces an intention to do so; is, or is deemed for the purposes of any Law to be, unable to pay its debts as they fall due or insolvent; enters into or proposes any composition, assignment or arrangement with its creditors generally; takes any step or suffers any step to be taken in relation to its winding-up, dissolution, administration (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) otherwise than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation; has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed (in each case, whether out of court or otherwise) in respect of it or any of its assets; has any security over any of its assets enforced; or any analogous procedure or step is taken in any jurisdiction;
 - 15.7.2 the Supplier undergoes a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 (other than for an intra-group change of control) without the prior written consent of the Authority and the Authority shall be entitled to withhold such consent if, in the reasonable opinion of the Authority, the proposed change of control will have a material impact on the performance of this Framework Agreement or the reputation of the Authority;
 - 15.7.3 the Supplier purports to assign, Sub-contract, novate, create a trust in or otherwise transfer or dispose of this Framework Agreement in breach of Clause 28.1 of this Schedule 2;
 - 15.7.4 pursuant to and in accordance with the Key Provisions and Clauses 15.8, 23.8; 25.2; 25.4 and 30.2 of this Schedule 2;
 - 15.7.5 the warranty given by the Supplier pursuant to Clause 10.4 of this Schedule 2 is materially untrue, the Supplier commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause 10.4 of this Schedule 2, or the Supplier fails to provide details of proposed mitigating factors as required by Clause 10.4 of this Schedule 2 that in the reasonable opinion of the Authority are acceptable.
- 15.8 If the Authority, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Supplier and/or any third party guaranteeing the obligations of the Supplier under this Framework Agreement and/or any material Sub-contractor of the Supplier when compared to any information provided to and/or assessed by the Authority as part of any procurement process or other due diligence leading to the award of this Framework Agreement to the Supplier or the entering into a Sub-contract by the Supplier or where the Authority

reasonably believes that financial circumstances of the Supplier and/or any third party guaranteeing the obligations of the Supplier under this Framework Agreement and/or any material Sub-contractor of the Supplier could directly impact on the continued performance and delivery of this Framework Agreement, the following process shall apply:

- 15.8.1 the Authority may (but shall not be obliged to) give notice to the Supplier requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Framework Agreement on such reasonable and proportionate terms as the Authority may require within a reasonable time period as specified in such notice;
- 15.8.2 a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 15.8 of this Schedule 2 in accordance with any reasonable timescales specified in any such notice issued by the Authority shall be deemed a breach of this Framework Agreement by the Supplier and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and
- 15.8.3 a failure to resolve such breach in accordance with such Dispute Resolution Procedure by the end of the escalation stage of such process (as set out in Clause 22.3 of this Schedule 2) shall entitle, but shall not compel, the Authority to terminate this Framework Agreement in accordance with Clause 15.4.1 of this Schedule 2.

In order that the Authority may act reasonably in exercising its discretion in accordance with Clause 15.8 of this Schedule 2, the Supplier shall provide the Authority with such reasonable and proportionate up-to-date financial or other information relating to the Supplier or any relevant third party entity upon request.

- 15.9 The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier where:
 - 15.9.1 the Framework Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure;
 - 15.9.2 the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Framework Agreement; or
 - 15.9.3 there has been a failure by the Supplier and/or one of its Sub-contractors to comply with legal obligations in the fields of environmental, social or labour law. Where the failure to comply with legal obligations in the fields of environmental, social or labour Law is a failure by one of the Supplier's Sub-contractors, the Authority may request the replacement of such Sub-contractor and the Supplier shall comply with such request as an alternative

to the Authority terminating this Framework Agreement under this Clause 15.9.3.

- 15.10 If the Authority novates this Framework Agreement to any body that is not a Contracting Authority, from the effective date of such novation, the rights of the Authority to terminate this Framework Agreement in accordance with Clause 15.7.1 to Clause 15.7.3 of this Schedule 2 shall be deemed mutual termination rights and the Supplier may terminate this Framework Agreement by issuing a Termination Notice to the entity assuming the position of the Authority if any of the circumstances referred to in such Clauses apply to the entity assuming the position of the Authority.
- 15.11 Any Breach Notice issued by a Party in connection with this Framework Agreement shall not be invalid due to it containing insufficient information. A Party receiving a Breach Notice ("**Receiving Party**") may ask the Party that issued the Breach Notice ("**Issuing Party**") to provide any further information in relation to the subject matter of the Breach Notice that it may reasonably require to enable it to understand the Breach Notice and/or to remedy the breach. The Issuing Party shall not unreasonably withhold or delay the provision of such further information. Any withholding or delay shall not invalidate the Breach Notice.

16 Consequences of expiry or early termination of this Framework Agreement

- 16.1 Upon expiry or earlier termination of this Framework Agreement, the Authority and the Supplier agree that all Call-Off Contracts entered into under this Framework Agreement will continue in full force and effect unless otherwise terminated under the terms and conditions of such Call-Off Contracts.
- 16.2 The Supplier shall cooperate fully with the Authority or, as the case may be, any replacement supplier during any re-procurement and handover period prior to and following the expiry or earlier termination of this Framework Agreement. This cooperation shall extend to providing access to all information relevant to the operation of this Framework Agreement, as reasonably required by the Authority to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements. Any Personal Data Processed by the Supplier on behalf of the Authority shall be returned to the Authority or destroyed in accordance with the relevant provisions of the Data Protection Protocol.
- 16.3 The expiry or earlier termination of this Framework Agreement for whatever reason shall not affect any rights or obligations of either Party which accrued prior to such expiry or earlier termination.
- 16.4 The expiry or earlier termination of this Framework Agreement shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination, which, for the avoidance of doubt, shall include but not be limited to the provisions of Clause 9 (Price and Payment) and Schedule 12 (NICS Fee and Indexation).

17 Suspension of Supplier's appointment

- 17.1 Without prejudice to the Authority's rights to terminate this Framework Agreement, if a right for the Authority to terminate this Framework Agreement arises (irrespective of whether the circumstances leading to such right are capable of remedy) in accordance with Clause 15 of this Schedule 2, the Authority may suspend the Supplier's appointment to receive new Orders under this Framework Agreement by giving notice in writing to the Supplier and all Approved Organisations.
- 17.2 If the Authority provides notice to the Supplier in accordance with Clause 17.1 of this Schedule 2, the Supplier's appointment shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Authority in writing from time to time provided that such suspension shall be lifted where:
- 17.2.1 the circumstances leading to the Authority's right to terminate this Framework Agreement have been remedied;
 - 17.2.2 the Authority has satisfied itself that the risk and/or impact of the circumstances giving rise to the Authority's right to terminate this Framework Agreement no longer requires such suspension; or
 - 17.2.3 the Authority exercises its rights to terminate this Framework Agreement in accordance with Clause 15 of this Schedule 2.

18 Complaints

- 18.1 The Supplier shall notify the Authority of any written complaints made by other Approved Organisations relating to the Supplier's noncompliance with any of its obligations under any Call-Off Contract within two (2) Business Days of the Supplier becoming aware of such complaints.
- 18.2 Without prejudice to any rights and remedies that the Approved Organisation may have under the relevant Call-Off Contract and/or the Authority may have under this Framework Agreement, the Supplier shall use its reasonable endeavours to resolve such complaint within ten (10) Business Days and in so doing, shall deal with the complaint fully, expeditiously and fairly.
- 18.3 Within two (2) Business Days of a written request by the Authority, the Supplier shall provide further reasonable details of the complaint to the Authority, including details of the steps being taken to progress its resolution and, following its resolution, details of how and when the complaint was resolved.

19 Sustainable development

- 19.1 The Supplier shall comply in all material respects with applicable environmental and social and labour Law requirements in force from time to time in relation to the Goods and Services. Where the provisions of any such Law are implemented by the use of voluntary agreements, the Supplier shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited

in the Specification, Selection Questionnaire and Bid. Without prejudice to the generality of the foregoing, the Supplier shall:

- 19.1.1 comply with all Policies and/or procedures and requirements set out in the Specification, Selection Questionnaire and Bid in relation to any stated environmental, social and labour requirements, characteristics and impacts of the Goods and Services and the Supplier's supply chain;
 - 19.1.2 maintain relevant policy statements documenting the Supplier's significant labour, social and environmental aspects as relevant to the Goods and Services being provided and as proportionate to the nature and scale of the Supplier's business operations; and
 - 19.1.3 maintain plans and procedures that support the commitments made as part of the Supplier's significant labour, social and environmental policies, as referred to at Clause 19.1.2 of this Schedule 2.
- 19.2 The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier's compliance with the provisions of Clause 19 of this Schedule 2.
- 19.3 The Supplier shall comply with the provisions set out in Schedule 11 (Corporate Social Responsibility).

20 Electronic product and services information

- 20.1 The Supplier shall:
- 20.1.1 upload and maintain their full Product Information and Services Information on the Authority's catalogue management system for the duration of the Framework Agreement; and
 - 20.1.2 where requested by the Authority, the Supplier shall provide the Authority the Product Information and the Services Information in such manner and upon such media as agreed between the Supplier and the Authority from time to time for the sole use by the Authority.
- 20.2 The Supplier warrants that the Product Information and the Services Information is complete and accurate as at the date upon which it is delivered to the Authority and that the Product Information and/or Services Information shall not contain any data or statement which gives rise to any liability on the part of the Authority following publication of the same in accordance with Clause 20 of this Schedule 2.
- 20.3 If the Product Information and Services Information ceases to be complete and accurate, the Supplier shall promptly notify the Authority in writing of any modification or addition to or any inaccuracy or omission in the Services Information.
- 20.4 The Supplier grants the Authority a perpetual, non-exclusive, royalty free licence to use and exploit the Product Information and the Services Information and any

Intellectual Property Rights in the Product Information and the Services Information for the purpose of illustrating the range of goods and services (including, without limitation, the Goods and Services) available pursuant to the Authority's contracts from time to time. Subject to Clause 20.5 of this Schedule 2, no obligation to illustrate or advertise the Services Information is imposed on the Authority, as a consequence of the licence conferred by this Clause 20.4 of this Schedule 2.

- 20.5 The Authority may reproduce for its sole use the Product Information and the Services Information provided by the Supplier in the Authority's product and/or services catalogue from time to time which may be made available on any NHS communications networks in electronic format and/or made available on the Authority's external website and/or made available on other digital media from time to time.
- 20.6 Before any publication of the Product Information and the Services Information (electronic or otherwise) is made by the Authority, the Authority will submit a copy of the relevant sections of the Authority's product and/or services catalogue to the Supplier for approval, such approval not to be unreasonably withheld or delayed. For the avoidance of doubt the Supplier shall have no right to compel the Authority to exhibit the Product Information and the Services Information in any product and/or services catalogue as a result of the approval given by it pursuant to this Clause 20.6 of this Schedule 2 or otherwise under the terms of this Framework Agreement.
- 20.7 If requested in writing by the Authority, and to the extent not already agreed as part of the Specification, Selection Questionnaire and Bid, the Supplier and the Authority shall discuss and seek to agree in good faith arrangements to use any Electronic Trading System.

21 Change management

- 21.1 The Supplier acknowledges to the Authority that the requirements for the Goods and/or Services may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification, Selection Questionnaire and Bid, as may be requested by the Authority from time to time.
- 21.2 A party proposing the change shall issue a Contract Change Notice to the receiving party and the receiving party shall review and respond to the proposed change within a reasonable time, but by no later than ten (10) Business Days following receipt of the Contract Change Notice.
- 21.3 Subject to Clause 21.4 of this Schedule 2, any change to the Goods and/or Services or other variation to this Framework Agreement shall only be binding once it has been agreed in writing and the Contract Change Notice has been signed by an authorised representative of both Parties.
- 21.4 Any change to the Data Protection Protocol shall be made in accordance with the relevant provisions of that protocol.

22 Dispute resolution

- 22.1 During any Dispute, including a Dispute as to the validity of this Framework Agreement, it is agreed that the Supplier shall continue its performance of the provisions of the Framework Agreement (unless the Authority requests in writing that the Supplier does not do so).
- 22.2 In the case of a Dispute arising out of or in connection with this Framework Agreement the Supplier and the Authority shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the Dispute and follow the procedure set out in Clause 22.3 of this Schedule 2 as the first stage in the Dispute Resolution Procedure.
- 22.3 If any Dispute arises out of the Framework Agreement either Party may serve a notice on the other Party to commence formal resolution of the Dispute. The Parties shall first seek to resolve the Dispute by escalation in accordance with the management levels as set out in Clause 5 of the Key Provisions. Respective representatives at each level, as set out in Clause 5 of the Key Provisions, shall have five (5) Business Days at each level during which they will use their reasonable endeavours to resolve the Dispute before escalating the matter to the next level until all levels have been exhausted. Level 1 will commence on the date of service of the Dispute Notice. The final level of the escalation process shall be deemed exhausted on the expiry of five (5) Business Days following escalation to that level unless otherwise agreed by the Parties in writing.
- 22.4 If the procedure set out in Clause 22.3 of this Schedule 2 above has been exhausted and fails to resolve such Dispute, as part of the Dispute Resolution Procedure, the Parties will attempt to settle it by mediation. The Parties shall, acting reasonably, attempt to agree upon a mediator. In the event that the Parties fail to agree a mediator within five (5) Business Days following the exhaustion of all levels of the escalation procedure at Clause 22.3 of this Schedule 2, the mediator shall be nominated and confirmed by the Centre for Effective Dispute Resolution, London.
- 22.5 The mediation shall commence within twenty eight (28) Business Days of the confirmation of the mediator in accordance with Clause 22.4 of this Schedule 2 or at such other time as may be agreed by the Parties in writing. Neither Party will terminate such mediation process until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour or one Party has failed to participate in the mediation process. After this time, either Party may terminate the mediation process by notification to the other party (such notification may be verbal provided that it is followed up by written confirmation). The Authority and the Supplier will cooperate with any person appointed as mediator providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine, or in the absence of such determination such costs will be shared equally.
- 22.6 Nothing in this Framework Agreement shall prevent:

- 22.6.1 the Authority taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the supply of Goods and/or provision of the Services; or
- 22.6.2 either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party or that relates to the safety of patients or the security of Confidential Information, pending resolution of the relevant Dispute in accordance with the Dispute Resolution Procedure.
- 22.7 Clause 22 of this Schedule 2 shall survive the expiry of or earlier termination of this Framework Agreement for any reason.
- 23 Force majeure**
- 23.1 Subject to Clause 23.2 of this Schedule 2 neither Party shall be liable to the other for any failure to perform all or any of its obligations under this Framework Agreement nor liable to the other Party for any loss or damage arising out of the failure to perform its obligations to the extent only that such performance is rendered impossible by a Force Majeure Event.
- 23.2 The Supplier shall only be entitled to rely on a Force Majeure Event and the relief set out in Clause 23 of this Schedule 2 and will not be considered to be in default or liable for breach of any obligations under this Framework Agreement if:
- 23.2.1 the Supplier has fulfilled its obligations pursuant to Clause 6 of this Schedule 2;
- 23.2.2 the Force Majeure Event does not arise directly or indirectly as a result of any wilful or negligent act or default of the Supplier; and
- 23.2.3 the Supplier has complied with the procedural requirements set out in Clause 23 of this Schedule 2.
- 23.3 Where a Party is (or claims to be) affected by a Force Majeure Event it shall use reasonable endeavours to mitigate the consequences of such a Force Majeure Event upon the performance of its obligations under this Framework Agreement and to resume the performance of its obligations affected by the Force Majeure Event as soon as practicable.
- 23.4 Where the Force Majeure Event affects the Supplier's ability to perform part of its obligations under the Framework Agreement the Supplier shall fulfil all such contractual obligations that are not so affected and shall not be relieved from its liability to do so.
- 23.5 If either Party is prevented or delayed in the performance of its obligations under this Framework Agreement by a Force Majeure Event, that Party shall as soon as reasonably practicable serve notice in writing on the other Party specifying the nature

and extent of the circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.

- 23.6 Subject to service of such notice, the Party affected by such circumstances shall have no liability for its failure to perform or for any delay in performance of its obligations affected by the Force Majeure Event only for so long as such circumstances continue and for such time after they cease as is necessary for that Party, using its best endeavours, to recommence its affected operations in order for it to perform its obligations.
- 23.7 The Party claiming relief shall notify the other in writing as soon as the consequences of the Force Majeure Event have ceased and of when performance of its affected obligations can be resumed.
- 23.8 If the Supplier is prevented from performance of its obligations as a result of a Force Majeure Event, the Authority may at any time, if the Force Majeure Event subsists for twenty (20) Business Days or more, terminate this Framework Agreement by issuing a Termination Notice to the Supplier.
- 23.9 Following such termination in accordance with Clause 23.8 of this Schedule 2 and subject to Clause 23.10 of this Schedule 2, neither Party shall have any liability to the other.
- 23.10 Any rights and liabilities of either Party which have accrued prior to such termination in accordance with Clause 23.8 of this Schedule 2 shall continue in full force and effect unless otherwise specified in this Framework Agreement.

24 Records retention and right of audit

- 24.1 Subject to any statutory requirement and Clause 24.2 of this Schedule 2, the Supplier shall keep secure and maintain for the Term and six (6) years afterwards, or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to this Framework Agreement.
- 24.2 Where any records could be relevant to a claim for personal injury such records shall be kept secure and maintained for a period of twenty one (21) years from the date of expiry or earlier termination of this Framework Agreement.
- 24.3 The Authority shall have the right to audit the Supplier's compliance with this Framework Agreement. The Supplier shall permit or procure permission for the Authority or its authorised representative during normal business hours having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records reasonably required to audit the Supplier's compliance with its obligations under this Framework Agreement.
- 24.4 Should the Supplier Sub-contract any of its obligations under this Framework Agreement, the Authority shall have the right to audit and inspect such third party. The Supplier shall procure permission for the Authority or its authorised representative during normal business hours no more than once in any twelve (12) months, having

given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records used in the performance of the Supplier's obligations under this Framework Agreement that are Sub-contracted to such third party. The Supplier shall cooperate with such audit and inspection and accompany the Authority or its authorised representative if requested.

- 24.5 The Supplier shall grant to the Authority or its authorised representative, such access to those records as they may reasonably require in order to check the Supplier's compliance with this Framework Agreement for the purposes of:
- 24.5.1 the examination and certification of the Authority's accounts; or
 - 24.5.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economic efficiency and effectiveness with which the Authority has used its resources.
- 24.6 The Comptroller and Auditor General may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to provide such oral and/or written explanations as they consider necessary. Clause 24 of this Schedule 2 does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Supplier under sections 6(3)(d) and 6(5) of the National Audit Act 1983.
- 24.7 The Supplier shall provide reasonable cooperation to the Authority, its representatives and any regulatory body in relation to any audit, review, investigation or enquiry carried out in relation to the subject matter of this Framework Agreement.
- 24.8 The Supplier shall provide all reasonable information as may be reasonably requested by the Authority to evidence the Supplier's compliance with the requirements of this Framework Agreement.
- 24.9 Subject to clauses 24.10 and 24.11, the Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 24, unless the audit reveals an error or omission by the Supplier in which case the Supplier shall reimburse the Authority for the Authority's costs incurred in relation to the audit.
- 24.10 If the Supplier cancels the audit on the required date and another date has to be arranged, then the Authority reserves the right to charge the Supplier the cost of the audit plus VAT at the prevailing rate.
- 24.11 If an audit conducted in accordance with this Clause 24 reveals that:
- 24.11.1 the Supplier has failed to provide all information that it is required to provide under this Framework Agreement; or
 - 24.11.2 if there are errors or omission in any information provided to the Authority; and

the Supplier fails to supply any outstanding information or rectify the error or omission within two (2) months of the audit, then the Authority reserves the right to re-audit the Supplier until all relevant information is found or the error or omission is rectified and charge the Supplier the cost of the first audit and this additional re-audit at the prevailing rate of the audit plus VAT.

25 Conflicts of interest and the prevention of fraud

- 25.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Framework Agreement. The Supplier will disclose to the Authority full particulars of any such conflict of interest which may arise.
- 25.2 The Authority reserves the right to terminate this Framework Agreement immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Framework Agreement. The actions of the Authority pursuant to this Clause 25.2 of this Schedule 2 shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the Authority.
- 25.3 The Supplier shall take all reasonable steps to prevent Fraud by Staff and the Supplier (including its owners, members and directors). The Supplier shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 25.4 If the Supplier or its Staff commits Fraud the Authority may terminate this Framework Agreement and recover from the Supplier the amount of any direct loss suffered by the Authority resulting from the termination.

26 Equality and human rights

- 26.1 The Supplier shall:
- 26.1.1 ensure that (a) it does not, whether as employer, a supplier of Goods, or as a provider of Services, engage in any act or omission that would contravene the Equality Legislation, and (b) it complies with all its obligations as an employer, a supplier of Goods, or provider of the Services and any associated services as set out in the Equality Legislation and take reasonable endeavours to ensure its Staff do not unlawfully discriminate within the meaning of the Equality Legislation;
 - 26.1.2 in the management of its affairs and the development of its equality and diversity policies, cooperate with the Authority in light of the Authority's obligations to comply with its statutory equality duties whether under the Equality Act 2010 or otherwise. The Supplier shall take such reasonable

and proportionate steps as the Authority considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age; and

26.1.3 the Supplier shall impose on all its Sub-contractors and suppliers, obligations substantially similar to those imposed on the Supplier by Clause 26 of this Schedule 2.

26.2 The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier's compliance with the provisions of Clause 26 of this Schedule 2.

27 Notice

27.1 Subject to Clause 22.5 of this Schedule 2, any notice required to be given by either Party under this Framework Agreement shall be in writing quoting the date of the Framework Agreement and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the Key Provisions or such other person as one Party may inform the other Party in writing from time to time.

27.2 A notice shall be treated as having been received:

27.2.1 if delivered by hand within normal business hours when so delivered or, if delivered by hand outside normal business hours, at the next start of normal business hours; or

27.2.2 if sent by first class recorded delivery mail on a normal Business Day, at 9.00 am on the second Business Day subsequent to the day of posting, or, if the notice was not posted on a Business Day, at 9.00 am on the third Business Day subsequent to the day of posting; or

27.2.3 if sent by email, if sent within normal business hours when so sent or, if sent outside normal business hours, at the next start of normal business hours provided the sender has either received an electronic confirmation of delivery or has telephoned the recipient to inform the recipient that the email has been sent.

28 Assignment, Novation and Sub-contracting

28.1 The Supplier shall not assign, Sub-contract, novate, create a trust in, or in any other way dispose of the whole or any part of this Framework Agreement without the prior consent in writing of the Authority, such consent not to be unreasonably withheld or delayed. If the Supplier Sub-contracts any of its obligations under this Framework Agreement, every act or omission of the Sub-contractor shall for the purposes of this Framework Agreement be deemed to be the act or omission of the Supplier and the Supplier shall be liable to the Authority as if such act or omission had been committed or omitted by the Supplier itself.

- 28.2 Any authority given by the Authority for the Supplier to Sub-contract any of its obligations under this Framework Agreement shall not impose any duty on the Authority to enquire as to the competency of any authorised Sub-contractor. The Supplier shall ensure that any authorised Sub-contractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such Sub-contractor are fully in accordance with this Framework Agreement.
- 28.3 Where the Authority considers that the grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015 apply to any Sub-contractor, then:
- 28.3.1 if the Authority finds there are compulsory grounds for exclusion, the Supplier shall ensure, or shall procure, that such Sub-contractor is replaced or not appointed; or
 - 28.3.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to ensure, or to procure, that such Sub-contractor is replaced or not appointed and the Supplier shall comply with such a requirement.
- 28.4 The Authority shall upon written request have the right to review any Sub-contract entered into by the Supplier in respect of the provision of the supply of Goods and/or the Services and the Supplier shall provide a certified copy of any Sub-contract within five (5) Business Days of the date of a written request from the Authority. For the avoidance of doubt, the Supplier shall have the right to redact any confidential pricing information in relation to such copies of Sub-contract.
- 28.5 The Authority may at any time transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Framework Agreement or any part of this Framework Agreement and the Supplier warrants that it will carry out all such reasonable further acts required to effect such transfer, assignment, novation, sub-contracting or disposal. If the Authority novates this Framework Agreement to any body that is not a Contracting Authority, from the effective date of such novation, the party assuming the position of the Authority shall not further transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Framework Agreement or any part of this Framework Agreement without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed by the Supplier.

29 Supply Chain Protection

- 29.1 Following a written request from the Authority, the Supplier shall provide the Authority with the contact details of a suitable representative from a Supplier Sub-contractor but by no later than five (5) Business Days from the written request, to enable the Authority to verify the Supplier's compliance with Clause 31 (Supply Chain Protection) of Schedule 2 of the Call-Off Contract.

30 Prohibited Acts

- 30.1 The Supplier warrants and represents that:

- 30.1.1 it has not committed any offence under the Bribery Act 2010 or done any of the following ("**Prohibited Acts**"):
- (i) offered, given or agreed to give any officer or employee of the Authority any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with the Authority or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the Authority; or
 - (ii) in connection with this Framework Agreement paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Authority; and
- 30.1.2 it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.
- 30.2 If the Supplier or its Staff (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Supplier in relation to this or any other agreement with the Authority:
- 30.2.1 the Authority shall be entitled:
- (i) to terminate this Framework Agreement and recover from the Supplier the amount of any loss resulting from the termination;
 - (ii) to recover from the Supplier the amount or value of any gift, consideration or commission concerned; and
 - (iii) to recover from the Supplier any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;
- 30.2.2 any termination under Clause 30.2.1 of this Schedule 2 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Authority; and
- 30.2.3 notwithstanding Clause 22 of this Schedule 2, any Dispute relating to:
- (i) the interpretation of Clause 30 of this Schedule 2; or
 - (ii) the amount or value of any gift, consideration or commission,
- shall be determined by the Authority, acting reasonably, and the decision shall be final and conclusive.

31 General

- 31.1 Each of the Parties is independent of the other and nothing contained in this Framework Agreement shall be construed to imply that there is any relationship between the Parties of partnership or of principal/agent or of employer/employee nor are the Parties hereby engaging in a joint venture and accordingly neither of the Parties shall have any right or authority to act on behalf of the other nor to bind the other by agreement or otherwise, unless expressly permitted by the terms of this Framework Agreement.
- 31.2 Failure or delay by either Party to exercise an option or right conferred by this Framework Agreement shall not of itself constitute a waiver of such option or right.
- 31.3 The delay or failure by either Party to insist upon the strict performance of any provision, term or condition of this Framework Agreement or to exercise any right or remedy consequent upon such breach shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.
- 31.4 Any provision of this Framework Agreement which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Framework Agreement and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.
- 31.5 Each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this Framework Agreement and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in this Framework Agreement or unless such representation, undertaking or warranty was made fraudulently.
- 31.6 Each Party shall bear its own expenses in relation to the preparation and execution of this Framework Agreement including all costs, legal fees and other expenses so incurred.
- 31.7 The rights and remedies provided in this Framework Agreement are independent, cumulative and not exclusive of any rights or remedies provided by general law, any rights or remedies provided elsewhere under this Framework Agreement or by any other contract or document. In this Clause 31.7 of this Schedule 2, right includes any power, privilege, remedy, or proprietary or security interest.
- 31.8 This Framework Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Framework Agreement. A person who is not a party to this Framework Agreement shall have no right to enforce any terms of it which confer a benefit on such person. No such person shall be entitled

to object to or be required to consent to any amendment to the provisions of this Framework Agreement.

- 31.9 This Framework Agreement, any variation in writing signed by an authorised representative of each Party and any document referred to (explicitly or by implication) in this Framework Agreement or any variation to this Framework Agreement, contain the entire understanding between the Supplier and the Authority relating to the operation of this Framework Agreement to the exclusion of all previous agreements, confirmations and understandings and there are no promises, terms, conditions or obligations whether oral or written, express or implied other than those contained or referred to in this Framework Agreement. Nothing in this Framework Agreement seeks to exclude either Party's liability for Fraud. Any tender conditions and/or disclaimers set out in the Authority's procurement documentation leading to the award of this Framework Agreement shall form part of this Framework Agreement.
- 31.10 This Framework Agreement, and any Dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.
- 31.11 Subject to Clause 22 of this Schedule 2, the Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim that arises out of or in connection with this Framework Agreement or its subject matter.
- 31.12 All written and oral communications and all written material referred to under this Framework Agreement shall be in English.

Schedule 3

Information and Data Provisions

1 Confidentiality

- 1.1 In respect of any Confidential Information it may receive directly or indirectly from the other Party ("**Discloser**") and subject always to the remainder of Clause 1 of this Schedule 3, each Party ("**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser's prior written consent provided that:
- 1.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date;
 - 1.1.2 the provisions of Clause 1 of this Schedule 3 shall not apply to any Confidential Information:
 - (i) which is in or enters the public domain other than by breach of this Framework Agreement or other act or omissions of the Recipient;
 - (ii) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
 - (iii) which is authorised for disclosure by the prior written consent of the Discloser;
 - (iv) which the Recipient can demonstrate was in its possession without any obligation of confidentiality prior to receipt of the Confidential Information from the Discloser; or
 - (v) which the Recipient is required to disclose purely to the extent to comply with the requirements of any relevant stock exchange.
- 1.2 Nothing in Clause 1 of this Schedule 3 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Freedom of Information Act 2000 ("**FOIA**"), Codes of Practice on Access to Government Information, on the Discharge of Public Authorities' Functions or on the Management of Records ("**Codes of Practice**") or the Environmental Information Regulations 2004 ("**Environmental Regulations**").
- 1.3 The Authority may disclose the Supplier's Confidential Information:
- 1.3.1 on a confidential basis, to any Contracting Authority (the Parties agree that all Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting

Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority);

- 1.3.2 on a confidential basis, to any consultant, contractor or other person engaged by the Authority and/or the Contracting Authority receiving such information;
- 1.3.3 to any relevant party for the purpose of the examination and certification of the Authority's accounts;
- 1.3.4 to any relevant party for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- 1.3.5 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirements; or
- 1.3.6 on a confidential basis, to a proposed successor body in connection with any proposed or actual, assignment, novation or other disposal of rights, obligations, liabilities or property in connection with this Framework Agreement;

and for the purposes of this Framework Agreement, references to disclosure "on a confidential basis" shall mean the Authority making clear the confidential nature of such information and that it must not be further disclosed except in accordance with Law or this Clause 1.3 of this Schedule 3.

- 1.4 The Supplier may only disclose the Authority's Confidential Information, and any other information provided to the Supplier by the Authority in relation to the operation of this Framework Agreement, to the Supplier's Staff or professional advisors who are directly involved in the performance of or advising on the Supplier's obligations under this Framework Agreement. The Supplier shall ensure that such Staff or professional advisors are aware of and shall comply with the obligations in Clause 1 of this Schedule 3 as to confidentiality and that all information, including Confidential Information, is held securely, protected against unauthorised use or loss and, at the Authority's written discretion, destroyed securely or returned to the Authority when it is no longer required. The Supplier shall not, and shall ensure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of performing the Supplier's obligations in this Framework Agreement.
- 1.5 For the avoidance of doubt, save as required by Law or as otherwise set out in this Schedule 3, the Supplier shall not, without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed), announce that it has entered into this Framework Agreement and/or that it has been appointed as a Supplier to the Authority and/or make any other announcements about this Framework Agreement.
- 1.6 Clause 1 of this Schedule 3 shall remain in force:

- 1.6.1 without limit in time in respect of Confidential Information which comprises Personal Data or which relates to national security; and
- 1.6.2 for all other Confidential Information for a period of three (3) years after the expiry or earlier termination of this Framework Agreement unless otherwise agreed in writing by the Parties.

2 Data protection

- 2.1 The Parties acknowledge their respective duties under Data Protection Legislation and shall give each other all reasonable assistance as appropriate or necessary to enable each other to comply with those duties. For the avoidance of doubt, the Supplier shall take reasonable steps to ensure it is familiar with the Data Protection Legislation and any obligations it may have under such Data Protection Legislation and shall comply with such obligations.
- 2.2 Where the Supplier is Processing Personal Data under or in connection with this Framework Agreement, the Parties shall comply with the Data Protection Protocol.
- 2.3 The Supplier and the Authority shall ensure that Personal Data is safeguarded at all times in accordance with the Law, and this obligation will include (if transferred electronically) only transferring Personal Data (a) if essential, having regard to the purpose for which the transfer is conducted; and (b) that is encrypted in accordance with any international data encryption standards for healthcare, and as otherwise required by those standards applicable to the Authority under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).
- 2.4 Where any Personal Data is Processed by any Sub-contractor of the Supplier in connection with this Framework Agreement, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 2 of this Schedule 3, as if such Sub-contractor were the Supplier.
- 2.5 The Supplier shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings whatsoever or howsoever arising from the Supplier's unlawful or unauthorised Processing, destruction and/or damage to Personal Data in connection with this Framework Agreement.

3 Freedom of Information and Transparency

- 3.1 The Parties acknowledge the duties of Contracting Authorities under the FOIA, Codes of Practice and Environmental Regulations and shall give each other all reasonable assistance as appropriate or necessary to enable compliance with those duties.
- 3.2 The Supplier shall assist and cooperate with the Authority to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Supplier agrees:

- 3.2.1 that this Framework Agreement and any recorded information held by the Supplier on the Authority's behalf for the purposes of this Framework Agreement are subject to the obligations and commitments of the Authority under the FOIA, Codes of Practice and Environmental Regulations;
 - 3.2.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA, Codes of Practice and Environmental Regulations is a decision solely for the Authority;
 - 3.2.3 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier itself is subject to the FOIA, Codes of Practice and Environmental Regulations it will liaise with the Authority as to the contents of any response before a response to a request is issued and will promptly (and in any event within two (2) Business Days) provide a copy of the request and any response to the Authority;
 - 3.2.4 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier is not itself subject to the FOIA, Codes of Practice and Environmental Regulations, it will not respond to that request (unless directed to do so by the Authority) and will promptly (and in any event within two (2) Business Days) transfer the request to the Authority;
 - 3.2.5 that the Authority, acting in accordance with the Codes of Practice issued and revised from time to time under both section 45 of FOIA, and regulation 16 of the Environmental Regulations, may disclose information concerning the Supplier and this Framework Agreement; and
 - 3.2.6 to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA and the Environmental Regulations) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of FOIA, and providing copies of all information requested by the Authority within five (5) Business Days of that request and without charge.
- 3.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations, the content of this Framework Agreement is not Confidential Information.
 - 3.4 Notwithstanding any other term of this Framework Agreement, the Supplier consents to the publication of this Framework Agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations.

- 3.5 In preparing a copy of this Framework Agreement for publication under Clause 3.4 of this Schedule 3, the Authority may consult with the Supplier to inform decision making regarding any redactions but the final decision in relation to the redaction of information will be at the Authority's absolute discretion.
- 3.6 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Framework Agreement.
- 3.7 Where any information is held by any Sub-contractor of the Supplier in connection with this Framework Agreement, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 3 of this Schedule 3, as if such Sub-contractor were the Supplier.

4 Information Security

- 4.1 Without limitation to any other information governance requirements set out in this Schedule 3, the Supplier shall:
- 4.1.1 notify the Authority forthwith of any information security breaches or near misses (including without limitation any potential or actual breaches of confidentiality or actual information security breaches) in line with the Authority's information governance Policies; and
 - 4.1.2 fully cooperate with any audits or investigations relating to information security and any privacy impact assessments undertaken by the Authority and shall provide full information as may be reasonably requested by the Authority in relation to such audits, investigations and assessments.
- 4.2 Where required in accordance with the Specification, Selection Questionnaire and Bid, the Supplier shall obtain and maintain certification under the HM Government Cyber Essentials Scheme at the level set out in the Specification, Selection Questionnaire and Bid.

Schedule 4

Definitions and Interpretations

1 Definitions

- 1.1 In this Framework Agreement the following words shall have the following meanings unless the context requires otherwise.

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| “Additional Request” | shall have the meaning given to it in Clause 8.13; |
| “Approval” | means the prior written consent of the Authority and “Approve” and “Approved” shall be construed accordingly; |
| “Approved Organisations” | means an organisation detailed in Schedule 8 that is entitled to place Orders under this Framework Agreement including the Authority; |
| “Authority” | means NHS Shared Business Services Limited a company registered in England and Wales under company number 05280446 whose registered office is at Three, Cherry Trees Lane, Hemel Hempstead, Hertfordshire, HP2 7AH (acting as an agent on behalf of its Approved Organisations); |
| “Authority’s Obligations” | means the Authority’s further obligations, if any, referred to in the Specification, Selection Questionnaire and Bid; |
| “Breach Notice” | means a written notice of breach given by one Party to the other, notifying the Party receiving the notice of its breach of this Framework Agreement; |
| “Business Continuity Event” | means any event or issue that could impact on the operations of the Supplier and its ability to fulfil its obligations under this Framework Agreement including an influenza pandemic and any Force Majeure Event; |
| “Business Continuity Plan” | means the Supplier’s business continuity plan which includes its plans for continuity of the supply of Goods and / or provision Services during a Business Continuity Event; |
| “Business Day” | means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales; |
| “Call-off Terms and Conditions for the Supply of Goods and | means any contract entered into under the Framework Agreement between the Supplier and an Approved Organisation as further defined in the Call-off Terms and Conditions for the |

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| /or the Provision of Services" | Supply of Goods and the Provision of Services and "Call-Off" or "Call-Off Contract" shall have the same meaning; |
| "Capability Assessment" | shall have the meaning given to the term in Clause 2.1 of Schedule 7; |
| "Catalogue" | means the list which contains concise descriptions of the goods and/or services to be made available for all Approved Organisations to be able to order using the Direct Award procedure described in Schedule 7; |
| "Codes of Practice" | shall have the meaning given to the term in Clause 1.2 of Schedule 3; |
| "Commencement Date" | means the date of this Framework Agreement; |
| "Commercial Schedule" | means the document set out at Schedule 6; |
| "Confidential Information" | means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the Framework Agreement including any procurement process which is: <ul style="list-style-type: none"> (a) Personal Data including without limitation which relates to any patient or other service user or his or her treatment or clinical or care history; (b) designated as confidential by either party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored); and/or (c) Policies and such other documents which the Supplier may obtain or have access to through the Authority's intranet; |
| "Contract Change Notice" | means the form of notice to be agreed between the parties prior to an amendment to this Framework Agreement as set out in Schedule 10; |
| "Contracting Authority" | means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended) and/or Schedule 1, other than the Authority; |
| "Contract Management Information" | has the meaning given to such term in clause 8.6 (Contract Management); |

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| “Contract Manager” | means for the Authority and for the Supplier the individuals specified in the Key Provisions or such other person notified by a Party to the other Party from time to time in accordance with Clause 8.1 of Schedule 2; |
| “Contract Price” | means the price exclusive of VAT that is payable to the Supplier by an Approved Organisation under any Call-Off Contract for the full and proper performance by the Supplier of its obligations under such Call-Off Contracts (as calculated in accordance with the provisions of the Commercial Schedule) and as confirmed in the relevant Order Form relating to the particular Call-Off Contract; |
| “Controller” | shall have the same meaning as set out in the GDPR; |
| “Data Protection Legislation” | means (i) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) the GDPR, the UK GDPR (which has the meaning given to it in section 3(1) (as supplemented by section 205(4) of the Data Protection Act 2018)), the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Law as amended from time to time; and (iii) all applicable Law about the processing of personal data and privacy; |
| “Data Protection Protocol” | means any document of that name as provided to the Supplier by the Authority (as amended from time to time in accordance with its terms), which shall include, without limitation, any such document appended to Schedule 3 (Information and Data Provisions) of this Framework Agreement; |
| “Deed of Guarantee” | means a document by the same name that is issued by the Authority to the Supplier; |
| “Direct Award” | has the meaning given to such term in Clause 1.3.2 of Schedule 7; |
| “Dispute(s)” | means any dispute, difference or question of interpretation or construction arising out of or in connection with this Framework Agreement, any matters of contractual construction and interpretation relating to the Framework Agreement, or any matter where this Framework Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure; |
| “Dispute Notice” | means a written notice served by one Party to the other stating that the Party serving the notice believes there is a Dispute; |

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| “Dispute Resolution Procedure” | means the process for resolving Disputes as set out in Clause 22 of Schedule 2; |
| “DOTAS” | means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992; |
| “Electronic Trading System(s)” | means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as the Authority may specify from time to time; |
| “Environmental Regulations” | shall have the meaning given to the term in Clause 1.2 of Schedule 3; |
| “eProcurement Guidance” | means the NHS eProcurement Strategy available via: http://www.gov.uk/government/collections/nhs-procurement together with any further Guidance issued by the Department of Health in connection with it; |
| “Equality Legislation” | means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998; |
| “Further Competition” | has the meaning given to such term in Clause 1.3.1 of Schedule 7; |
| “FOIA” | shall have the meaning given to the term in Clause 1.2 of Schedule 3; |
| “Force Majeure Event” | means any event beyond the reasonable control of the Party in question to include, without limitation: |

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| | <p>(a) war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict materially affecting either Party's ability to perform its obligations under this Framework Agreement;</p> <p>(b) acts of terrorism;</p> <p>(c) flood, storm or other natural disasters;</p> <p>(d) fire;</p> <p>(e) unavailability of public utilities and/or access to transport networks to the extent no diligent supplier could reasonably have planned for such unavailability as part of its business continuity planning;</p> <p>(f) government requisition or impoundment to the extent such requisition or impoundment does not result from any failure by the Supplier to comply with any relevant regulations, laws or procedures (including such laws or regulations relating to the payment of any duties or taxes) and subject to the Supplier having used all reasonable legal means to resist such requisition or impoundment;</p> <p>(g) compliance with any local law or governmental order, rule, regulation or direction applicable outside of England and Wales that could not have been reasonably foreseen;</p> <p>(h) industrial action which affects the ability of the Supplier to supply the Goods and/or to provide the Services, but which is not confined to the workforce of the Supplier or the workforce of any Sub-contractor of the Supplier; and</p> <p>(i) a failure in the Supplier's and/or Authority's supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties;</p> <p>but excluding, for the avoidance of doubt, the withdrawal of the United Kingdom from the European Union and any related circumstances, events, changes or requirements;</p> |
| "Framework Agreement" | means the form of framework agreement at the front of this document and all schedules and appendices attached to the form of framework agreement; |
| "Fraud" | means any offence under any Law in respect of fraud in relation to this Framework Agreement or defrauding or attempting to defraud or conspiring to defraud the government, parliament or any Contracting Authority; |

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| “GDPR” | means the General Data Protection Regulation (Regulation (EU) 2016/679); |
| “General Anti-Abuse Rule” | means: (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions; |
| “Good Industry Practice” | means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier and/or service provider engaged in the manufacture and/or supply of goods and/or the provision of services similar to the Goods and Services under the same or similar circumstances as those applicable to this Framework Agreement, including in accordance with any codes of practice published by relevant trade associations; |
| “Goods” | means all goods, materials or items that the Supplier is required to supply to Approved Organisations under Call-Off Contracts placed under this Framework Agreement, details of such Goods, materials or other items being set out in the Specification, Selection Questionnaire and Bid and any Order; |
| “Guidance” | means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Goods and/or Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Authority and/or have been published and/or notified to the Supplier by the Department of Health, Monitor, NHS England, the Medicines and Healthcare Products Regulatory Agency, the European Medicine Agency the European Commission, the Care Quality Commission and/or any other regulator or competent body; |
| “Halifax Abuse Principle” | means the principle explained in the CJEU Case C-255/02 Halifax and others; |
| "HM Government Cyber Essentials Scheme" | means the HM Government Cyber Essentials Scheme as further defined in the documents relating to this scheme published at: https://www.gov.uk/government/publications/cyber-essentials-scheme-overview |
| “Indexation” | means the adjustment of an amount or sum in accordance with Schedule 12; |

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| “Initial Request” | shall have the meaning given to it in Clause 8.13 of Schedule 2; |
| “Intellectual Property Rights” | means all patents, copyright, design rights, registered designs, trademarks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trademarks and registered designs; |
| “Issuing Party” | shall have the meaning given to it in Clause 15.11 of Schedule 2; |
| “Key Provisions” | means the key provisions set out in Schedule 1; |
| “Key Sector Provisions” | means the key sector provisions set out in Schedule 1 of the Call-off Terms and Conditions for the Supply of Goods and /or the Provision of Services; |
| “KPI” | means the key performance indicators as set out in Schedule 5; |
| “KPI Meeting” | has the meaning given to it in clause 8.15 (Contract Management) of Schedule 2; |
| “Law” | <p>means any applicable legal requirements including, without limitation:</p> <ul style="list-style-type: none"> (a) any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument as applicable in England and Wales; (b) any applicable European Union obligation, directive, regulation, decision, law or right (including any such obligations, directives, regulations, decisions, laws or rights that are incorporated into the law of England and Wales or given effect in England and Wales by any applicable statute, proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument); (c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972; (d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales; (e) requirements set by any regulatory body as applicable in England and Wales; (f) any relevant code of practice as applicable in England and Wales; and (g) any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above); |

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| “Lot” | means a specific scope of Goods and/or Services as further specified in the Specification, if applicable; |
| “Management Information” | means the information that the Supplier shall issue to the Authority as further detailed in Schedule 9 (Management Information); |
| “NHS Contracted Income Stream Fee” or “NCIS Fee” | means the management fee charged by NHS SBS as set out in Schedule 12 (NCIS Pricing and Indexation); |
| “NCIS Fee Rate” | means the percentage rate of the Total Supplier Charges that establishes the NCIS Fee, as set out in Clause 7 (NCIS Fee Rate) of Schedule 1; |
| “NHS” | means the National Health Service; |
| “NHS Resolution” | means an arm’s length body of the Department of Health and Social Care established to resolve disputes in the NHS; |
| “Occasion of Tax Non-Compliance” | <p>means:</p> <ul style="list-style-type: none"> (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or (b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion; |
| “Order Form” | means the template order form on which Orders are to be placed, as set out in Appendix B to Schedule 7; |

| | |
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| “Ordering Procedure” | means the procedure enabling Approved Organisations to call-off Goods and/or Services and enter into Call-Off Contracts under this Framework Agreement, as set out in Schedule 7; |
| “Orders” | means orders for Goods and/or Services placed under this Framework Agreement by Approved Organisations; |
| “Party” | means the Authority or the Supplier as appropriate and Parties means both the Authority and the Supplier; |
| “Personal Data” | shall have the same meaning as set out in the GDPR; |
| “Policies” | means the policies, rules and procedures of the Authority as notified to the Supplier from time to time; |
| “Process” | shall have the same meaning as set out in the GDPR. Processing and Processed shall be construed accordingly; |
| “Processor” | shall have the same meaning as set out in the GDPR; |
| “Product Information” | means information concerning the Goods as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 20 of Schedule 2 for inclusion in the Authority's product catalogue from time to time; |
| “Prohibited Acts” | has the meaning given under Clause 30.1.1 of Schedule 2; |
| “Proposal” | shall have the meaning given to the term in Clause 2.2.6 of Schedule 7; |
| “Receiving Party” | shall have the meaning given to the term in Clause 15.11 of Schedule 2; |
| “RFP” | shall have the meaning given to the term in Clause 2.2 of Schedule 7; |
| “Relevant Tax Authority” | means HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established; |
| “Remedial Proposal” | has the meaning given under Clause 15.3 of Schedule 2; |
| “Review Date” | has the meaning given under Clause 2.1 of Schedule 12; |
| “Services” | means the services that the Supplier is required to provide to Approved Organisations under Call-Off Contracts placed under this Framework Agreement, details of such Services being set out in the Specification, Selection Questionnaire and Bid and any Order; |



Shared Business Services

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| “Services Information” | means information concerning the Services as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 20 of Schedule 2 for inclusion in the Authority's services catalogue from time to time; |
| “Special Terms” | means paragraph H (Special Terms) in the Order Form; |
| “Specification” | means the document entitled the “specification” set out in Schedule 5 as amended and/or updated in accordance with this Framework Agreement; |
| “Specification, Selection Questionnaire and Bid” | means the document set out in Schedule 5 as amended and/or updated in accordance with this Framework Agreement; |
| “Staff” | means all persons employed or engaged by the Supplier to perform its obligations under this Framework Agreement including any Sub-contractors and person employed or engaged by such Sub-contractors; |
| “Sub-contract” | means a contract between two or more suppliers, at any stage of remoteness from the Supplier in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Framework Agreement; |
| “Sub-contractor” | means a party to a Sub-contract other than the Supplier; |
| “Supplier” | means the supplier named on the form of Framework Agreement on the first page; |
| “Supplier Code of Conduct” | means the code of that name published by the Government Commercial Function originally dated September 2017, as may be amended, restated, updated, re-issued or re-named from time to time; |
| “Term” | means the term as set out in the Key Provisions; |
| “Termination Notice” | means a written notice of termination given by one Party to the other notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Framework Agreement on a specified date and setting out the grounds for termination; |
| “Third Party Body” | has the meaning given under Clause 8.6 of Schedule 2; |

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| “Total Supplier Charges” | means all charges (including VAT) invoiced from the Supplier to the Approved Organisation for the supply of Goods and/or provision of Services under the Call-off Terms and Conditions for the Supply of Goods and /or the Provision of Services pursuant to this Framework Agreement; and |
| “VAT” | means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax. |

- 1.2 References to any Law shall be deemed to include a reference to that Law as amended, extended, consolidated, re-enacted, restated, implemented or transposed from time to time
- 1.3 References to any legal entity shall include any body that takes over responsibility for the functions of such entity.
- 1.4 References in this Framework Agreement to a “Schedule”, “Appendix”, “Paragraph” or to a “Clause” are to schedules, appendices, paragraphs and clauses of this Framework Agreement.
- 1.5 References in this Framework Agreement to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.
- 1.6 The headings are for convenience only and shall not affect the interpretation of this Framework Agreement.
- 1.7 Words denoting the singular shall include the plural and vice versa.
- 1.8 Where a term of this Framework Agreement provides for a list of one or more items following the word “including” or “includes” then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.
- 1.9 Where a document is required under this Framework Agreement, the Parties may agree in writing that this shall be in electronic format only.
- 1.10 Any guidance notes highlighted in green do not form part of this Framework Agreement.
- 1.11 Any terms defined as part of a Schedule or other document forming part of this Framework Agreement shall have the meaning as defined in such Schedule or document.

Schedule 5

Specification, Selection Questionnaire and Bid

[To be inserted as part of the final Framework Agreement - MUST ensure embedded documents can be accessed by both Parties]

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Schedule 6

Commercial Schedule

[To be inserted as part of the final Framework Agreement- MUST ensure embedded documents can be accessed by both Parties]

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Schedule 7

Ordering Procedure, Award Criteria and Order Form

[Further Competitions are the default ordering procedure under this Framework Agreement. Direct awards are to only be used in the circumstances described in Clause 3 of this Schedule 7. Where an Approved Organisation does use the Direct Award procedure, the Approved Organisation is strongly advised to document the justifications for proceeding with a Direct Award prior to engaging with the relevant Supplier. These records can then be used to justify such a decision to directly award if the Approved Organisation is challenged on this decision.]

1 General

- 1.1 This Schedule 7 sets out the procedure to be followed each time an Approved Organisation wishes to purchase Goods and/or Services during the Term of the Framework Agreement.
- 1.2 For the purpose of this Schedule 7, references to Suppliers means each of the suppliers awarded a Framework Agreement.
- 1.3 There are two procurement routes for an Approved Organisation that wishes to use this Framework Agreement:
 - 1.3.1 a competitive process between the Suppliers in the relevant Lot ("**Further Competition**"); or
 - 1.3.2 an award without a competitive process to particular Supplier(s) ("**Direct Award**").
- 1.4 This Schedule 7 explains the rules for both Further Competitions and Direct Awards. Further Competitions are the default ordering procedure under this Framework Agreement.
- 1.5 Approved Organisations who wish to purchase Goods and/or Services during the Term of the Framework Agreement shall do so via a Further Competition except that if the conditions for Direct Awards are fulfilled, the Approved Organisations may instead choose to purchase Goods and/or Services via a Direct Award.
- 1.6 Approved Organisations may also refer to guidance published by the Authority to supplement this Schedule 7 with regards to the factors it should consider when deciding how to procure Goods and/or Services using this Framework Agreement.

2 Further Competition

- 2.1 To begin the process for a Further Competition, the Approved Organisation may provide to all Suppliers in the relevant Lot a document which sets out the high level

requirements, the estimated timeframes for submission of responses and the conclusion of the Further Competition, and duration so that each Supplier can assess its capacity to bid and then to express its preference to opt in or opt out of the Further Competition ("**Capability Assessment**") in the format appended to this Schedule and by the date specified the Approved Organisation. Alternatively, an Approved Organisation may elect to issue the Further Competition to all suppliers on a Lot – requesting them to advise whether or not they will be submitting an RFP.

2.2 Each Supplier that expresses a preference to opt in for the Further Competition pursuant to the Capability Assessment, or is on a Lot whereby the Approved Organisation elects to issue the Further Competition to all suppliers on that Lot, shall receive a copy of a request to submit a proposal from the Approved Organisation ("**RFP**") comprising:

- 2.2.1 a draft Order Form in relation to the relevant Goods and/or Services;
- 2.2.2 detailed requirements;
- 2.2.3 the evaluation/award criteria and any specific percentage weightings;
- 2.2.4 any Key Sector Provisions and/or Special Terms applicable to the Call-Off Contract;
- 2.2.5 any further information useful to the Suppliers in relation to the procurement;
- 2.2.6 deadline for submission of the Suppliers' proposals in response to the RFP ("**Proposal**").

2.3 Each Supplier shall ensure that its Proposal:

- 2.3.1 is submitted to the Approved Organisation by the date specified in the RFP;
- 2.3.2 complies with the conditions for submission specified in the RFP; and
- 2.3.3 shall remain open for acceptance by the Approved Organisation for at least 90 Business Days (or such other period specified in the RFP).

2.4 Unless otherwise specified in the RFP, the Proposal shall include:

- 2.4.1 full and detailed responses to all questions or requests for information in the RFP;
- 2.4.2 details of the individuals whom it intends to nominate as key personnel;
- 2.4.3 details of the sub-contractor(s) that it intends to use;
- 2.4.4 outline plans/policies, provided in accordance with the format (if any) set out in the template Call-Off Contract;

- 2.4.5 details of any proposed transfers of Personal Data outside the United Kingdom by the Supplier or its sub-contractors, including details of the scope and type of Personal Data involved, the locations involved, any sub-contractors or other third parties who will be Processing the Personal Data, and how the Supplier will ensure an adequate level of protection and adequate safeguards (in accordance with the Data Protection Legislation and in particular so as to ensure the Approved Organisation's compliance with the Data Protection Legislation); and
- 2.4.6 any other information reasonably requested by the Approved Organisation in the RFP.
- 2.5 At any time during the Further Competition, the Suppliers may be required at their own expense and in compliance with timeframes and dates set by Approved Organisation:
- 2.5.1 participate in a consultation process to allow the parties to gain further understanding of the scope of the requirements;
- 2.5.2 clarify its Proposal and/or any draft documentation submitted;
- 2.5.3 work with the relevant Approved Organisation to demonstrate how its Proposal provides value for money;
- 2.5.4 attend multi-supplier forums hosted by the Approved Organisation; and
- 2.5.5 respond to requests for further information and/or copies of plans, policies and other relevant documents.
- 2.6 Following submission of the Proposals, the Approved Organisation shall evaluate each Proposal, applying the appropriate award criteria as outlined below to determine the most economically advantageous solution.
- 2.7 The Approved Organisation shall notify all participating Suppliers of the outcome of the Further Competition following completion of the evaluation and its governance steps. The Approved Organisation shall provide each unsuccessful Supplier with written feedback on its Proposal.
- 2.8 Approved Organisations shall evaluate the Proposals in accordance with the following parameters for award criteria and weightings:

| Criteria Number | Award Criteria | Percentage Weightings |
|-----------------|----------------|-----------------------|
| 1 | Commercial | [30%-100%] |
| 2 | Quality | [60%-100%] |

| | | |
|--|--|------------|
| 3 | Social Value (accounting for at least 10% of the weighting for Non Price Elements) | [10%-100%] |
| Acceptance of the Call-Off Contract terms is a pass or fail assessment. Any amendments or reservations of position which impact negatively on the Approved Organisation's risk profile shall be marked as a fail and the Supplier will not be awarded the Call-Off Contract. | | |

3 Direct Award

[Further Competitions are the default ordering procedure under this Framework Agreement. Direct awards are to only be used in the circumstances described in this Clause 3 of this Schedule 7. Where an Approved Organisation does use the Direct Award procedure, the Approved Organisation is strongly advised to document the justifications for proceeding with a Direct Award prior to engaging with the relevant Supplier. These records can then be used to justify such a decision to directly award if the Approved Organisation is challenged on this decision.]

- 3.1 The Approved Organisation shall have the option to award a Call-Off Contract directly to a Supplier (without any Further Competition) if all of the following are met:
- 3.1.1 the requirements are easily defined (eg requiring commodity products and services);
 - 3.1.2 it can identify the Goods and/or Services that meet its requirements from viewing the information on the Catalogue including prices, service description, functionality/technical merit, delivery timescales, target performance indicators, transition/migration, social value;
 - 3.1.3 the Approved Organisation is able to justify that the selected Goods and/or Services provide the most economically advantageous solution and that no additional benefit would be derived from a Further Competition to evaluate pricing and quality; and
 - 3.1.4 there are no Key Sector Provisions and/or Special Terms to be added to the Call-Off Contract.
- 3.2 If the conditions above for Direct Awards are fulfilled, and the Approved Organisation elects to make a Direct Award it will notify the relevant Supplier by sending a notification together with the proposed Order Form. To the extent that the relevant Supplier is required to provide information or otherwise help to populate and complete the Order Form, the Supplier shall do so promptly.

3.3 If a proposed Call-Off Contract is procured via a Direct Award, the relevant Supplier selected:

3.3.1 shall not unreasonably refuse to enter into a Call-Off Contract with an Approved Organisation, provided that the Approved Organisation is applying the information available on the Catalogue without material amendment.

3.3.2 If a proposed Call-Off Contract is procured via a Direct Award, the relevant Supplier is not required to prepare a proposal.

4 Responsibility for Awards

4.1 Each Approved Organisation is independently responsible for the conduct of its procurement and award of Call-Off Contracts under this Framework Agreement and that the Authority shall have no liability whatsoever in relation to:

4.1.1 the conduct and/or decisions of the Approved Organisations; or

4.1.2 the performance or non-performance of any Call-Off Contracts between the relevant Supplier and Approved Organisation entered into pursuant to this Framework Agreement.

5 Pricing and Costs

5.1 All prices bid by each Supplier as part of their Proposal(s) shall be exclusive of VAT but inclusive of all other forms of tax (including, but not limited to, any value added, sales, turnover, business rates or similar tax imposed in any country).

5.2 The prices for the selected Goods and/or Services under a Direct Award shall be no higher than the prices published in the Catalogue for the relevant Goods and/or Services.

5.3 For a Proposal submitted in a Further Competition, prices shall not be higher than the prices published in the Catalogue except where Key Sector Provisions and/or Special Terms are included by the Approved Organisation. To the extent that the incorporation of any of the Key Sector Provisions and/or Special Terms is cost impacting, the relevant Supplier shall be entitled to submit a price which is higher than the prices published in the Catalogue to the extent that it can demonstrate to the satisfaction of both the Authority and Approved Organisation (acting reasonably) that it will incur additional costs. In each case, such change to the bid price will be strictly proportionate to the change in costs associated with the relevant Key Sector Provisions and/or Special Terms and must be agreed in writing by the Authority and Approved Organisation prior to work commencing. Any disagreement regarding the pricing adjustments shall be referred to the dispute resolution procedure under this Framework Agreement.

5.4 If required by the Approved Organisation, each Supplier shall provide a full breakdown of its bid price either in its Proposal or as a clarification of the Proposal.

- 5.5 Each Supplier shall ensure that the charging methodology contained in the Proposal represents best value for money for the Approved Organisation. If a Supplier believes that the requirements in the RFP do not work in the Approved Organisation's best interests, the relevant Supplier shall notify the Authority and shall provide recommendations or alternative solutions in its Proposal for how the Approved Organisation can achieve best value for money.
- 5.6 Each Supplier and Approved Organisations shall bear their own costs for participating in Further Competitions and the process for Direct Awards.

6 Binding Contract

- 6.1 At the conclusion of a Further Competition or a Direct Award process, the execution of the Order Form by duly authorised representatives of the relevant Supplier and the Approved Organisation shall be sufficient to create a valid and legally binding Call-Off Contract comprising the Call-Off terms in force at that time as amended and supplemented by the relevant Order Form.
- 6.2 The Approved Organisation shall be entitled at all times to decline to make an award, even where a Further Competition or Direct Award process has reached an advanced stage. Nothing in this Framework Agreement shall oblige any Approved Organisation to award any Call-Off Contract.
- 6.3 Unless and until a Call-Off Contract is executed by the relevant Supplier and an Approved Organisation, all discussions, communications and clarifications between the parties regarding the provision of any Goods and/or Services pursuant to this Framework Agreement shall be treated as subject to contract and shall not create binding obligations.
- 6.4 Once a Supplier enters into a Call-Off Contract with an Approved Organisation, any material failure to comply with the requirements to provide the Goods and/or Services in accordance with the terms of the Call-Off Contract shall also be regarded as a material breach of this Framework Agreement.

APPENDIX A TO SCHEDULE 7 - CAPABILITY ASSESSMENT

Capability Assessment

Please note that this document is a guidance and at the Approved Organisation's discretion

Approved Organisation Contact Details: (Individual managing the mini competition, including name, email address and telephone number):

Approved Organisation Name: (Organisation e.g. Name of Approved Organisation):

Approved Organisation Address: (e.g. Address of Approved Organisation/Area of Work):

Dear Sir / Madam,

Re: INSERT NAME OF PROJECT

Reference Number (Reference Number to be Confirmed)

Direct award or Mini-Competition capability assessment confirmations are invited against the above NHS Shared Business Services Framework Agreement for the supply of INSERT NAME OF PROCUREMENT to Approved Organisations.

Approved Organisation background information

Eg The Trust is a Mental Health Trust.....covering 4 sites

Eg The Council is a shared service with the following public sector bodies.....

Background to the requirement

The purpose of this procurement exercise is to.....

Approved Organisation Objective

The Approved Organisation is seeking to.....

Scope/Specifics

.....

Timeframes

The Approved Organisation requires this service/product to be in place by

Summary

Please could you confirm whether you intend to “Opt in” or “Out” of this mini competition opportunity under Supplier Response below?

Supplier Response



Shared Business Services

.....

.....

.....

.....

.....

Please provide your response by

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APPENDIX B TO SCHEDULE 7 – ORDER FORM

[Insert template Order Form]

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Schedule 8

Approved Organisations

https://www.sbs.nhs.uk/media/14452/NHS-SBS-Approved-Organisation-List/pdf/NHS_SBS_Aproved_Organisation_List1.pdf?m=1571833603357

Please Note: The Authority may update this list of Approved Organisations from time to time.

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Schedule 9





Management Information

1. MANAGEMENT INFORMATION

- 1.1 In accordance with Clause 8.5 (Management Information) of Schedule 2, the Supplier shall provide at no charge, provide full, accurate and complete Management Information to the Authority, in the format and frequency set out in the table below.
- 1.2 The Supplier shall send the Management Information to the Authority by no later than the 7th (seventh) Business Day of the following month the relevant Management Information is due.

| Management Information Title | Content of Management Information | Reporting Format | Frequency |
|---------------------------------|--|------------------|-----------|
| Direct Awards | Number and value of Direct Award Call-Off Contracts for the previous calendar month and since the Commencement Date organised by lot and by Approved Organisation. | [Excel] | Monthly |
| Further Competitions entered | Number and value of Further Competitions participated in for the previous month and since the Commencement Date | [Excel] | Monthly |
| Successful Further Competitions | Number and value of successful Further Competitions for the previous month and since the Commencement Date organised by lot and by Approved Organisation | [Excel] | Monthly |
| Social Value | Social Value realised versus that committed in the bid. | [Word] | Monthly |
| NCIS Return | NCIS Return. | [Excel] | Monthly |

| | | | |
|-------------------------------|--|--|--|
| Successful Call-Off Contracts | [Details of Call-Off Contracts that are progressing exceptionally well (possible case studies). | [Word] | Monthly |
| | Details of all contracts that are not progressing well, or have been suspended or terminated early. Please include the Approved Organisation's key contact details and a summary of the issue(s).] | | |
| Supplier Mandatory Data | As set out in Clause Error! Reference source not found. of this Schedule 9 | Pipe delimited text file format, XML format or as an excel spreadsheet | <p>Monthly</p> <p>If the Supplier has a name between A – M then the Supplier Mandatory Data shall be provided to the Authority between 1st to 14th of each month</p> <p>If the Supplier has a name between N - Z then the Supplier Mandatory Data shall be provided to the Authority between 15th to the last day of each month</p> |

| | | | |
|---|--|---|---|
| Total Supplier Charges | <p>The details of the Total Supplier Charges that the Supplier has invoiced:</p> <ul style="list-style-type: none"> • for the previous month; and • throughout the Term. | [Excel] | Monthly |
|  |  |  |  |

Schedule 10

Contract Change Notice

[Insert Contract Change Notice template]

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Schedule 11

Corporate Social Responsibility

1. What we expect from our Suppliers

- 1.1 In February 2019, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of Suppliers who work with government (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf)
- 1.2 The Suppliers and Sub-contractors shall:
 - 1.2.1 meet the standards set out in the Supplier Code of Conduct; and
 - 1.2.2 comply with the standards set out in this Schedule 11.
- 1.3 The Supplier acknowledges that the Authority may have additional requirements in relation to corporate social responsibility. The Authority expects that the Supplier and its Sub-contractors shall comply with such corporate social responsibility requirements as the Authority may notify the Supplier from time to time.
- 1.4 Notwithstanding Clause 21 (Change Management) of Schedule 2, the Authority reserves the right to update the Supplier Code of Conduct from time to time.

2. Equality and Accessibility

- 2.1 In addition to legal obligations, the Supplier shall support the Authority in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under this Framework Agreement in a way that seeks to:
 - 2.1.1 eliminate discrimination, harassment or victimisation of any kind; and
 - 2.1.2 advance equality of opportunity and good relations between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

3. Modern Slavery, Child Labour and Inhumane Treatment

"Modern Slavery Helpline" means the mechanism for reporting suspicion, seeking help or advice and information on the subject of modern slavery available online at <https://www.modernslaveryhelpline.org/report> or by telephone on 08000 121 700.

- 3.1 The Supplier:
 - 3.1.1 shall not use, nor allow its Sub-Contractors to use forced, bonded or involuntary prison labour;
 - 3.1.2 shall not require any Supplier Staff or Subcontractor Staff to lodge deposits or identify papers with their employer and shall be free to leave their employer after reasonable notice;
 - 3.1.3 warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;

- 3.1.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offenses anywhere around the world;
- 3.1.5 shall make reasonable enquires to ensure that its officers, employees and Sub-Contractors have not been convicted of slavery or human trafficking offenses anywhere around the world;
- 3.1.6 shall have and maintain throughout the term of the Framework Agreement its own policies and procedures to ensure its compliance with the Modern Slavery Act and include in its contracts with its Sub-Contractors anti-slavery and human trafficking provisions;
- 3.1.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Framework Agreement;
- 3.1.8 shall prepare and deliver to the Authority, 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 with its annual certification of compliance with this Clause 3 of this Schedule 11;
- 3.1.9 shall not use, nor allow its employees or Sub-contractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Sub-contractors;
- 3.1.10 shall not use or allow child or slave labour to be used by its Sub-contractors;
- 3.1.11 shall report the discovery or suspicion of any slavery or trafficking by it or its Sub-Contractors to the Authority and Modern Slavery Helpline.

4. Sustainability

- 4.1 The Supplier shall meet the applicable Government Buying Standards applicable to Deliverables which can be found online at:

<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>

Schedule 12

NCIS Pricing and Indexation

1. **NCIS FEE**

- 1.1 In consideration for the establishment and management of the Framework Agreement, the Supplier shall pay to the Authority the NCIS Fee (which is subject to indexation in accordance with Clause 3 of this Schedule 12), which shall be calculated as follows:

$$\text{Total Supplier Charges} \times \text{NCIS Fee Rate} = \text{NCIS Fee}$$

- 1.2 The NCIS Fee Rate shall be Confidential Information for the purposes of this Framework Agreement and the Supplier shall not disclose such information to any other third party.
- 1.3 The Authority shall submit invoices to the Supplier for the NCIS Fee (based on the Management Information provided) on a monthly basis (in respect of the Total Supplier Charges accrued in the previous month). The Supplier shall pay the invoice within 30 days of the date of such invoice.
- 1.4 The NCIS Fee applies to the Total Supplier Charges and will not be varied due to any service credits or other deductions.
- 1.5 The Supplier shall:
- 1.5.1 pay the NCIS Fee in UK pounds sterling; and
 - 1.5.2 pay the NCIS Fee electronically via Direct Debit.
- 1.6 The Supplier agrees and acknowledges that the NCIS Fee is subject to the prevailing rate of Value Added Tax (VAT).

2. **CONTRACT PRICE CHANGE REQUEST**

- 2.1 The Contract Price shall be fixed for the first 1 year following the Commencement Date (the date of expiry of such period is a "**Review Date**"). After this Contract Prices can only be adjusted on each following yearly anniversary (the date of each such anniversary is also a "**Review Date**").
- 2.2 The Supplier shall give the Authority at least three (3) Months' notice in writing prior to a Review Date where it wants to request an increase. If the Supplier does not give notice in time then it will only be able to request an increase prior to the next Review Date.
- 2.3 As part of Further Competitions, the Supplier may discount their Contract Pricing as appropriate.
- 2.4 Any notice requesting an increase shall include:

- 2.4.1 a list of the Contract Prices to be reviewed;
- 2.4.2 for each of the Contract Prices under review, written evidence of the justification for the requested increase including:
- (a) details of which specific Goods and/or Services are affected;
 - (b) a detailed explanation of the reason for the proposed change in the Contract Price and including the following supporting evidence:
 - (i) letters from the supply chain outlining proposed price changes for components, parts, supplies, fuel, transportation, haulage for the applicable period;
 - (ii) copies of material cost invoices at the original cost and new cost which will outline price changes being proposed;
 - (iii) details of staff/pay changes to demonstrate staff costs;
 - (iv) other suitable evidence to demonstrate/support price change proposals, and
 - (v) for price increases, evidence of measures taken to mitigate the proposed price increases,
 - (c) a list of existing prices and proposed prices for the Goods and/or Services affected, and the percentage(s) difference being proposed;
 - (d) measures to mitigate the effect of the proposed Contract Price changes to Approved Organisations, and
 - (e) Approved Organisation engagement approach/communication strategy regarding the proposed Contract Price changes.
- 2.5 In the event that it is not appropriate or it is deemed that there are commercial difficulties in obtaining the supporting evidence specified in Clauses 2.4.2(b)(i) to 2.4.2(b)(v) of this Schedule 12, the Supplier must provide a statement outlining the reasons they are submitting a Contract Price change request ("**Justification Statement**"). As a minimum, the Justification Statement must address the following:
- (a) the reasons for the Contract Price change request;
 - (b) the cause of the Contract Price change request, and whether it relates to predictable effects of economic, labour or supply chain issues against which the Supplier, in accordance with Good Industry Practice, should have reasonably planned or taken steps to address;

- (c) how the Contract Price change request differs from other foreseeable challenges that other suppliers working within the relevant sector are facing; and
 - (d) the mitigations and alternatives has the Supplier considered and/or implemented;
- 2.6 If the Supplier fails to provide the information required pursuant to Clause 2.4 or 2.5 of this Schedule 12 (as applicable) the price change request shall be automatically rejected.
- 2.7 Where the Authority approves an increase in writing to the Supplier then it will be implemented from the first (1st) Business Day following the relevant Review Date or such later date as the Authority may determine at its sole discretion and the Commercial Schedule shall be updated accordingly.
- 2.8 The Contract Price can also be varied (and the Commercial Schedule shall be updated accordingly) due to:
 - 2.8.1 A request from the Supplier, which it can make up to four (4) times per year , to decrease the Contract Prices;
 - 2.8.2 Indexation, where it is expressly states that a particular Contract Price is “subject to indexation” in which event Clause 3 (Indexation) of this Schedule 12 shall apply.
- 2.9 The Authority shall consider each request for a price increase or decrease. The Authority may grant Approval to an increase or decrease at its sole discretion (for example the Authority may reject a price reduction request as the proposed reduction is insufficient compared to the wider market and/or other suppliers price proposed reductions).
- 2.10 Where a price change request is rejected, the Authority shall provide feedback to the Supplier outlining the reasons for the rejection. The Supplier shall have 20 calendar days to raise the matter as a Dispute under the Dispute Resolution Procedure.
- 2.11 During the Dispute Resolution Procedure regarding price changes, the Supplier shall continue to offer the existing or lower prices to Approved Organisations for up to three (3) months after the existing prices were due to expire.
- 2.12 Subject to this Clause 2 of this Schedule 12, where a price increase is rejected, the Supplier may no longer be able to provide the affected Goods and/or Services under the Framework Agreement.
- 2.13 Where the rejected price increase affects more than half of the Goods and Services provided by the Supplier under the Framework Agreement, the Authority reserves the right to terminate the Framework by serving 3 (three) months’ written notice to the Supplier.

3. INDEXATION

- 3.1 Any amounts or sums in this Framework Agreement which are expressed to be “subject to indexation” shall be adjusted in accordance with the provisions of this Clause 3 of this Schedule 12 to reflect the effects of inflation.
- 3.2 The Contract Prices shall not be indexed during the first year following the Commencement Date.
- 3.3 Where the Commercial Schedule states a Contract Price is subject to Indexation then it will be indexed on the date which is 1 year after the Commencement Date to reflect the percentage change in the **UK Retail Price Index Excluding Mortgage Interest Payments (RPIX)/Framework or Category Specific Index** since the Commencement Date. They shall be indexed on each following yearly anniversary to reflect the percentage change in the **UK Retail UK Retail Price Index Excluding Mortgage Interest Payments (RPIX)/Framework or Category Specific Index** since the previous change.
- 3.4 Where the **UK Retail Price Index Excluding Mortgage Interest Payments (RPIX)/Framework or Category Specific Index**:
- 3.4.1 used to carry out an indexation calculation is updated (for example due to it being provisional) then the indexation calculation shall also be updated unless the Authority and the Supplier agree otherwise;
 - 3.4.2 is no longer published, the Authority and the Supplier shall agree a fair and reasonable replacement that will have substantially the same effect.
- 3.5 Except as set out in this Clause 3 (Indexation), neither the NCIS Fee nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier or Sub-contractors of the performance of their obligations.

Schedule 13

[Delete at final Framework Agreement stage if not required]

DRAFT