

DATED

28 November 2023

(1) NHS ENGLAND

and

(2) IQVIA LTD.

CONTRACT
relating to

Privacy Enhancing Technology Services

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THIS CONTRACT is made on

28 November 2023

BETWEEN:

- (1) NHS England of Quarry House, Quarry Hill, Leeds LS2 7UE (the “**Authority**”); and
- (2) IQVIA LTD., a company registered in England and Wales whose registered office is 3 Forbury Place, 23 Forbury Road, Reading, United Kingdom, RG1 3JH (the “**Supplier**”),

(each a “**Party**” and together the “**Parties**”).

INTRODUCTION

- (A) The Authority is an executive non-departmental public body of the Department of Health & Social Care and responsible for the National Health Service in England further to the National Health Service Act 2006, the Health and Social Care Act 2012 and the Health and Care Act 2022. The Authority wishes to procure privacy enhancing technology services in order to deliver its functions.
- (B) On 21 June 2023 the Authority published a notice on the UK Government’s Find a Tender service (ref 2023/S 000-017630), inviting prospective suppliers to submit requests to participate in a procurement for privacy enhancing technology services in relation to the Programme.
- (C) The Supplier is a leading global provider of advanced analytics, technology solutions, and clinical research services to the life sciences and healthcare industries and has experience in the provision of privacy enhancing technology and associated services.
- (D) On the basis of the Supplier’s response to the advertisement and a subsequent tender process, the Authority selected the Supplier as its preferred supplier.
- (E) The Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

IT IS AGREED as follows:

1. DEFINITIONS

- 1.1 In this Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in these Terms and in particular Schedule 1 (Definitions).

2. INTERPRETATION

- 2.1 In this Contract, unless the context otherwise requires:
 - 2.1.1 the singular includes the plural and vice versa;
 - 2.1.2 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
 - 2.1.3 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - 2.1.4 the words "including", "other", "in particular", "for example" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
 - 2.1.5 references to “writing” include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form and expressions referring to writing shall be construed accordingly;
 - 2.1.6 references to “Clauses” and “Schedules” are, unless otherwise provided, references to the clauses and schedules of this Contract and references in any Schedule to paragraphs, parts, annexes and tables are, unless otherwise provided, references to the paragraphs, parts, annexes and tables of the Schedule or the part of the Schedule in which the references appear;

- 2.1.7 the headings in this Contract are for ease of reference only and shall not affect the interpretation or construction of this Contract; and
- 2.2 In the event and to the extent only of a conflict between this Contract and the Applicable Supplier Terms, the conflict shall be resolved in accordance with the following descending order of precedence:
 - 2.2.1 this Contract (excluding Schedule 4 (Supplier Solution));
 - 2.2.2 Schedule 4 (Supplier Solution); and
 - 2.2.3 the Applicable Supplier Terms.

3. APPLICABLE SUPPLIER TERMS

Applicable Supplier Terms:

- 3.1 The Supplier Terms which shall apply to this Contract, and are therefore incorporated into this Contract subject to these Terms, are restricted to those Supplier Terms which are set out or expressly referred to in Schedule 17 (Applicable Supplier Terms) (the “**Applicable Supplier Terms**”) and as may be modified strictly in accordance with the provisions of this Contract.

Modifications to Supplier Terms:

- 3.2 The Supplier Terms forming part of the Applicable Supplier Terms pursuant to Clause 3.1 cannot be amended during the Term without the Authority’s prior written consent.

Hyperlinks:

- 3.3 Where in:

- 3.3.1 any Applicable Supplier Terms; and/or
- 3.3.2 the Supplier Solution,

a standard, policy, list, terms and conditions or any other document (“**Additional Documents and/or Terms**”) is incorporated into the relevant Applicable Supplier Terms and/or Supplier Solution by reference to a hyperlink, then such hyperlink shall be deemed ineffective and any Additional Documents and/or Terms shall be deemed unenforceable and shall not apply to this Contract and this Contract shall apply as if such hyperlink to the Additional Documents and/or Terms was not included.

4. TERM

- 4.1 This Contract shall take effect on the Effective Date, and unless terminated earlier under the terms of this Contract, shall expire at the end of the Initial Term.
- 4.2 Subject to Clause 4.3 & 4.4, the Authority may elect to extend the Term as follows:
 - 4.2.1 for a 24 month period beginning on the third (3rd) anniversary of the Commencement Date and ending on the fifth (5th) anniversary of the Commencement Date (“**First Extension Period**”);
 - 4.2.2 if the Authority elects to extend the Term by the First Extension Period, for a 12 month period beginning on the fifth (5th) anniversary of the Commencement Date and ending on the sixth (6th) anniversary of the Commencement Date (“**Second Extension Period**”); and
 - 4.2.3 if the Authority elects to extend the Term by the Second Extension Period, for a further 12 month period beginning on the sixth (6th) anniversary of the Commencement Date and ending on the seventh (7th) anniversary of the Commencement Date (“**Third Extension Period**”),

(each an “**Extension Period**” and together the “**Extension Periods**”).

- 4.3 Where the Authority wishes to trigger an Extension Period, the Authority shall give the Supplier at least fifteen (15) Working Days’ notice before the end of the Initial Term or the then current Extension Period (as applicable).
- 4.4 This Contract will not in any circumstances apply beyond the Maximum Term.

5. PROVISION AND RECEIPT OF THE SERVICES

- 5.1 The Supplier shall perform the Services in accordance with this Contract.
- 5.2 The Supplier shall ensure that the Services comply at all times and in all respects with:
 - 5.2.1 the Service Description; and
 - 5.2.2 the Supplier Solution.
- 5.3 The Supplier shall perform its obligations under this Contract in accordance with:
 - 5.3.1 all applicable Laws; and
 - 5.3.2 Good Industry Practice.
- 5.4 In its performance of its obligations under this Contract (including provision of the Services) the Supplier shall at all times comply with this Contract including the Schedules.
- 5.5 In its receipt and use of the Services the Authority shall at all times comply with the provisions of this Contract.
- 5.6 In their dealings under this Contract the Parties shall at all times behave and act reasonably and in good faith towards each other and in accordance with the collaborative behaviours set out in Clause 29 (Collaborative Behaviour).
- 5.7 The Authority will not attempt to access or manipulate in any way the source code of any software used by or on behalf of the Supplier to provide the Services.

Service Description and Supplier Solution:

- 5.8 The Supplier warrants that all software described in the Supplier Solution and forming part of the Services shall:
 - 5.8.1 be free from material design and programming errors;
 - 5.8.2 perform in all material respects in accordance with the relevant specifications contained in the Supplier Solution; and
 - 5.8.3 not infringe any Intellectual Property Rights.
- 5.9 The Service Description and Supplier Solution may only be modified in accordance with the provisions of Clauses 5.12 to 5.16 (Modifications to the Services).

Configuration Services:

- 5.10 In accordance with the scope of the Service Description, as part of the Services the Authority may request, and the Supplier has agreed to provide, configuration services that link the software and services described in the Supplier Solution to the Other Data Platforms ("**Configuration Services**"). In the event the Authority requires Configuration Services, the Authority shall submit a Service Request to the Supplier in accordance with Clause 5.11.
- 5.11 Where the Authority submits a Service Request, the Authority shall be committed to purchase and pay for such Configuration Services and the Supplier shall be obliged to provide such Configuration Services in accordance with Schedule 5 (Charges & Invoicing) and as otherwise set out under the terms of this Contract. Service Requests must be submitted in accordance with the agreed process set out in Schedule 12 (Service Request Procedure) (including any restrictions on who is authorised to submit Service Requests if specified in that Schedule).

Modifications to the Services:

- 5.12 The Authority acknowledges that the Services are provided by the Supplier using hardware and software systems made available to customers on a multi-tenant basis and accordingly the Supplier may need to modify the Services during the Term, for example to introduce new and improved functionality and may also include discontinuing and replacing some elements of the Services.

- 5.13 Subject to the Authority's right to terminate under Clause 5.15, the Supplier may, from time to time during the Term, propose a modification to the Services ("**Service Modification**") provided in each case the following conditions are satisfied:
- 5.13.1 subject to Clause 5.14, the Supplier has given the Authority Authorised Representative no less than thirty (30) days' prior written notice via email of the proposed Service Modification, such notice to include a hyperlink directly to a URL setting out in full and in a clear and transparent manner the relevant modified Service Descriptions for the proposed Service Modification;
 - 5.13.2 the proposed Service Modification applies on a uniform basis to all customers in respect of the affected Services; and
 - 5.13.3 the proposed Service Modification does not constitute a substantial modification to this Contract (including the Service Description and Supplier Solution) to the extent that the Regulations would otherwise require a new procurement procedure.
- 5.14 The Supplier is not required to provide prior written notice of Service Modifications under Clause 5.13.1 where and to the extent a Service Modification is reasonably necessary to enable the Supplier:
- 5.14.1 to comply with Law and such requirement to comply is imminent and was reasonably unforeseen by the Supplier in the circumstances; or
 - 5.14.2 to maintain the security of the Supplier's technology infrastructure,
- (in each case an "**Urgent Service Modification**") provided that as soon as is reasonably possible following completion of any Urgent Service Modification the Supplier gives the Authority Authorised Representative written notice via email of the date on which such Urgent Service Modification was made and includes in such notice brief summary details of the Urgent Service Modification together with a hyperlink directly to a URL setting out in full and in a clear and transparent manner the relevant modified Service Descriptions for that Urgent Service Modification.
- 5.15 Where the Authority reasonably believes a Service Modification or Urgent Service Modification) has, or is likely to have, a materially adverse impact on:
- 5.15.1 the Authority's use and enjoyment of the Services under this Contract;
 - 5.15.2 the commercial benefits of this Contract to the Authority (including in relation to pricing and performance of the Services); and/or
 - 5.15.3 the balance of risks under this Contract from the Authority's perspective (including the creation of new or increased potential liabilities and/or new or materially different operational responsibilities for the Authority and/or any Authority Users),
- the Authority may, acting reasonably, object to the Supplier's proposed and/or actual modifications to the Services notified under Clause 5.13.1 (Service Modification) or Clause 5.14 (Urgent Service Modification) (as applicable) by notifying the Supplier in writing within 30 (thirty) days of the Authority's receipt of the Supplier's notice of such Service Modification or Urgent Service Modification (as applicable). If the Parties (acting reasonably) are unable within the next ten (10) days to resolve the Authority's objection to its reasonable satisfaction the Authority may terminate this Contract with immediate effect and without any liability (including, for the avoidance of doubt, pursuant to Clause 22.4) by giving notice in writing to the Supplier.
- 5.16 Where the Authority:
- 5.16.1 does not object to a Service Modification or Urgent Service Modification within the thirty (30) day period referred to in Clause 5.15 or
 - 5.16.2 having objected the Authority subsequently agrees to the relevant Service Modification or Urgent Service Modification,
- and subject to the conditions in Clause 5.13 being satisfied, the relevant Service Descriptions are deemed modified to reflect the relevant modified Service Descriptions notified to the Authority under either (as applicable):
- (a) Clause 5.13.1 (Service Modifications), with effect from the effective date set out in the relevant email notice or where no effective date is specified thirty (30) days following the Authority's receipt of the email notice; or

- (b) Clause 5.14 (Urgent Service Modifications), with effect from the effective date set out in the relevant email notice or where no effective date is specified immediately upon the Authority's receipt of the email notice,

save where any of the conditions in Clause 5.13 are not satisfied, in which case the relevant Service Modification or Urgent Service Modification is deemed invalid and shall not modify the then current relevant Service Descriptions applying to this Contract.

6. IMPLEMENTATION & MILESTONES

Implementation Plan:

- 6.1 The Supplier shall be responsible for preparing and maintaining a detailed Implementation Plan. A draft of the Implementation Plan is set out in Schedule 6 (Implementation Plan). The Supplier shall provide a further draft Implementation Plan to the Authority not later than thirty (30) days after the Effective Date.
- 6.2 The draft Implementation Plan submitted in accordance with Clause 6.1:
- 6.2.1 must contain information at the level of detail necessary to manage the implementation stage effectively, including each Planned Date, Milestone Date, and as the Customer may otherwise require; and
- 6.2.2 it shall take account of all dependencies on the Authority or any other third party known to, or which should reasonably be known to, the Supplier.
- 6.3 The Supplier shall provide each of the Deliverable Items identified in the Implementation Plan by the date assigned to that Deliverable Item in the Implementation Plan so as to ensure that each Milestone is Achieved on or before its Milestone Date.
- 6.4 The Supplier shall monitor its performance against the Implementation Plan and Milestones and report to the Authority on such performance in accordance with the agreed governance processes.

Reviewing and changing the Implementation Plan:

- 6.5 Subject to Clause 6.3, the Supplier shall keep the Implementation Plan under review and ensure that it is updated on a regular basis.
- 6.6 The Authority shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.
- 6.7 Changes to any Milestones, Milestone Payments and Delay Payments shall not be permitted unless agreed in writing by the Authority.
- 6.8 The Supplier shall, as soon as reasonably practicable, notify the Customer if the Supplier: (i) fails to; or (ii) becomes aware of any event or incident that could have a material impact on its ability to, meet a Planned Date. As soon as reasonably practicable, but in any event within two (2) Working Days of receipt of such notice, the Parties will work together in good faith to agree a rectification plan to include the revised Planned Date and the actions required to meet it. Each Party shall take such steps as are reasonably practicable to mitigate the impact of any delays to a Planned Date.

Compliance with the Implementation Plan:

- 6.9 The Supplier shall:
- 6.9.1 comply with Implementation Plan; and
- 6.9.2 ensure that each Milestone is Achieved on or before its Milestone Date.
- 6.10 Where the Supplier is responsible for the failure to Achieve a Milestone by the relevant Milestone Date this shall constitute a material Default.
- 6.11 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay:
- 6.11.1 it shall:
- (a) notify the Authority in accordance with Clause 18 (Rectification Plan Process); and
- (b) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and

- 6.11.2 if the Delay or anticipated Delay relates to a Key Milestone, the provisions of Clause 19 (Delay Payments) shall apply.

Testing and Achievement of Milestones:

- 6.12 The Parties shall work together in good faith to agree the test criteria determining whether or not a Milestone has been Achieved. Notwithstanding this, the Authority shall determine, in its absolute discretion, whether or not a Milestone has been Achieved.

Issue of Milestone Achievement Certificate

- 6.13 The Authority shall issue a Milestone Achievement Certificate in respect of a given Milestone as soon as is reasonably practicable following:
- 6.13.1 Achievement of that Milestone in accordance with Clause 6.12; and
 - 6.13.2 performance by the Supplier to the reasonable satisfaction of the Authority of any other tasks identified in the Implementation Plan as associated with that Milestone.
- 6.14 The grant of a Milestone Achievement Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of Schedule 5 (Charges & Invoicing).

7. WARRANTIES AND STANDARDS

- 7.1 The Supplier warrants and represents that:
- 7.1.1 it has full capacity and authority to enter into and to perform this Contract and this Contract is executed by its authorised representative;
 - 7.1.2 it is a legally valid and existing organisation incorporated in the place it was formed;
 - 7.1.3 there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might reasonably be anticipated to affect its ability to perform this Contract;
 - 7.1.4 it maintains all necessary rights, authorisations, licences and consents to perform its obligations under this Contract;
 - 7.1.5 it does not have any contractual obligations which are likely to have a material adverse effect on its ability to perform this Contract;
 - 7.1.6 it is not impacted by an Insolvency Event; and
 - 7.1.7 all statements made and documents submitted by the Supplier as part of the procurement of the Services under this Contract are true and accurate.
- 7.2 The Supplier shall at all times during the Term comply with the Standards and maintain, where applicable, accreditation with the relevant Standards' authorisation body.

8. CHARGES, PAYMENT AND INVOICING

- 8.1 In consideration of the Supplier carrying out its obligations under this Contract, including the provision of the Services, the Authority shall pay the undisputed Charges.
- 8.2 The Charges for Services consumed or to be consumed by the Authority during the Term shall be calculated using the relevant pricing information (including applicable currency), charging model, payment profile, invoicing procedure and payment method set out or referred to in Schedule 5 (Charges & Invoicing) as these apply to the relevant Services.
- 8.3 The Supplier warrants that it will calculate Charges due under this Contract accurately in compliance with Schedule 5 (Charges & Invoicing).
- 8.4 The Supplier shall invoice the Charges to the Authority in accordance with this Clause 8 and the Authority will pay the Supplier within thirty (30) days of receipt of a valid invoice. All Supplier invoices shall be expressed and paid in pounds sterling by electronic transfer of funds to the bank account that the Supplier has specified on its invoice. The Authority must accept and process for payment an undisputed Electronic Invoice received from the Supplier.

- 8.5 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate (with visibility of the amount as a separate line item) as applicable and paid by the Authority following delivery of a valid invoice.
- 8.6 The Authority may retain or set off any amount owed to it by the Supplier (including any Authority's Existing Entitlement) against any amount due to the Supplier under this Contract or under any other agreement between the Supplier and the Authority.
- 8.7 If the Authority wishes to exercise its right pursuant to Clause 8.6 it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Authority's reasons for retaining or setting off the relevant Charges.
- 8.8 If there's an invoice dispute, the Authority must pay any undisputed amount and return the invoice within 10 Working Days of the invoice date. The Authority will provide a covering statement with proposed amendments and the reason for any non-payment. The Supplier must notify the Authority within 10 Working Days of receipt of the returned invoice if it accepts the amendments. If it does then the Supplier must provide a replacement valid invoice with the response.
- 8.9 Due to the nature of the Services it is not practicable in a static Schedule to agree in detail exactly the quantity and rate of consumption of the Services during the Term. Accordingly, the Charges due under this Contract are calculated (in accordance with the process set out in Schedule 5 (Charges & Invoicing)) by reference to the Authority's actual consumption of Services. Accordingly, the Supplier agrees that the Authority's anticipated quantities and rates of consumption of Services are indicative only.

9. LIABILITIES

Unlimited liability:

- 9.1 Neither Party limits its liability for:
- 9.1.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
 - 9.1.2 fraud or fraudulent misrepresentation by it or its employees;
 - 9.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - 9.1.4 any liability to the extent it cannot be limited or excluded by Law.
- 9.2 The Supplier's liability in respect of the indemnity in Clause 10.7 shall be unlimited.

Financial and other limits:

- 9.3 Subject to Clauses 9.1 and 9.2 (Unlimited Liability) and Clause 9.6 (Consequential losses):
- 9.3.1 the Supplier's aggregate liability in respect of loss of or damage to Authority Data or breach of the Data Protection Legislation that is caused by Default of the Supplier [REDACTED]
 - 9.3.2 the Supplier's aggregate liability in respect of all other Losses incurred by the Authority under or in connection with this Contract as a result of Defaults by the Supplier [REDACTED]
 - (a) [REDACTED]
 - (b) [REDACTED]
 - 9.3.3 the Supplier's aggregate liability in respect of all Service Credits incurred in any rolling period of 12 months [REDACTED]
- 9.4 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under Clause 9.3.2. The Supplier hereby expressly agrees that any Losses of any NHS Body incurred in

connection with or in relation to this Contract arising in contract, tort (including negligence) or otherwise shall be deemed to be (and shall be) the Losses of the Authority.

- 9.5 Subject to Clauses 9.1 (Unlimited Liability) and Clause 9.6 (Consequential Losses), and without prejudice to the Authority's obligation to pay the Charges as and when they fall due for payment, the Authority's total aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Contract as a result of Defaults by the Authority [REDACTED]

Consequential Losses:

- 9.6 Subject to Clauses 9.1 and 9.2 (Unlimited Liability) and Clause 9.7, neither Party shall be liable to the other Party for:
- 9.6.1 any indirect, special or consequential Loss; or
 - 9.6.2 any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 9.7 Notwithstanding Clause 9.6 but subject to Clause 9.3, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority and any Authority User to the extent that they arise as a result of a Default by the Supplier:
- 9.7.1 any additional operational and/or administrative costs and expenses incurred by the Authority and any Authority User, including costs relating to time spent by or on behalf of the Authority and any Authority User in dealing with the consequences of the Default;
 - 9.7.2 any wasted expenditure or charges;
 - 9.7.3 the additional cost of procuring Replacement Services for the remainder of the Term and/or replacement Deliverable Items, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverable Items above those which would have been payable under this Contract;
 - 9.7.4 any compensation or interest paid to a third party by the Authority and/or any Authority User; and
 - 9.7.5 any fine or penalty incurred by the Authority and any Authority User pursuant to Law and any costs incurred by the Authority and any Authority User in defending any proceedings which result in such fine or penalty.

Mitigation:

- 9.8 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Contract, including any Losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Contract.

Notice and conduct of Indemnity Claims:

- 9.9 If a Beneficiary is notified of a Claim then it must notify the Provider as soon as reasonably practical and no later than 10 Working Days.
- 9.10 At the Provider's cost and expense the Beneficiary must both:
- 9.10.1 allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim; and
 - 9.10.2 give the Provider reasonable assistance with the Claim if requested.
- 9.11 The Beneficiary must not make admissions about the Claim without the prior written consent of the Provider which cannot be unreasonably withheld or delayed.
- 9.12 The Provider must consider and defend the Claim diligently using competent legal advisors and in a way that doesn't damage the Beneficiary's reputation.
- 9.13 The Provider must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.
- 9.14 Each Beneficiary must take all reasonable steps to minimise and mitigate any losses that it suffers because of the Claim.

9.15 If the Provider pays the Beneficiary money under an indemnity or under Clause 10.5.2 (as applicable) and the Beneficiary later recovers money which is directly related to the Claim, the Beneficiary must immediately repay the Provider the lesser of either:

9.15.1 the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money; or

9.15.2 the amount the Provider paid the Beneficiary for the Claim.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 Save for the licences expressly granted pursuant to Clauses 10.3 and 10.4, neither Party shall acquire any right, title or interest in or to the IPR (whether pre-existing or created during the Term) of the other Party or its licensors.

10.2 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

10.3 The Authority grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use the Authority's or its relevant licensor's Authority Content and related IPR solely to the extent necessary for providing the Services in accordance with this Contract, including the right to grant sub-licences to Sub-Contractors provided that:

10.3.1 any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on substantially the same terms as set out in Clause 26 (Confidentiality); and

10.3.2 the Supplier shall not and shall procure that any relevant Sub-Contractor shall not, without the Authority's written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.

10.4 The Supplier grants to:

10.4.1 the Authority; and

10.4.2 the Authority Users,

the licence taken from its Applicable Supplier Terms as set out or expressly referred to in Schedule 4 (Supplier Solution) under the heading 'Licence Terms' which licence shall, as a minimum, grant the Authority and any Authority Users a non-exclusive, non-transferable licence during the Term to use the Supplier's or its relevant licensor's IPR solely to the extent necessary to access and use the Services in accordance with this Contract.

10.5 Subject to the limitation in Clause 9.5, the Authority shall:

10.5.1 defend the Supplier, its Affiliates and licensors from and against any third-party claim:

(a) alleging that any use of the Services by or on behalf of the Authority and/or Authority Users is in breach of applicable Law;

(b) alleging that the Authority Content violates, infringes or misappropriates any rights of a third party;

(c) alleging that the Authority's and/or Authority User's use of the Services is in material breach of the Applicable Supplier Terms;

(d) arising from the Supplier's use of the Authority Content in accordance with this Contract; and

10.5.2 in addition to defending in accordance with Clause 10.5.1, the Authority will pay the amount of Losses awarded in final judgment against the Supplier or the amount of any settlement agreed by the Authority,

provided that the Authority's obligations under this Clause 10.5 shall not apply where and to the extent such Losses or third-party claim is caused by the Supplier's breach of this Contract.

IPR Indemnity:

- 10.6 The Supplier shall ensure and procure that the availability, provision and use of the Services and the performance of the Supplier's responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.
- 10.7 The Supplier will during and after the Term, on written demand, defend and indemnify and keep the Authority and/or any Authority Users indemnified from and against all Losses incurred by, awarded against or agreed to be paid by the Authority and/or any Authority Users (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.

Supplier options:

- 10.8 If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:
- 10.8.1 procure for the Authority the right to continue using the relevant item which is subject to the IPR Claim; or
 - 10.8.2 replace or modify the relevant item with non-infringing substitutes provided that:
 - (a) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (b) the replaced or modified item does not have an adverse effect on any other Services;
 - (c) there is no additional cost to the Authority and/or any Authority User; and
 - (d) the terms and conditions of this Contract shall apply to the replaced or modified Services.
- 10.9 The indemnity in Clause 10.7 shall not apply where and to the extent an IPR Claim and/or any Losses arising from such an IPR Claim, arise directly from and would not have arisen in the absence of:
- 10.9.1 the use of any Authority Content provided by the Authority and/or any Authority User; and/or
 - 10.9.2 the Authority's and/or any Authority User's breach of this Contract.
- 10.10 If the Supplier elects to procure a licence in accordance with Clause 10.8.1 or to modify or replace an item pursuant to Clause 10.8.2, but this has not avoided or resolved the IPR Claim, then:
- 10.10.1 the Authority may terminate this Contract by written notice with immediate effect; and
 - 10.10.2 without prejudice to the indemnity set out in Clause 10.7, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

11. PUBLICITY AND BRANDING

- 11.1 The Supplier shall not, and shall take all reasonable steps to ensure the Supplier staff do not, make any press announcements or publicise this Contract or any part of it in any way nor use the Authority's name or brand in any promotion or marketing or announcement of orders, without the Authority's prior written approval (the decision of the Authority to approve or not shall not be unreasonably withheld or delayed).
- 11.2 Each Party acknowledges to the other that nothing in this Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

12. AUTHORITY CONTENT AND SECURITY REQUIREMENTS

- 12.1 The Supplier shall comply with the cyber security and information governance requirements set out in Schedule 3 (Cyber Security and Information Governance).
- 12.2 The Supplier shall not access, store, copy, disclose or use any of the Authority Content uploaded to the relevant data storage platform(s) other than for the sole purpose and to the extent necessary to provide the Services or as otherwise approved in advance and in writing by the Authority, unless the Supplier is required to do so by Law. If it is so required the Supplier shall promptly notify the Authority before doing so unless prohibited by Law.

- 12.3 If the Supplier suspects that the Authority Content has or may become corrupted, lost, breached or significantly degraded in any way for any reason, then the Supplier will notify the Authority without undue delay and within 72 hours of becoming aware and will (at its own cost if corruption, loss, breach or degradation of the Authority Content was caused by the act or omission of the Supplier) comply with any remedial action reasonably proposed by the Authority.
- 12.4 The Supplier will use all reasonable endeavours, software and the most up-to-date antivirus definitions available from an industry-accepted antivirus software seller to minimise the impact of Malicious Software.
- 12.5 If Malicious Software causes loss of operational efficiency or loss or corruption of Authority Content, the Supplier will assist and support the Authority to mitigate any Losses and restore the Services to operating efficiency as soon as possible.
- 12.6 [REDACTED]
- 12.7 The Authority acknowledges it has responsibilities in relation to security where and to the extent described in the relevant Applicable Supplier Terms and applicable Service Descriptions.

13. KEY PERFORMANCE INDICATORS

- 13.1 The Supplier shall:
- 13.1.1 provide the Services in such a manner so as to meet or exceed the Target Performance Level for each Key Performance Indicator from the Commencement Date; and
 - 13.1.2 comply with the provisions of Schedule 8 (Performance Levels) in relation to the monitoring and reporting of its performance against the Key Performance Indicators.

Performance Failures:

- 13.2 If in any Service Period:
- 13.2.1 a KPI Failure occurs in respect of a Critical KPI, Service Points shall be calculated in accordance with Schedule 8 (Performance Levels) and Service Credits deducted from the Service Charges in accordance with Schedule 5 (Charges & Invoicing); and
 - 13.2.2 a Material KPI Failure occurs, the Supplier shall comply with the Rectification Plan Process (in addition to Service Credits accruing in accordance with Clause 13.2.1 where the KPI Failure is in respect of a Critical KPI).

- 13.3 Service Credits shall not be the Authority's exclusive financial remedy for a KPI Failure in respect of a Critical KPI.

Critical Performance Failure:

- 13.4 If a Critical Performance Failure occurs, the Authority may exercise its rights to terminate this Contract in whole or in part pursuant to Clause 21.4 (Termination by the Authority).

14. RECORDS AND AUDIT

- 14.1 The Supplier will maintain full and accurate records and accounts, using good industry practice and generally accepted accounting principles, of the:
- 14.1.1 operation of this Contract and the Services provided under it (including any Sub-Contracts); and
 - 14.1.2 amounts paid by the Authority under this Contract.
- 14.2 The Supplier's records and accounts will be kept until the latest of the following dates:
- 14.2.1 7 years after the date of termination or expiry of this Contract; or

14.2.2 another date agreed between the Parties.

14.3 During the timeframes highlighted in Clause 14.2, the Supplier will maintain:

[REDACTED]

14.4 The Supplier will allow representatives of the Authority, the Comptroller and Auditor General and their staff, any appointed representatives of the National Audit Office, HM Treasury, the Cabinet Office and any successors or assigns of any of the above, access to the records, documents, and account information referred to in Clause 14.3 (including access to online records (including any Security Assessment Documents)) as may be required by them and subject to reasonable and appropriate confidentiality undertakings, to verify and review:

[REDACTED]

14.5 The Authority acknowledges that the rights of audit or inspection under this Clause 14 shall not include the right to audit or inspect the Supplier's physical infrastructure.

14.6 Notwithstanding any provisions of the DPA and/or any other Applicable Supplier Terms, throughout the Term the Supplier shall appoint external auditors to inspect and verify the continued adequacy and effectiveness of its Protective Measures in respect of the Services (including the security of the physical data centres from which the Supplier provides the Services) ("**Security Audit**"). The Supplier shall ensure:

14.6.1 Security Audits are undertaken at least annually by external auditors appointed by the Supplier and at the Supplier's sole cost and expense;

14.6.2 external auditors appointed to undertake Security Audits are suitably qualified and experienced independent third party organisations, whose identity the Supplier shall disclose to the Authority upon request;

14.6.3 are undertaken in accordance with ISO 27001 (or other substantially equivalent alternative standard(s)); and

14.6.4 any Security Audit results in the independent external auditors providing written summary reports, certifications and/or attestations of compliance (as applicable) in accordance with good industry practice ("**Security Assessment Documents**") capable of being used by the Authority so that it can reasonably assess and assure itself as to the continued adequacy and effectiveness of the Supplier's Protective Measures, the Supplier's compliance with those Protective Measures and its obligations under the Data Protection Legislation in respect of its provision of the Services in accordance with this Contract.

14.7 Upon the Authority's request, and subject to the confidentiality undertakings of this Contract, the Supplier shall at the Authority's option either provide a copy or make available to the Authority for review the Security Assessment Documents. The Security Assessment Documents will be treated as the Supplier's Confidential Information.

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- 14.8 Subject to any confidentiality obligations, the Supplier will use reasonable endeavours to provide all audit information within scope and give auditors access to Supplier Personnel and in each case without undue delay.
- 14.9 The Authority will use reasonable endeavours to ensure that any audit does not unreasonably disrupt the Supplier, but the Supplier accepts that control over the conduct of audits carried out by the auditors is outside of the Authority's control.
- 14.10 Each Party is responsible for its own costs incurred in respect of its compliance with the audit obligations in this Clause 14, save that the Supplier will reimburse the Authority its reasonable Audit costs if the Audit reveals a material Default.

15. SUPPLY CHAIN RIGHTS AND PROTECTION

Register of Key Sub-Contractors and Sub-processors:

- 15.1 The Supplier warrants that the Key Sub-Contractors and Sub-processors as at the Effective Date shall be those set out in Schedule 15 (Key Sub-Contractors) as at that date. Throughout the Term the Supplier shall notify promptly the Authority in writing of any additional or replacement Key Sub-Contractors and Sub-processors (and in the case of any additional or replacement Sub-processors in accordance with the provisions of Clause 17.11) appointed after the Effective Date and maintain at all times throughout the Term an accurate, complete and up to date list of all Key Sub-Contractors and Sub-processors used in the provision of the Services (the "**Supplier's Register of Key Sub-Contractors and Sub-processors**"), such list to contain as a minimum:
- 15.1.1 the trading name of each Sub-processor and each Key Sub-Contractor and their respective registered company names, if different;
 - 15.1.2 a brief description of each Sub-processor's and each Key Sub-Contractor's role in the provision of the Services;
 - 15.1.3 whether each Key Sub-Contractor should reasonably be categorised as a Sub-processor under Data Protection Legislation; and
 - 15.1.4 details of any third party which is not a Key Sub-Contractor, but which should reasonably be categorised as a Sub-processor under Data Protection Legislation.
- 15.2 The Supplier's Register of Key Sub-Contractors and Sub-processors is the Supplier's Confidential Information. For the avoidance of doubt, the Confidential Information that the Authority may disclose under Clause 26.7 shall include the Supplier's Register of Key Sub-Contractors.

Supply Chain Protection:

- 15.3 Where the Supplier enters into a Sub-Contract wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract the Supplier shall pay any undisputed sums which are due from the Supplier to the relevant Sub-Contractor under that Sub-Contract within thirty (30) days from the receipt of a valid invoice.
- 15.4 Notwithstanding any provision of Clause 26 (Confidentiality) and 11 (Publicity and Branding) if the Supplier notifies the Authority that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late payment or non-payment (including on government websites and in the press).

Retention of Legal Obligations:

- 15.5 The Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

Income Tax and National Insurance Contributions:

- 15.6 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Supplier shall:
- 15.6.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act

1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and

15.6.2 indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel.

16. INSURANCE

The Supplier shall effect and maintain insurances in relation to the performance of this Contract in accordance with Schedule 13 (Insurance Requirements) of this Contract.

17. PROTECTION OF PERSONAL DATA

17.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor unless otherwise specified in the Schedule of Processing, Personal Data and Data Subjects. The only Processing that the Supplier is authorised to do is listed in the Schedule of Processing, Personal Data and Data Subjects by the Authority and may not be determined by the Supplier.

17.2 The Supplier shall notify the Authority immediately if it considers that any of the Authority's documented instructions infringe the Data Protection Legislation.

17.3 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- 17.13 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. Subject to the Supplier's prior written consent (such consent not to be unreasonably withheld or delayed) the Authority may, at any time on not less than thirty (30) Working Days' notice to the Supplier:
- 17.13.1 revise this Clause 17 (Protection of Personal Data) by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by Attachment to this Contract); and/or
 - 17.13.2 amend this Contract to ensure that it complies with any guidance, codes of practice, codes of conduct, regulatory guidance, standard clauses or any other related laws arising from the UK GDPR.
- 17.14 Without prejudice to the foregoing, the Parties acknowledge that in performing its obligations under this Contract, the Supplier will from time to time collect and Process on an incidental basis limited amounts of Personal Data of the Authority and/or Authority Users (for example names and business contact details of points of contact at the Authority and/or Authority Users) ("**CRM Personal Data**") for the purpose of performing its obligations under this Contract (including providing the Services). The Supplier shall, when Processing such CRM Personal Data, do so as a Data Controller and shall ensure that it fully complies with its obligations under the Data Protection Legislation.
- 17.15 In respect of such CRM Personal Data, the Supplier shall:
- 17.15.1 ensure that it has all necessary notices and consents in place to enable it to Process the CRM Personal Data;
 - 17.15.2 provide full information, in the form of a suitable privacy policy, to any Data Subject whose CRM Personal Data may be Processed by the Supplier under this Contract, concerning the nature such Processing;
 - 17.15.3 not, by its acts or omissions, place the Authority and/or any Authority User in breach of the Data Protection Legislation; and
 - 17.15.4 ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, the CRM Personal Data.
- 17.16 The Supplier shall not Process CRM Personal Data for any purposes other than those set out in this Contract.

18. RECTIFICATION PLAN PROCESS

- 18.1 In the event that:
- 18.1.1 there is, or is reasonably likely to be, a Delay;
 - 18.1.2 in any Service Period there has been a Material KPI Failure; and/or
 - 18.1.3 the Supplier commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default),

(each a "**Notifiable Default**"), the Supplier shall notify the Authority of the Notifiable Default as soon as practicable but in any event within 3 Working Days of becoming aware of the Notifiable Default, detailing the actual or anticipated effect of the Notifiable Default and, unless the Notifiable Default also constitutes a Rectification Plan Failure or other Supplier Termination Event, the Authority may not terminate this Contract in whole or in part on the grounds of the Notifiable Default without first following the Rectification Plan Process.

Notification:

- 18.2 If:
- 18.2.1 the Supplier notifies the Authority pursuant to Clause 18.1 that a Notifiable Default has occurred; or
 - 18.2.2 the Authority notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

then, unless the Notifiable Default also constitutes a Supplier Termination Event and the Authority serves a termination notice, the Supplier shall comply with the Rectification Plan Process.

- 18.3 The “**Rectification Plan Process**” shall be as set out in Clauses 18.4 (Submission of the draft Rectification Plan) to 18.9 (Agreement of the Rectification Plan).

Submission of the draft Rectification Plan:

- 18.4 The Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within 10 Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 18.2 (Notification). The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.
- 18.5 The draft Rectification Plan shall set out:
- 18.5.1 full details of the Notifiable Default that has occurred, including a root cause analysis;
 - 18.5.2 the actual or anticipated effect of the Notifiable Default; and
 - 18.5.3 the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).
- 18.6 The Supplier shall promptly provide to the Authority any further documentation that the Authority reasonably requires to assess the Supplier’s root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Schedule 10 (Dispute Resolution Procedure).

Agreement of the Rectification Plan:

- 18.7 The Authority may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- 18.7.1 is insufficiently detailed to be capable of proper evaluation;
 - 18.7.2 will take too long to complete;
 - 18.7.3 will not prevent reoccurrence of the Notifiable Default; and/or
 - 18.7.4 will rectify the Notifiable Default but in a manner which is unacceptable to the Authority.
- 18.8 The Authority shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Authority rejects the draft Rectification Plan, the Authority shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Authority for review within 5 Working Days (or such other period as agreed between the Parties) of the Authority’s notice rejecting the first draft.
- 18.9 If the Authority consents to the Rectification Plan:
- 18.9.1 the Supplier shall immediately start work on the actions set out in the Rectification Plan; and
 - 18.9.2 the Authority may no longer terminate this Contract in whole or in part on the grounds of the relevant Notifiable Default,
- save in the event of a Rectification Plan Failure or other Supplier Termination Event.

19. SUPPLIER RELIEF DUE TO AUTHORITY CAUSE

- 19.1 Notwithstanding any other provision of this Contract, if the Supplier has failed to:
- 19.1.1 Achieve a Milestone by its Milestone Date;
 - 19.1.2 provide the Services in accordance with the Key Performance Indicators; and/or
 - 19.1.3 comply with its obligations under this Contract,
- (each a “**Supplier Non-Performance**”),
- and can demonstrate that the Supplier Non-Performance would not have occurred but for an Authority Cause, then (subject to the Supplier fulfilling its obligations in this Clause 19):

- (a) the Supplier shall not be treated as being in breach of this Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause;
- (b) the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance to terminate this Contract pursuant to Clause 21.2 or 21.4;
- (c) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
 - (i) if the Authority considers it appropriate, will make consequential revisions to the Milestone Dates resulting from the Authority Cause;
 - (ii) the Supplier shall have no liability to pay any Delay Payments associated with the Key Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Authority Cause;
- (d) where the Supplier Non-Performance constitutes a KPI Failure:
 - (i) the Supplier shall not be liable to accrue Service Credits; and
 - (ii) the Supplier shall be entitled to invoice for the Service Charges for the relevant Services affected by the Authority Cause,

in each case, to the extent that the Supplier can demonstrate that the KPI Failure was caused by the Authority Cause.

- 19.2 In order to claim any of the rights and/or relief referred to in Clause 19.1, the Supplier shall as soon as reasonably practicable (and in any event within five (5) Working Days) after becoming aware that an Authority Cause has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Authority notice (a “Relief Notice”) setting out details of:
- 19.2.1 the Supplier Non-Performance;
 - 19.2.2 the Authority Cause and its effect, or likely effect, on the Supplier’s ability to meet its obligations under this Contract;
 - 19.2.3 any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and
 - 19.2.4 the relief claimed by the Supplier.
- 19.3 Following the receipt of a Relief Notice, the Authority shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Authority Cause and whether it agrees with the Supplier’s assessment set out in the Relief Notice as to the effect of the relevant Authority Cause and its entitlement to relief, consulting with the Supplier where necessary.
- 19.4 The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Authority Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.
- 19.5 If a Dispute arises as to:
- 19.5.1 whether a Supplier Non-Performance would not have occurred but for an Authority Cause; and/or
 - 19.5.2 the nature and/or extent of the relief and/or compensation claimed by the Supplier,
- either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.
- 19.6 Any variation that is required pursuant to this Clause 19 shall be implemented in accordance with Clause 39 (Variation).

20. DELAY PAYMENTS

- 20.1 Subject to Clause 19 (Supplier Relief Due to Authority Cause), if a Key Milestone (or any interim milestone forming part of that Key Milestone) has not been Achieved by its relevant Milestone Date, the Supplier shall, subject to the Delay Payments Cap, pay to the Authority the Delay Payments as set out in Schedule 5 (Charges & Invoicing).
- 20.2 Delay Payments shall be the Authority's exclusive financial remedy for the Supplier's failure to Achieve a Key Milestone by its Milestone Date except where the Authority is entitled to or does terminate this Contract pursuant to Clause 21.4 (Termination by the Authority).

21. TERMINATION AND EXPIRY

- 21.1 During the Initial Term, the Authority may terminate this Contract without reason (and, subject to Clause 22.4, without any liability whatsoever or howsoever arising from the Authority's termination under this Clause 21.1) by issuing a written notice to the Supplier giving at least thirty (30) days' written notice, provided that such termination shall not take effect until the anniversary of the Commencement Date immediately following expiry of the thirty (30) day written notice period.
- 21.2 The Authority may terminate this Contract at any time with immediate effect for material Default by issuing a written notice to the Supplier where:
 - 21.2.1 the Supplier commits any material Default of this Contract which is not, in the reasonable opinion of the Authority, capable of remedy; and/or
 - 21.2.2 the Supplier commits a Default, including a material Default, which in the opinion of the Authority is remediable but has not remedied such Default to the satisfaction of the Authority within fifteen (15) Working Days of being notified in writing to do so.
- 21.3 For the purpose of Clause 21.2, a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.
- 21.4 The Authority may terminate this Contract at any time with immediate effect by issuing a written notice to the Supplier where a Supplier Termination Event occurs.
- 21.5 The Supplier may, by issuing a written notice to the Authority, terminate this Contract if the Authority fails to pay an undisputed sum due to the Supplier under this Contract and such sum remains outstanding forty (40) Working Days after the receipt by the Authority of a written notice of non-payment from the Supplier specifying:
 - 21.5.1 the Authority's failure to pay;
 - 21.5.2 the correct overdue and undisputed sum;
 - 21.5.3 the reasons why the undisputed sum is due; and
 - 21.5.4 the requirement on the Authority to remedy the failure to pay,and this Contract shall then terminate on the date specified in the Supplier's written notice (which shall not be less than twenty (20) Working Days from the date of the issue of that notice).

22. CONSEQUENCES OF TERMINATION AND EXPIRY

- 22.1 Even if a notice has been served to terminate this Contract, the Supplier must continue to provide ordered Services until the dates set out in the notice and as necessary to comply with this Clause 22.
- 22.2 Expiry or termination of this Contract will not affect:
 - 22.2.1 any rights, remedies or obligations accrued before its termination or expiry (as applicable); and
 - 22.2.2 the right of either Party to recover any amount outstanding at the time of termination or expiry (as applicable).
- 22.3 Upon termination or expiry of this Contract and subject always to Clause 22.4.1:
 - 22.3.1 the rights and obligations of the Parties under this Contract will cease immediately (including the Authority's payment obligations under this Contract save where and to the extent any payments are expressly stated in this Contract to be payable by the Authority following

termination or expiry of this Contract), except for those continuing provisions identified in Clause 22.5;

22.3.2 the Authority will:

- (a) pay any outstanding Charges properly due to the Supplier;
- (b) extract and/or destroy all copies of the Authority Content for which it had been using the Services. The Supplier shall retain the Authority Content and allow the Authority to extract the Authority Content for a period of 60 (sixty) days following expiry or termination or such other period as may be specified in the Exit Management Plan and the Supplier shall be entitled to a reasonable charge for continuing to provide the Authority with access to the Services for this purpose during the relevant period;

22.3.3 the Supplier will:

- (a) comply with any exit related obligations as specified in the Exit Management Plan;
- (b) within 10 Working Days of the termination or expiry date, return to the Authority on a pro rata basis any sums paid in advance for Services due to be provided by the Supplier under this Contract for any period post the termination or expiry date (as applicable);
- (c) following the expiry of the period referred to in Clause 22.3.2(b), promptly destroy all copies of the Authority Content when it receives the Authority's written instructions to do so or within 12 calendar months after the termination or expiry date; and
- (d) provide the Authority with written confirmation that the Authority Content has been securely destroyed pursuant to Clause 22.3.3(c), except if the retention of any of Authority Content is required by Law; and

22.3.4 each Party will promptly either:

- (a) return all copies of the other's Confidential Information in such Party's custody, possession or control unless there is a legal requirement to keep it or this Contract states otherwise; or
- (b) (where the other Party has given its prior written consent to its destruction) destroy the other Party's Confidential Information and confirm its destruction to the reasonable satisfaction of the other Party.

22.4 If the Authority terminates this Contract for convenience pursuant to Clause 21.1 (but not, for the avoidance of any doubt, termination pursuant to any other right of termination) before the Milestone Date in respect of Milestone 1, the Authority shall pay the Supplier an amount equal to the Milestone Payment in respect of Milestone 1. The Supplier may not charge the Authority any fees, costs or expenses relating to:

22.4.1 the Authority's extraction, transfer and/or destruction of Authority Content whenever and howsoever after such termination; or

22.4.2 the Supplier complying with its exit related obligations under this Contract.

22.5 The following Clauses survive the termination or expiry of this Contract: Clauses 1 (Definitions), 2 (Interpretation), 3 (Applicable Supplier Terms), 9 (Liabilities), 10 (Intellectual Property Rights), 11 (Publicity and Branding), 14 (Records and Audit), 17 (Protection of Personal Data), 21 (Termination and Expiry), 22 (Consequences of Termination and Expiry), 26 (Confidentiality), 27 (Transparency and FOIA), 42 (Entire Agreement), 43 (Third Party Rights), 44 (Disputes) and 45 (Governing Law and Jurisdiction) and Schedule 1 (Definitions) and without limitation to the foregoing any other provisions of this Contract which are expressly or by implication intended to continue.

23. BUSINESS CONTINUITY, DISASTER RECOVERY AND INCIDENT MANAGEMENT

- 23.1 The Supplier shall have adequate business continuity, disaster recovery and incident management policies and procedures in place to ensure:
- 23.1.1 continuity of the processes and operations supported by the Services following any failure or disruption of any element of the Services (including where caused by an Insolvency Event of the Supplier, any Sub-contractor and/or any Supplier group member); and
 - 23.1.2 the recovery of the Services in the event of the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable;
 - 23.1.3 it can comply with the incident management requirements set out in Schedule 3 (Cyber Security and Information Governance).
- 23.2 Within not less than thirty (30) days of the Effective Date, the Supplier shall provide the Authority with a copy of its current business continuity and disaster recovery policies ("**Current BCDR Policies**"). The Supplier shall review and update the Current BCDR Policies (and the risk analysis on which it is based) on a regular basis and as a minimum once every 12 months and provide the Authority with copies of such updated policies upon request.
- 23.3 The Supplier shall ensure that it (and any Sub-contractor and/or any Supplier group member providing any part of the Services) complies with its obligations: (i) set out in the Current BCDR Policies as updated from time to time in accordance with Clause 23.2; and (ii) in respect of the incident management requirements set out in Schedule 3 (Cyber Security and Information Governance).

24. EXIT MANAGEMENT

- 24.1 The Supplier shall be responsible for preparing and maintaining a detailed Exit Management Plan. The Supplier shall provide a draft Exit Management Plan to the Authority not later than ninety (90) days after the Effective Date.
- 24.2 The draft Exit Management Plan submitted in accordance with Clause 24.1:
- 24.2.1 must contain information at the level of detail necessary to manage the exit management stage effectively; and
 - 24.2.2 it shall take account of all dependencies on the Authority or any other third party known to, or which should reasonably be known to, the Supplier.
- 24.3 The Supplier shall provide each of the items identified in the Exit Management Plan by the date assigned to that item in the Exit Management Plan.
- Reviewing and changing the Exit Management Plan:**
- 24.4 Subject to Clause 24.3, the Supplier shall keep the Exit Management Plan under review and ensure that it is updated on a regular basis.
- 24.5 The Authority shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Exit Management Plan.
- Compliance with the Exit Management Plan:**
- 24.6 Each Party shall comply with its respective obligations as set out in the Exit Management Plan.

25. SUB-CONTRACTING

- 25.1 The Supplier may sub-contract its obligations under this Contract from time to time provided that any proposed Sub-Contractor is included in the list of Key Sub-Contractors set out in Schedule 15 (Key Sub-Contractors). The Supplier shall, prior to sub-contracting, notify the Authority in writing of the Key Sub-Contractor including relevant details as required by the Authority and ensure the Key Sub-Contractor has been duly registered. The Supplier shall not sub-contract any aspect of the Services to a subcontractor, other than a Key Sub-Contractor, without the Authority's prior written consent.

25.2 The Supplier shall remain responsible for all acts and omissions of its sub-contractors (including all Key Sub-Contractors) and the acts and omissions of those employed or engaged by the sub-contractors (including all Key Sub-Contractors) as if they were its own.

26. CONFIDENTIALITY

26.1 For the purposes of this Clause 26, the term “**Disclosing Party**” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party which receives or obtains directly or indirectly Confidential Information.

26.2 Except to the extent set out in this Clause 26 or where disclosure is expressly permitted elsewhere in this Contract, the Recipient shall:

26.2.1 treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and

26.2.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Contract or without obtaining the owner's prior written consent;

26.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Contract; and

26.2.4 without undue delay and within 72 hours of becoming aware notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

26.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

26.3.1 the Recipient is required to disclose the Confidential Information by Law;

26.3.2 the need for such disclosure arises out of or in connection with:

(a) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Contract;

(b) the purpose of the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Contract; or

(c) the conduct of a relevant Government Body review in respect of this Contract;

26.3.3 the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

26.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.

26.5 Subject to Clauses 26.2 and 26.3, the Supplier may only disclose the Authority's Confidential Information on a confidential basis to:

26.5.1 Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable the performance of the Supplier's obligations under this Contract; and

26.5.2 its professional advisers for the purposes of obtaining advice in relation to this Contract.

26.6 Where the Supplier discloses Confidential Information of the Authority pursuant to this Clause 26, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.

- 26.7 The Authority may disclose the Confidential Information of the Supplier:
- 26.7.1 to any Government Body for any proper purpose of the Authority or of the relevant Government Body on the basis that the information may only be further disclosed to Government Bodies and other Contracting Bodies to the extent reasonably necessary;
 - 26.7.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 26.7.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - 26.7.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by the Authority for any purpose relating to or connected with this Contract;
 - 26.7.5 on a confidential basis for the purpose of the exercise of its rights under this Contract; or
 - 26.7.6 to a proposed transferee, assignee or novatee of, or successor in title to the Authority
- and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 26.
- 26.8 For the avoidance of doubt the Charges are Commercially Sensitive Information and categorised as the Supplier's Confidential Information.
- 26.9 In the event of a breach by the Supplier of any of the applicable provisions of this Clause 26, the Authority reserves the right to terminate this Contract for material Default.
- 26.10 Transparency Information is not Confidential Information.

27. TRANSPARENCY AND FOIA

- 27.1 The Supplier must tell the Authority within 48 hours if it receives a Request For Information.
- 27.2 Within the required timescales the Supplier must give the Authority full co-operation and information needed so the Authority can:
- 27.2.1 publish the Transparency Information;
 - 27.2.2 comply with any Freedom of Information Act (FOIA) request; and
 - 27.2.3 comply with any Environmental Information Regulations (EIR) request.
- 27.3 The Authority may talk to the Supplier to help it decide whether to publish information under this Clause 27. However, the extent, content and format of the disclosure is the Authority's decision, which does not need to be reasonable.

28. CONTRACT GOVERNANCE

- 28.1 The Parties shall comply with the provisions of Schedule 9 (Reporting & Governance) in relation to the management and governance of this Contract.

Representatives

- 28.2 Each Party shall have a representative for the duration of this Contract who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Contract.
- 28.3 The initial Supplier Representative shall be the person named as such in Schedule 9 (Reporting and Governance) and shall be classed as Key Personnel. Any change to the Supplier Representative shall be agreed in accordance with Clause 31 (Supplier Personnel).
- 28.4 The Authority shall notify the Supplier of the identity of the initial Authority Representative within 5 Working Days of the Effective Date. The Authority may, by written notice to the Supplier, revoke or amend the authority of the Authority Representative or appoint a new Authority Representative.

29. COLLABORATIVE BEHAVIOUR

- 29.1 Without prejudice to any of the other requirements in this Contract, as part of the Services, the Supplier shall work appropriately with the Authority's other suppliers engaged as part of the Programme

["Collaborative Suppliers"). The Supplier agrees to comply with the following principles of collaborative behaviour at all times:

- 29.1.1 form and conduct collaborative partnerships with the Collaborative Suppliers in accordance with Good Industry Practice in order to help fulfil (so far as reasonably possible) each Collaborative Supplier's respective obligations to the Supplier;
- 29.1.2 to work with the Collaborative Suppliers to mitigate any operational friction and ineffectiveness and support the use, when possible, common tooling as well as common reference documents;
- 29.1.3 to take a collaborative approach to knowledge and skills sharing benefiting the Programme as a whole;
- 29.1.4 to actively participate in reasonable collaborative governance processes with the Collaborative Suppliers including without limitation, attending weekly, or on request by the Authority, governance meetings with the Collaborative Suppliers and contribute to joint reports with the Collaborative Suppliers for those governance meetings; and
- 29.1.5 to work with the Collaborative Suppliers to mitigate the effect of any service issue and to assist so that the other Collaborative Supplier is able to solve such service issue as expeditiously and cost effectively as possible with minimal service disruption to the Programme.

29.2 The Supplier shall comply with its Social Value Obligations.

30. DIGITAL & DATA ACADEMY

Each Party shall comply with its respective obligations as set out in Schedule 16 (Digital & Data Academy).

31. SUPPLIER PERSONNEL

31.1 The Supplier shall:

- 31.1.1 provide in advance of any admission to Authority Premises a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;
- 31.1.2 ensure that all Supplier Personnel:
 - (i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (ii) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 3 (Cyber Security and Information Governance); and

- 31.1.3 comply with all reasonable requirements of the Authority and Authority Users concerning conduct at the Authority Premises, including the security requirements as set out in Schedule 3 (Cyber Security and Information Governance);
 - 31.1.4 retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority;
 - 31.1.5 be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Contract shall be a Default by the Supplier;
 - 31.1.6 use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
 - 31.1.7 replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
 - 31.1.8 bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
 - 31.1.9 procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the termination or expiry of this Contract.
- 31.2 If the Authority reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Contract, it may:
- 31.2.1 refuse admission to the relevant person(s) to the Authority Premises; and/or
 - 31.2.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

Key Personnel:

- 31.3 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Schedule 14 (Key Personnel) lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Effective Date.
- 31.4 The Authority may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 31.5 The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:
- 31.5.1 requested to do so by the Authority;
 - 31.5.2 the person concerned resigns, retires or dies or is on maternity leave, paternity leave or shared parental leave or long-term sick leave;
 - 31.5.3 the person's employment or contractual arrangement with the Supplier or a Sub-contractor is terminated for material breach of contract by the employee; or
 - 31.5.4 the Supplier obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).
- 31.6 The Supplier shall:
- 31.6.1 notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of 2 weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
 - 31.6.2 ensure that any Key Role is not vacant for any longer than 10 Working Days;

- 31.6.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least 60 Working Days' notice;
- 31.6.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and
- 31.6.5 ensure that any replacement for a Key Role:
 - (i) has a level of qualifications and experience appropriate to the relevant Key Role; and
 - (ii) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

32. FORCE MAJEURE

- 32.1 Neither Party will be liable to the other Party for any delay in performing, or failure to perform, its obligations under this Contract to the extent that such delay or failure is a result of a Force Majeure event.
- 32.2 A Party will promptly (on becoming aware of the same) notify the other Party of a Force Majeure event or potential Force Majeure event which could affect its ability to perform its obligations under this Contract.
- 32.3 Each Party will use all reasonable endeavours to continue to perform its obligations under this Contract and to mitigate the effects of Force Majeure.
- 32.4 If a Force Majeure event prevents a Party from performing its obligations under this Contract for more than twenty (20) Working Days, the other Party may terminate this Contract with immediate effect by written notice.

33. WAIVER

- 33.1 The rights and remedies under this Contract may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Contract or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 33.2 Unless otherwise provided in this Contract, rights and remedies under this Contract are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

34. SEVERANCE

- 34.1 If any provision of this Contract (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Contract shall not be affected.
- 34.2 In the event that any deemed deletion under Clause 34.1 is so fundamental as to prevent the accomplishment of the purpose of this Contract or materially alters the balance of risks and rewards in this Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Contract and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 34.3 If the Parties are unable to agree on the revisions to this Contract within 5 Working Days of the date of the notice given pursuant to Clause 34.2, the matter shall be dealt with in accordance with Paragraph 4 (Commercial Negotiation) of Schedule 10 (Dispute Resolution Procedure) except that if the representatives are unable to resolve the dispute within 30 Working Days of the matter being referred to them, this Contract shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Contract is terminated pursuant to this Clause 34.3.

35. RELATIONSHIP OF THE PARTIES

Except as expressly provided otherwise in this Contract, nothing in this Contract, nor any actions taken by the Parties pursuant to this Contract, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

36. PREVENTING FRAUD BRIBERY AND CORRUPTION

36.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Effective Date:

36.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

36.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

36.2 The Supplier shall not during the Term:

36.2.1 commit a Prohibited Act; and/or

36.2.2 do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

36.3 The Supplier shall during the Term:

36.3.1 establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;

36.3.2 have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Supplier do not commit tax evasion facilitation offences as defined under that Act;

36.3.3 keep appropriate records of its compliance with its obligations under Clause 36.3.1 and make such records available to the Authority on request; and

36.3.4 take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017.

36.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 36.1 and/or 36.2, or has reason to believe that it has or any of the Supplier Personnel have:

36.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

36.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

36.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.

36.5 If the Supplier makes a notification to the Authority pursuant to Clause 36.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation.

36.6 If the Supplier is in Default under Clauses 36.1 and/or 36.2, the Authority may by notice:

36.6.1 require the Supplier to remove from performance of this Contract any Supplier Personnel whose acts or omissions have caused the Default; or

36.6.2 immediately terminate this Contract.

36.7 Any notice served by the Authority under Clause 36.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Contract shall terminate).

37. COMPLIANCE

Health and Safety:

37.1 The Supplier shall perform its obligations under this Contract (including those in relation to the Services) in accordance with:

37.1.1 all applicable Law regarding health and safety; and

37.1.2 the Health and Safety Policy whilst at the Authority Premises.

37.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Contract. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

Equality and Diversity:

37.3 The Supplier shall:

37.3.1 perform its obligations under this Contract (including those in relation to the Services) in accordance with:

(d) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

(e) the Authority's or any Authority User's equality and diversity policy as provided to the Supplier from time to time;

(f) any other requirements and instructions which the Authority or any Authority User reasonably imposes in connection with any equality obligations imposed on the Authority or any Authority User at any time under applicable equality Law; and

37.3.2 take all necessary steps, and inform the Authority and the Authority Users of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

Official Secrets Act and Finance Act:

37.4 The Supplier shall comply with the provisions of:

37.4.1 the Official Secrets Acts 1911 to 1989; and

37.4.2 section 182 of the Finance Act 1989.

Conflicts of Interest:

37.5 The Supplier:

37.5.1 must take action to ensure that neither the Supplier nor the Supplier Personnel are placed in the position of an actual, potential or perceived Conflict of Interest.

37.5.2 must promptly notify and provide details to the Authority if an actual, potential or perceived Conflict of Interest happens or is expected to happen.

37.6 The Authority will consider whether there are any appropriate measures that can be put in place to remedy an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of the Authority, such measures do not or will not resolve an actual or potential Conflict of Interest, the Authority may terminate this Contract immediately by giving notice in writing to the Supplier where there is or may be an actual or potential Conflict of Interest.

Modern Slavery:

37.7 The Supplier:

- 37.7.1 shall not use, nor allow its sub-contractors to use forced, bonded or involuntary prison labour;
 - 37.7.2 shall not require any Supplier Personnel or the personnel of any sub-contractors to lodge deposits or identity papers with their employer and shall be free to leave their employer after reasonable notice;
 - 37.7.3 warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;
 - 37.7.4 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 offences anywhere around the world;
 - 37.7.5 shall make reasonable enquires to ensure that its officers, employees and sub-contractors have not been convicted of slavery or human trafficking offences anywhere around the world;
 - 37.7.6 shall have and maintain throughout the Term its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its sub-contractors anti-slavery and human trafficking provisions;
 - 37.7.7 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 this Contract;
 - 37.7.8 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 (or a copy of a report under section 54 of the Modern Slavery Act 2015);
 - 37.7.9 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;
 - 37.7.10 shall not use or allow child or slave labour to be used by its sub-contractors; and
 - 37.7.11 shall report the discovery or suspicion of any slavery or trafficking by it or its sub-contractors to the Authority and the Modern Slavery Helpline.
- 37.8 If the Supplier notifies the Authority pursuant to Clause 37.10 it shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with this Contract.
- 37.9 If the Supplier is in Default under Clause 37.7 the Authority may by notice:
- 37.9.1 require the Supplier to remove from performance of this Contract any Sub-Contractor, Supplier Personnel or other persons associated with it whose acts or omissions have caused the Default; or
 - 37.9.2 immediately terminate this Contract.

Whistleblowing:

- 37.10 As soon as it is aware of it the Supplier and Supplier Personnel must report to the Authority any actual or suspected breach of:
- 37.10.1 Law;
 - 37.10.2 Clauses 37.1 to 37.7 or 37.11; or
 - 37.10.3 Clause 36.
- 37.11 The Supplier must not retaliate against any of the Supplier Personnel who in good faith reports a breach listed in this Clause to the Authority or a Prescribed Person.

38. ASSIGNMENT

- 38.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Contract without the prior written consent of the Authority.
- 38.2 The Authority may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Contract and/or any associated licences to:

38.2.1 any NHS Body; or

38.2.2 to a body other than a NHS Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority,

and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 38.2.

38.3 A change in the legal status of the Authority such that it ceases to be a NHS Body shall not affect the validity of this Contract and this Contract shall be binding on any successor body to the Authority.

39. VARIATION

39.1 Either Party may request a variation to this Contract provided that such variation does not amount to a material change of this Contract within the meaning of the Regulations and the Law. Subject to Clause 5.16, such a change will only be effective if agreed in writing and signed by both Parties.

39.2 For 101(5) of the Regulations, if the Court declares any change to this Contract ineffective, the Parties agree that their mutual rights and obligations will be regulated by the terms of this Contract as they existed immediately prior to that change and as if the Parties had never entered into that change.

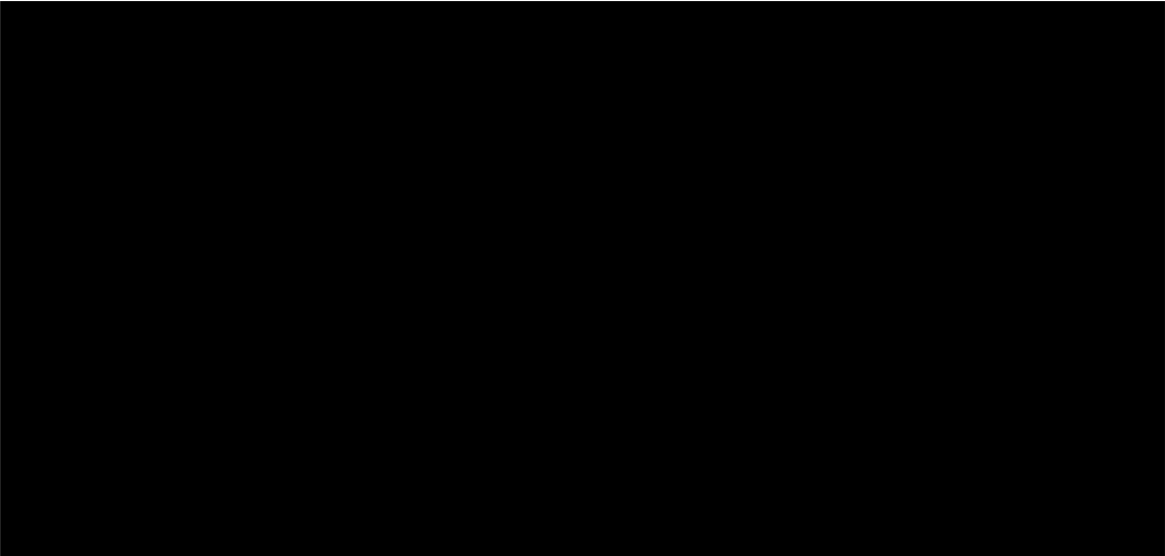
40. NOTICES

40.1 Any notices sent under this Contract must be in writing.

40.2 The following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

Manner of Delivery	of	Deemed time of service	Proof of service
Email		9.00am on the first Working Day after sending.	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.
Personal delivery		On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt.
Prepaid, Royal Mail Signed For™ 1 st Class or other prepaid, next Working Day service providing proof of delivery		At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt.

40.3 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Contract:

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- 40.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with this Clause 40 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 40.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.
 - 40.5 This Clause 40 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 10 (Dispute Resolution Procedure)).

41. **FURTHER ASSURANCES**

Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be reasonably necessary to give effect to the meaning of this Contract.

42. **ENTIRE AGREEMENT**

- 42.1 This Contract constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 42.2 Neither Party has been given, nor entered into this Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Contract.
- 42.3 Nothing in this Clause 42 shall exclude any liability in respect of misrepresentations made fraudulently.

43. **THIRD PARTY RIGHTS**

- 43.1 The Supplier acknowledges that the Authority enters into this Contract for its own benefit and for the benefit of each Authority User and the Supplier shall perform its obligations under this Contract for the benefit of the Authority and such Authority Users. Accordingly, a number of the provisions in this Contract confer benefits on Authority Users and/or other persons named or identified in such provisions (together “**Third Party Provisions**”) other than the Parties (each such person a “**Third Party Beneficiary**”) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.
- 43.2 Subject to Clause 43.1, a person who is not a Party to this Contract has no right under the CRTPA to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

43.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.

43.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 43.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

44. DISPUTES

44.1 The Parties shall resolve Disputes arising out of or in connection with this Contract in accordance with the Dispute Resolution Procedure.

44.2 The Supplier shall continue to provide the Services in accordance with the terms of this Contract until a Dispute has been resolved.

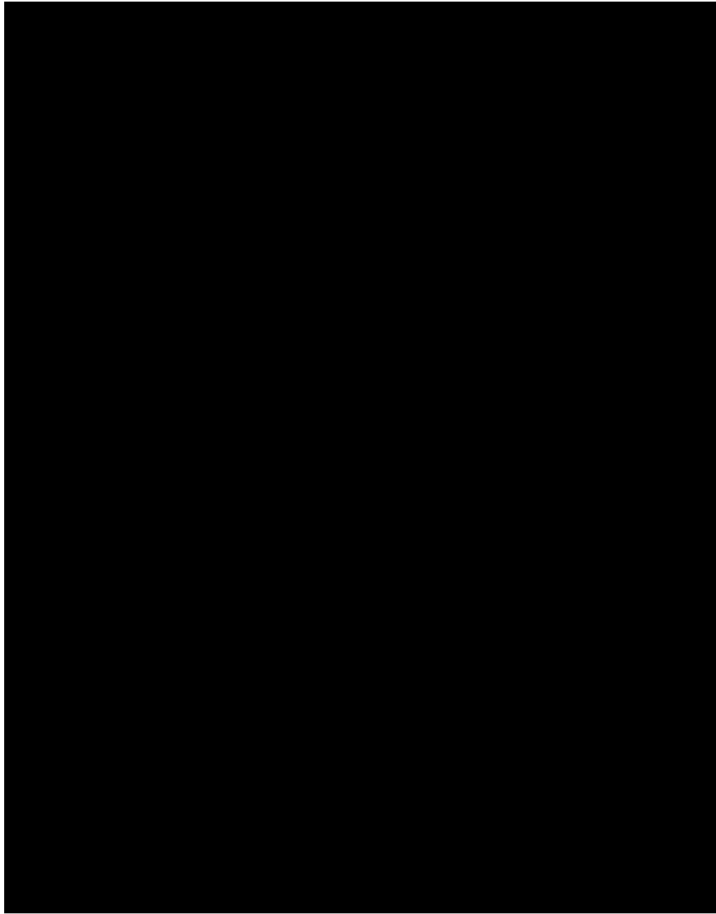
45. GOVERNING LAW AND JURISDICTION

45.1 This Contract and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

45.2 Subject to Clause 44 (Disputes) and Schedule 10 (Dispute Resolution Procedure) (including the Authority's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Contract or its subject matter or formation.

SIGNATURE PAGE

This Agreement has been duly executed by the Parties on the date which appears at the head of its page 1.



SCHEDULE 1

DEFINITIONS

1. In accordance with Clause 1 (Definitions), in this Contract the following expressions shall have the meanings ascribed in the table below.

Academy Working Group	has the meaning given to it in Paragraph 2.1 of Schedule 16 (Digital & Data Academy);
Achieve	means in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone in accordance with the provisions of Schedule 7 (Milestones), and “Achieved” and “Achievement” shall be construed accordingly;
Affiliate	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
Applicable Supplier Terms	has the meaning given in Clause 3.1;
Associated Person	has the meaning given to it in Section 44(4) of the Criminal Finances Act 2017;
Authority Authorised Representative	means the person identified as such in Schedule 9 (Reporting and Governance) as at the Effective Date or as subsequently changed by the Authority from time to time;
Authority Cause	any material breach by the Authority of any responsibilities of the Authority agreed in writing between the Parties from time to time in connection with this Contract, except to the extent that such breach is: <ul style="list-style-type: none"> a) the result of any act or omission by the Authority to which the Supplier has given its prior consent; or b) caused by the Supplier, any Sub-Contractor or any Supplier Personnel;
Authority Content	means the data (together with any databases) including any Personal Data, content, materials, information and software which are controlled, uploaded or otherwise transferred by or on behalf of the Authority to the relevant environments hosted by or on behalf of the Supplier pursuant to the Services including any derivative data that is generated in the relevant environments but excluding metadata where and to the extent such metadata: <ul style="list-style-type: none"> a) is generated by the Supplier’s Services under this Contract solely for administrative and/or service maintenance purposes; b) is not under the control of the Authority; and c) does not contain any Personal Data;
Authority Data	means: <ul style="list-style-type: none"> a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: <ul style="list-style-type: none"> (i) supplied to the Supplier by or on behalf of the Authority or an Authority User; and/or (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Contract; or b) any Personal Data for which the Authority or any Authority User is the Data Controller;

Authority Premises	means premises owned, controlled or occupied by the Authority, any Authority User and/or any NHS Body which are made available for use by the Supplier or its Sub-contractors for provision of the Services (or any of them);
Authority's Existing Entitlement	means the Authority's funds held on account by the Supplier in respect of another transaction(s) outside of this Contract and to be used as part or whole payment of the Charges;
Authority User	means any NHS Body receiving the Services and "Authority Users" shall mean all of them;
Beneficiary	means a Party having (or claiming to have) the benefit of an indemnity or a right to be defended (as applicable) under this Contract;
Central Government Body	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: a) Government Department; b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); c) Non-Ministerial Department; or d) Executive Agency;
Change of Control	means any change of Control of the Supplier or a Parent Undertaking of the Supplier;
Charges	means the charges payable to the Supplier by the Authority under this Contract in respect of the Services, calculated in accordance with this Contract and as set out or referred to in Schedule 5 (Charges & Invoicing);
Claim	means any claim which it appears that a Beneficiary is, or may become, entitled to indemnification or a right to be defended (as applicable) under this Contract;
Commencement Date	means the date on which Interim Milestone 1B (as set out in Schedule 7 (Milestones)) is Achieved;
Commercially Sensitive Information	commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;
Confidential Information	means the Authority's confidential information and/or the Supplier's confidential information, as the context requires;
Conflict of Interest	a conflict between the financial or personal duties of the Supplier or the Supplier's staff and the duties owed to the Authority under this Contract, in the reasonable opinion of the Authority;
Configuration Services	has the meaning given to it in Clause 5.10;
Contract	means the contract between the Authority and the Supplier consisting of: a) these Terms; b) the Schedules to these Terms;
Contract Year	means a consecutive period of twelve (12) Months commencing on the Commencement Date or each anniversary thereof;
Control	means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "Controlled" shall be construed accordingly;
Controller	has the meaning given to it in the UK GDPR;
Critical KPI	means those Key Performance Indicators indicated as "Critical KPIs" in Annex 1 of Schedule 8 (Performance Levels);
Critical Performance Failure	

Crown Body	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
CRTPA	means the Contracts (Rights of Third Parties) Act 1999;
Data Loss Event	means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
Data Processing Agreement or DPA	means the Supplier's terms and conditions as set out in Schedule 11 (Data Processing Agreement) which, in addition to these Terms, govern the Supplier's processing of Personal Data and related security measures and standards which the Supplier shall comply with under this Contract in respect of any Services;
Data Protection Impact Assessment	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
Data Protection Legislation	means: (i) the UK GDPR; (ii) the DPA 2018 to the extent that it relates to Processing of personal data and privacy; (iii) all applicable Law about the Processing of personal data and privacy;
Data Protection Officer	has the meaning given to it in the UK GDPR;
Data Subject	has the meaning given to it in the UK GDPR;
Data Subject Request	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
Default	means any breach of the obligations of the Supplier (including any fundamental breach or breach of a fundamental term) or any other default, act, omission, misrepresentation, negligence or negligent statement of the Supplier or its personnel in connection with or in relation to this Contract or the subject matter of this Contract and in respect of which the Supplier is liable to the Authority;
Delay	means a delay in the Achievement of a Key Milestone (including any interim milestone forming part of such Key Milestone) by its Milestone Date;
Delay Payment Rate	has the meaning given to it in Part C of Schedule 5 (Charges & Invoicing);
Delay Payments	means the amounts payable by the Supplier to the Authority in respect of a Delay in Achieving a Key Milestone as specified in Schedule 7 (Milestones);
Delay Payments Cap	has the meaning given to it in Part C of Schedule 5 (Charges & Invoicing);
Deliverable Item	means an item or feature delivered or to be delivered by the Supplier at or before a Milestone Date or at any other stage during the performance of this Contract as set out in the Implementation Plan;
Digital Suppliers	has the meaning given to it in Paragraph 1.1.1 of Schedule 16 (Digital & Data Academy);
Dispute	means any claim, dispute or difference arises out of or in connection with this Contract (whether contractual or non contractual) or in connection with the negotiation, existence, legal validity, enforceability or termination of this Contract, whether the alleged liability shall arise under English law or under the law of some other country and regardless of whether a particular cause of action may successfully be brought in the English courts;

Dispute Notice	means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
Dispute Resolution Procedure	means the dispute resolution procedure set out in Schedule 10 (<i>Dispute Resolution Procedure</i>);
DPA 2018	means the Data Protection Act 2018;
EIR	the Environmental Information Regulations 2004;
Effective Date	means 22 November 2023;
Electronic Invoice	an invoice which has been issued, transmitted and received in a structured electronic format which allows for its automatic and electronic processing and which complies with (a) the European standard and (b) any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870;
Exit Management Plan	means an exit management plan prepared in accordance with Clause 24 (Exit Management);
Extension Period	means one period of 2 years from the end of the Initial Term and two successive periods of 12 months from the end of such 2 year period;
Federated Data Platform	means the Federated Data Platform (FDP) software that will sit across NHS trusts and integrated care systems allowing them to connect data they already hold in a secure and safe environment;
FOIA	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
Force Majeure	<p>means any event, occurrence, circumstance, matter or cause affecting the performance by either Party of its obligations arising from:</p> <ul style="list-style-type: none"> a) acts, events, omissions, happening or non-happenings beyond the reasonable control of the affected Party which prevent or materially delay the affected Party from performing its obligations under this Contract; b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare; c) acts of government, local government or regulatory bodies; d) fire, flood or disaster and any failure or shortage of power or fuel; or e) industrial dispute affecting a third party for which a substitute third party is not reasonably available. <p>The following do not constitute a Force Majeure event:</p> <ul style="list-style-type: none"> (i) any industrial dispute relating to the Supplier, its staff, or failure in the Supplier's (or a Subcontractor's) supply chain; (ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions by the Party seeking to rely on Force Majeure; (iii) any failure of delay caused by a lack of funds; (iv) the event was foreseeable by the Party seeking to rely on Force Majeure at the time this Contract was entered into; or (v) any event which is attributable to the Party seeking to rely on Force Majeure and its failure to comply with its own business continuity and disaster recovery plans;
Good Industry Practice	means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
Government	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and

	government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
Government Body	means as applicable a Central Government Body;
Health and Safety Policy	means the health and safety policy of the Authority, an Authority User and/or other relevant NHS Body as provided to the Supplier on or before the Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety;
Implementation Plan	means the draft implementation plan as set out in Schedule 6 (Implementation Plan) as amended in accordance with Clause 6 (Implementation & Milestones);
Initial Term	means the period beginning on the Effective Date and ending on the third anniversary of the Commencement Date;
Insolvency Event	means, in respect of the Supplier: <ul style="list-style-type: none"> a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or e) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or h) where the person is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;
Intellectual Property Rights or IPR	means: <ul style="list-style-type: none"> a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, trade secrets and other rights in Confidential Information; b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and c) all other rights having equivalent or similar effect in any country or jurisdiction;
IPR Claim	means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Services or as otherwise provided and/or licensed by the

	Supplier (or to which the Supplier has provided access) to the Authority in the fulfilment of its obligations under this Contract;
Key Milestone	means a Milestone designated as a "Key Milestone" in Schedule 7 (Milestones);
Key Performance Indicator	means the Critical KPIs and Standard KPIs set out in Annex 1 of Schedule 8 (<i>Performance Levels</i>);
Key Personnel	means the Supplier Personnel identified as "Key Personnel" in Schedule 14 (Key Personnel) (if any);
Key Role	means the roles to be performed by the Key Personnel as set out in Schedule 14 (Key Personnel) (if any);
Key Sub-Contractor	means a Sub-Contractor which performs a critical role in the provision of all or part of the Services;
KPI Effective Date	means the date from which performance monitoring begins in respect of each KPI on Achieving the Milestone set out against that KPI in Schedule 8 (Performance Levels);
KPI Failure	means a failure to meet the Target Performance Level in respect of a Key Performance Indicator;
KPI Service Threshold	shall be as set out against the relevant Key Performance Indicator in Annex 1 of Schedule 8 (Performance Levels);
Law	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;
Losses or Loss	means all losses, liabilities, damages, costs, fines, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise;
Malicious Software	means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
Material KPI Failure	means: a) a Serious KPI Failure; b) a Severe KPI Failure; or c) a failure by the Supplier to meet a KPI Service Threshold;
Maximum Term	means a period of seven (7) years from the Commencement Date;
Measurement Period	means in relation to a Key Performance Indicator, the period over which the Supplier's performance is measured (for example, a Service Period if measured monthly or a 12 month period if measured annually);
Milestone	means an event or task described in Schedule 7 (Milestones);
Milestone Achievement Certificate	means the certificate to be granted by the Authority when the Supplier has Achieved a Milestone;
Milestone Date	means the date set out against the relevant Milestone in Schedule 7 (Milestones);
Milestone Payment	means the amount set out in Schedule 7 (Milestone Payments) to be paid by the Authority to the Supplier on the Supplier Achieving each Milestone and " Milestone Payments " shall be construed accordingly;
NHS Body	means a health service body within the meaning of section 275 of the National Health Service Act 2006;
Notifiable Default	shall have the meaning given in Clause 18.1(<i>Rectification Plan Process</i>);
Other Data Platforms	means those data platforms forming part of the Programme from time to time other than the Federated Data Platform;

Parent Undertaking	has the meaning set out in section 1162 of the Companies Act 2006;
Party	means a party to this Contract, namely either the Authority or the Supplier (together the “Parties”);
Performance Monitoring Report	has the meaning given to it in Part B of Schedule 8 (Performance Levels);
Personal Data	Personal Data has the meaning given to it in the UK GDPR;
Personal Data Breach	has the meaning given to it in the UK GDPR;
Prescribed Person	a legal adviser, an MP, or an appropriate body which a whistle-blower may make a disclosure to as detailed in ‘Whistleblowing: list of prescribed people and bodies’, available online at: https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies-2/whistleblowing-list-of-prescribed-people-and-bodies , as updated from time to time;
Processing	has the meaning given to it in the UK GDPR and “Process” and “Processed” shall be interpreted accordingly;
Processor	has the meaning given to it in the UK GDPR;
Programme	means the implementation of new data platforms and/or the maintenance of existing data platforms (including but not limited to the Federated Data Platform), by the Authority and NHS Bodies, to understand patterns, solve problems, plan services for local populations and ultimately transform the health and care of the people the Authority and NHS Bodies serve;
Programme Board	means the body described in Paragraph 4 of Schedule 9 (Reporting and Governance);
Prohibited Acts	means: <ul style="list-style-type: none"> a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority or any other public body a financial or other advantage to: <ul style="list-style-type: none"> i) induce that person to perform improperly a relevant function or activity; or ii) reward that person for improper performance of a relevant function or activity; b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract; or c) committing any offence: <ul style="list-style-type: none"> i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or ii) under legislation or common law concerning fraudulent acts; or d) defrauding, attempting to defraud or conspiring to defraud the Authority or other public body; or e) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;
Protective Measures	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by the Supplier including those set out or referred to in Schedule 11 (Data Processing Agreement);
Provider	means a Party from whom an indemnity or a right to be defended (as applicable) is sought under this Contract;

Rectification Plan Failure	<p>means:</p> <ul style="list-style-type: none"> a) the Supplier failing to submit or resubmit a draft Rectification Plan to the Authority within the timescales specified in Clauses 18.4 (Submission of the draft Rectification Plan) or 18.8 (Agreement of the Rectification Plan); b) the Authority, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to Clause 18.7 (Agreement of the Rectification Plan); c) the Supplier failing to rectify a material Default within the later of: <ul style="list-style-type: none"> i) 30 Working Days of a notification made pursuant to Clause 18.2 (Notification); and ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the material Default; d) a Material KPI Failure re-occurring in respect of the same Key Performance Indicator for the same (or substantially the same) root cause in any of the 3 Measurement Periods subsequent to the Measurement Period in which the initial Material KPI Failure occurred; e) the Supplier not Achieving a Milestone by the relevant Milestone Date; and/or f) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of 6 months for the same (or substantially the same) root cause as that of the original Notifiable Default;
Rectification Plan	means a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default;
Rectification Plan Process	means the process set out in Clauses 18.4 (Submission of the draft Rectification Plan) to 18.9 (Agreement of the Rectification Plan);
Regulations	means the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires);
Relevant Requirements	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State pursuant to section 9 of the Bribery Act 2010;
Relief Notice	has the meaning given to it in Clause 19.2;
Request for Information	means a request for information or an apparent request relating to this Contract or an apparent request for such information under the FOIA or the EIRs;
Restricted Country	<p>means any country other than:</p> <ul style="list-style-type: none"> a) a member of the European Economic Area; b) the United Kingdom; or c) deemed adequate by article 45(3) of the UK GDPR;

Schedule of Processing, Personal Data and Data Subjects	means the schedule of processing, personal data and data subjects set out in Schedule 11 (Data Processing Agreement) which sets out various details concerning the processing of Personal Data including: a) identity of the Controller and Processor; b) subject matter of processing; c) duration of the processing; d) nature and purposes of the processing; e) type of Personal Data being Processed; f) categories of Data Subject; and g) plan for return of the data once the processing is complete unless requirement under Data Protection Legislation to preserve that type of data;
Security Assessment Documents	has the meaning given in Clause 14.6.4;
Serious KPI Failure	shall be as set out against the relevant Key Performance Indicator in Annex 1 of Schedule 8 (Performance Levels);
Service Charges	means all Charges other than Milestone Payments;
Service Credit Cap	has the meaning given in Clause 9.3.3 (Financial and other limits);
Service Credits	means credits payable by the Supplier due to the occurrence of 1 or more Critical KPI Failures, calculated in accordance with Schedule 8 (Performance Levels);
Service Description	means the description of the Services as set out or referred to in Schedule 2 (Service Description);
Service Level Agreement or SLA	means the Supplier's relevant service level terms and conditions which apply to a particular service product provided as part of the Services under this Contract, as set out or referred to in Schedule 4 (Supplier Solution);
Service Period	means a calendar month, save that: a) the first service period shall begin on the first KPI Effective Date and shall expire at the end of the calendar month in which the first KPI Effective Date falls; and b) the final service period shall commence on the first day of the calendar month in which the Term expires or terminates and shall end on the expiry or termination of the Term;
Service Points	means in relation to a KPI Failure, the points that are set out against the relevant Critical KPIs in Annex 1 of Schedule 8 (Performance Levels);
Service Request	means a request for Services submitted by the Authority for itself and/or on behalf of any NHS Body in accordance with the procedure for requesting Configuration Services set out in Schedule 12 (Service Request Procedure);
Services	means the services which the Supplier shall make available to the Authority under this Contract as set out or referred to in Schedule 2 (Service Description) and Schedule 4 (Supplier Solution);
Severe KPI Failure	shall be as set out against the relevant Key Performance Indicator in Schedule 8 (Performance Levels);
Social Value Obligations	means the social value commitments made by the Supplier in the Supplier Solution;
Standard KPIs	means those Key Performance Indicators indicated as "Standard KPIs in Annex 1 of Schedule 8 (Performance Levels);
Standards	means any standards set out or referred to in this Contract and Schedule 3 (Cyber Security and Information Governance);

Standard Contractual Clauses	means the standard contractual clauses for the transfer of Personal Data to processors established in third countries which do not ensure an adequate level of protection as set out in Commission Decision C (2010) 593 and reference to the standard contractual clauses shall be to the clauses as updated, amended, replaced or superseded from time to time by the European Commission;
Sub-Contract	means any contract or agreement or proposed agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services (or any part thereof) or to provide facilities or services necessary for the provision of the Services (or any part thereof) or necessary for the management, direction or control of the provision of the Services or any part thereof;
Sub-Contractor	means any third party engaged by the Supplier from time to time under a Sub-Contract;
Sub-processor	means any third party appointed as at the Effective Date (and any additional third party appointed strictly in accordance with Clause 17.11) to process Personal Data on behalf of the Supplier related to this Contract as recorded in the Supplier's Register of Key Sub-Contractors and Sub-Processors, including those Key Sub-Contractors identified as a sub-processor;
Supplier Non-Performance	has the meaning given to it in Clause 19.1;
Supplier Personnel	means all persons employed or engaged by the Supplier together with the Supplier's servants, agents, suppliers, consultants and Sub-Contractors (and all persons employed by any Sub-Contractor together with the Sub-Contractor's servants, consultants, agents, suppliers and sub-contractors) used in the performance of its obligations under this Contract;
Supplier Solution	the Supplier's solution for the Services set out in Schedule 4 (Supplier Solution), including any Annexes to that Schedule;
Supplier Termination Event	means: <ul style="list-style-type: none"> (a) the Supplier's level of performance constituting a Critical Performance Failure; (b) a Rectification Plan Failure; (c) failure to Achieve a Key Milestone by its Milestone Date; (d) a Change of Control of the Supplier unless: <ul style="list-style-type: none"> (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or (ii) the Authority has not served its notice of objection within 6 months of the later of the date on which the Change of Control took place or the date on which the Authority was given notice of the Change of Control; (e) a change of Control of a Key Sub-contractor unless, within 6 months of being notified by the Authority that it objects to such change of Control, the Supplier terminates the relevant contract with the Key Sub-contractor and replaces it with a comparable Key Sub-contractor which is approved by the Authority; (f) the occurrence of an Insolvency Event; or (g) the Supplier acquires Control of the third party supplier providing the Federated Data Platform;

Supplier's Register of Key Sub-Contractors and Sub-Processors	means the register of Key Sub-Contractors and Sub-processors described in Clause 15.1 effective as of the Effective Date and as updated from time to time by the Supplier in accordance with this Contract and made available to the Authority upon request;
Target Performance Level	means the minimum level of performance for a Key Performance Indicator which is required by the Authority, as set out against the relevant Key Performance Indicator in Schedule 8 (Performance Levels);
Term	means the period commencing on the Effective Date and ending on the expiry of the Initial Term or any Extension Period or on earlier termination of this Contract;
Terms	means these terms and conditions excluding the Schedules;
Third Party Beneficiary	has the meaning given in Clause 43.1 (<i>Third Party Rights</i>);
Third Party Provisions	has the meaning given in Clause 43.1 (<i>Third Party Rights</i>);
Transparency Information	means the transparency reports (including information relating to the Services and performance of this Contract which the Supplier is required to provide to the Authority in accordance with Schedule 9 (Reporting and Governance)) and the content of this Contract, including any changes to this Contract agreed from time to time, except for: a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and b) Commercially Sensitive Information;
UK GDPR	has the meaning given to it in the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019;
VAT	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
Working Day	means any day other than a Saturday, Sunday or public holiday in England and Wales.

SCHEDULE 2
SERVICE DESCRIPTION



NHS Privacy Enhancing Technology (NHS-PET)

Schedule 2, Appendix 2A: Technical Specification

Name of Contracting Authority	NHS England
Procurement for	NHS - Privacy Enhancing Technology (NHS-PET)
Project reference	C177577
Find a Tender Service Contract Notice reference	FTS-007743
Date of Publication	21 June 2023
Tender Submission Response Deadline	26 July 2023

OFFICIAL SENSITIVE COMMERCIAL

C177577 NHS Privacy Enhancing Technology



8 Appendix C – NHS Standards and Practices

NHS Service Standard Principles, expands on GDS's Service Standard:

<https://service-manual.nhs.uk/standards-and-technology/service-standard>

GDS Service Standard principles:

<https://www.gov.uk/service-manual/service-standard>

NHS Architecture principles:

<https://digital.nhs.uk/about-nhs-digital/our-work/nhs-digital-architecture/principles>

The Technology Code of Practice:

<https://www.gov.uk/guidance/the-technology-code-of-practice>

NCSC Cloud Security principles:

<https://www.ncsc.gov.uk/collection/cloud/the-cloud-security-principles>

NHS Data and Application Security:

The solution must comply with [NHS Data Security and Protection Toolkit](#)
GPG44: [Using authenticators to protect an online service - GOV.UK \(www.gov.uk\)](#)
GPG45: [How to prove and verify someone's identity - GOV.UK \(www.gov.uk\)](#)
[Security and authorisation - NHS Digital](#)
[DCB3051 Identity Verification and Authentication Standard for Digital Health and Care Services - NHS Digital](#)

Data retention policy and guidance

[Records Management Code of Practice 2021 - NHS Transformation Directorate \(nhsx.nhs.uk\)](#)

Information Security Management

[ISO - ISO/IEC 27001 — Information security management](#)

Development Frameworks

[NHS digital, data and technology standards - NHS Digital](#) which embodies the
[Government Design Principles - GOV.UK \(www.gov.uk\)](#)
[Developer hub \(digital.nhs.uk\)](#)

NHS Accessibility Standards

[NHS England » Accessible Information Standard](#)
[NHS \(DCB1605\): Accessible Information](#)
[Government WCAG 2.1 AA Accessibility Standard](#)

Service Management

[ISO 200001 for service management systems](#)

SCHEDULE 9

REPORTING AND GOVERNANCE

In this Schedule, the following definitions shall apply:

“Board Member”	means the initial persons appointed by the Authority and Supplier to the Boards as set out in ANNEX 1 and any replacements from time to time agreed by the Parties in accordance with Paragraph 2.3;
“Boards”	means the Service Management Board, Programme Board, Technical Board and Risk Management Board and “Board” shall mean any of them;
“Project Managers”	means the individuals appointed as such by the Authority and the Supplier in accordance with Paragraph 3;
“Risk Management Board”	means the body described in Paragraph 6;
“Service Management Board”	means the body described in Paragraph 3; and
“Technical Board”	means the body described in Paragraph 5.

1. MANAGEMENT OF THE SERVICES

- 1.1 The Supplier and the Authority shall each appoint a representative for the purposes of this Contract through whom the Services shall be managed at a day-to-day:



- 1.2 Both Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Contract can be fully realised.

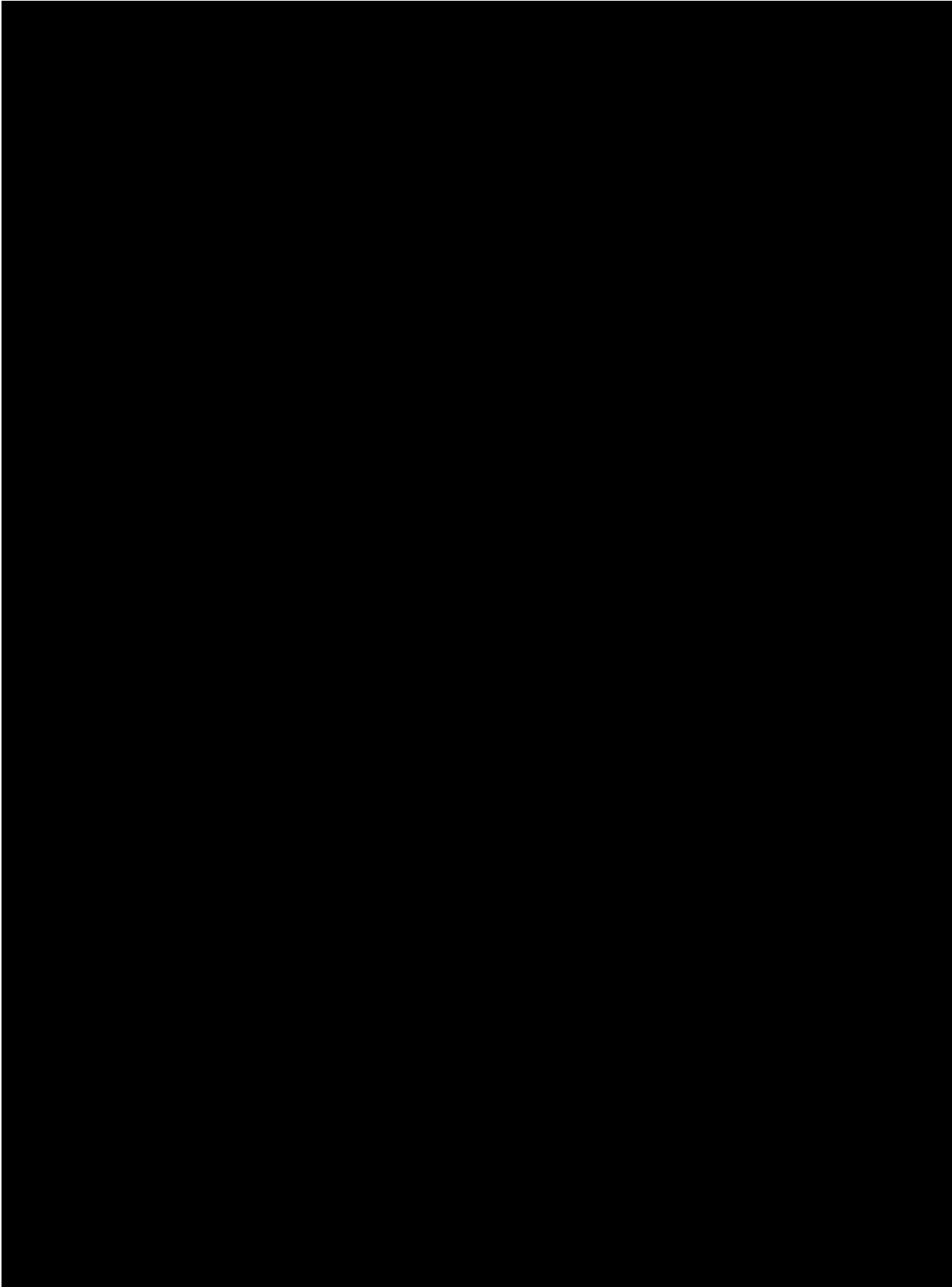
2. BOARDS

Establishment and structure of the Boards:

- 2.1 The Boards shall be established by the Authority for the purposes of this Contract on which both the Supplier and the Authority shall be represented.
- 2.2 In relation to each Board, the:
- 2.2.1 Authority Board Members;
 - 2.2.2 Supplier Board Members;
 - 2.2.3 frequency that the Board shall meet (unless otherwise agreed between the Parties);
 - 2.2.4 location of the Board's meetings; and
 - 2.2.5 planned start date by which the Board shall be established,

shall be as set out in ANNEX 1.

- 2.3 In the event that either Party wishes to replace any of its appointed Board Members, that Party shall notify the other in writing of the proposed change for agreement by the other Party (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Authority Board Member has at all times a counterpart Supplier Board Member of equivalent



SCHEDULE 10

DISPUTE RESOLUTION PROCEDURE

1. If there is a Dispute, the senior representatives of the Parties who have authority to settle the Dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the Dispute.
2. If the Dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the Dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the Dispute, the Dispute must be resolved using Paragraphs 3-5 of this Schedule 10.
3. Unless the Authority refers the Dispute to arbitration using Paragraph 4 of this Schedule 10, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:
 - (a) determine the Dispute;
 - (b) grant interim remedies; and/or
 - (c) grant any other provisional or protective relief.
4. The Supplier agrees that the Authority has the exclusive right to refer any Dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the Dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.
5. The Authority has the right to refer a Dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under Paragraph 3 of this Schedule 10, unless the Authority has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under Paragraph 4 of this Schedule 10.
6. The Supplier cannot suspend the performance of this Contract during any Dispute.

SCHEDULE 12

SERVICE REQUEST PROCEDURE

- Unless agreed otherwise by the Parties, the Authority Representative shall submit a draft Service Request, setting out the Configuration Services required, to the Supplier Representative by email.
- The Supplier shall arrange a date for a meeting between the Supplier and the Authority to discuss the draft requirement for Configuration Services within ten (10) Working Days of the date of such email (or sooner where requested by the Authority).
- The Authority and the Supplier shall discuss and agree the: (i) scope and duration of; and (ii) Charges for, such Configuration Services and shall prepare a final Service Request Form which shall be substantially in the form set out below.
- Unless agreed otherwise by the Parties, the Authority Representative and the Supplier Representative shall be the signatories to the agreed Service Request.
- The terms of the Agreement shall be incorporated into each Service Request Form once signed. The approved and signed Service Request Form shall come into force on the date of the last signature.

Service Request Form

This Service Request Form incorporates the terms of the agreement between the Authority and the Supplier dated [DATE OF AGREEMENT] 2023 ("Agreement").	
Date of submission: [DATE]	
Contact Information (including contact details - email & telephone):	
Authority Representative:	[NAME] [EMAIL] [PHONE NUMBER]
Supplier Representative:	[NAME] [EMAIL] [PHONE NUMBER]
Details of Configuration Services	
Scope of Configuration Services:	[INSERT DETAILS OF REQUIREMENT]
Configuration Services commencement date:	[DATE]
Configuration Services completion date:	[DATE]
Charges (calculated in accordance with Schedule 5 of the Agreement)	£[NUMBER] exc. VAT

Signatures	
On behalf of the Authority:	Signature:
	Name:
	Date:
On behalf of the Supplier:	Signature:
	Name:
	Date:

SCHEDULE 16

DIGITAL & DATA ACADEMY

1. INTRODUCTION

- 1.1 The Parties agree to collaborate in order to achieve the following objectives:
- 1.1.1 the co-ordination of their training and recruitment efforts having regard to the workforce profile desirable for NHS Bodies using the Services, including co-ordination with other relevant suppliers of services to the Authority ("**Digital Suppliers**");
 - 1.1.2 the creation of an apprenticeship scheme, or the alignment of the existing apprenticeship programmes of the Parties, aligned with usage of the Federated Data Platform; and
 - 1.1.3 the creation of a "Digital & Data Academy" being a centre of excellence promoted by the Authority, the Supplier and Digital Suppliers, and co-ordinating the matters described in this Schedule.
- 1.2 The Authority intends to agree terms similar to those in this Schedule with Digital Suppliers.

2. GOVERNANCE

- 2.1 The Parties will establish a joint committee (the "**Academy Working Group**") for the purposes of managing delivery of the objectives described in this Schedule.
- 2.2 The Parties will discuss and agree the terms of reference, meeting cadence and attendance of the Academy Working Group (which may include representatives of Digital Suppliers) by analogy with the arrangements for Boards in Schedule 9 (Reporting & Governance).

3. APPRENTICESHIP SCHEMES

- 3.1 The Parties intend to co-ordinate their respective apprenticeship programmes in order to:
- 3.1.1 align and jointly plan apprentice recruitment;
 - 3.1.2 co-ordinate and collaborate on apprentice programmes, including secondment and other learning arrangements;
 - 3.1.3 collaborate on the procurement and management of training and education providers supporting apprenticeship programmes;
 - 3.1.4 collaborate on setting up an infrastructure for training and development of apprentices;
 - 3.1.5 establish ways of working and joint arrangements allowing for the HR management of apprentices on their apprenticeship programmes;
 - 3.1.6 promote school and college engagement outside of the apprenticeship programmes; and
 - 3.1.7 seek to procure for the wider benefit of communities served by NHS services, and embed social value objectives.

3.2 The Parties further agree to:

- 3.2.1 collaborate on establishing requirements for the apprenticeship framework, based on occupational and professional standards, where necessary;
- 3.2.2 clearly define the roles and responsibilities of employers and apprentices;
- 3.2.3 develop training plans describing the required learning content and methods of learning and assessment;
- 3.2.4 identify or create appropriate academic, vocational or skills-related qualifications associated with relevant apprenticeship programmes;
- 3.2.5 invite the Supplier's subcontractors, as agreed with the Authority, to participate in achieving the objectives set out in this Schedule;
- 3.2.6 engage in conversations around funding arrangements of the apprenticeship programmes including co-ordination of the deployment of funds derived from each party's apprenticeship levy; and
- 3.2.7 engage in discussions and collaborate with Digital Suppliers in pursuit of the purpose of the objectives set out above.

