

WARNING: THIS IS A LEGAL AGREEMENT CREATING LEGALLY BINDING OBLIGATIONS AND EACH PARTY SHOULD SATISFY ITSELF THAT THIS LEGAL AGREEMENT IS SUITABLE FOR ITS SPECIFIC NEEDS AND TAKE LEGAL ADVICE PRIOR TO ENTERING INTO THE SAME

CALL-OFF CONTRACT FOR SCANNER MAINTENANCE AND SUPPORT SERVICES

BASED ON NHS TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND THE PROVISION OF SERVICES (CONTRACT VERSION - JANUARY 2018) WITH AMENDMENTS

ORDER FORM

Call-off Contract under the QE Facilities Framework Agreement for
Clinical software (and hardware) solutions for use in healthcare

(reference number: 2021/S 001-002154 dated 4th January 2021).

The Authority:	NHS Business Services Authority Stella House Goldcrest Way Newburn Riverside Newcastle upon Tyne NE15 8NY
The Supplier:	OITUK Limited, trading as CCube Solutions 13 Diamond Court, Opal Drive Milton Keynes MK15 0DU Company Registration Number: 04727067 Company Registration Date: 8th April 2003 VAT Registration Number: 816 2432 48
QEF Framework Agreement Reference:	2021/S 001-002154 - Clinical IT Framework - Document Scanning Solutions
Commencement Date:	01/04/2022
Type(s) of IT Products and Services:	Opex Scanner Maintenance and support

The Supplier and the Authority agree that the Authority wishes to enter into a Contract in respect of the IT Products and/or Services pursuant to the framework agreement between QE Facilities Limited and the Supplier dated 4th January 2021 (the "Framework Agreement").

This Contract is made on the Commencement Date as set out above subject to the terms set out in the schedules listed below ("Schedules"). The Authority and the Supplier undertake to comply with the provisions of the Schedules in the performance of this Contract.

The Supplier shall supply to the Authority, and the Authority shall receive and pay for, the IT Products and/or the Services on the terms of this Contract.

The Definitions used in Schedule 3 (Information and Data Provisions) and Schedule 4 (Definitions and Interpretations) apply to the use of all capitalised terms used in this Contract.

Schedules

Schedule 1	Key Provisions
Schedule 2	General Terms and Conditions
Schedule 3	Information and Data Provisions
Schedule 4	Definitions and Interpretations
Schedule 5	Specification and Tender Response Document
Schedule 6	Charging and Invoicing
Schedule 7	Standards
Schedule 8	NOT USED
Schedule 9	Authority Obligations
Schedule 10	Change Control Process
Schedule 11	IT Products and Software Licences
Schedule 12	Support and Maintenance Services for IT Products
Schedule 13	Performance Levels
Schedule 14	Security Management and Policies
Schedule 15	Governance
Schedule 16	NOT USED
Schedule 17	Financial Distress
Schedule 18	NOT USED
Schedule 19	Exit Management

Signed by the authorised representative of THE AUTHORITY

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Signed by the authorised representative of THE SUPPLIER

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Schedule 1

Key Provisions

(including Standard Key Provisions and Extra Key Provisions)

Standard Key Provisions

1 Application of the Key Provisions

- 1.1 The standard Key Provisions at Clauses 1 to 7 of this Schedule 1 (Key Provisions) shall apply to this Contract.
- 1.2 The optional Key Provisions at Clauses 8 to 24 of this Schedule 1 (Key Provisions) shall only apply to this Contract where they have been checked and information completed as applicable.
- 1.3 Extra Key Provisions shall only apply to this Contract where such provisions are set out at the end of this Schedule 1 (Key Provisions).

2 Term

- 2.1 This Contract shall commence on the Commencement Date and the Term of this Contract shall expire at midnight on **31/03/2023**
- 2.2 The Term may be extended in accordance with Clause 15.2 (Term and Termination) of Schedule 2 (General Terms and Conditions) provided that the duration of this Contract shall be no longer than ten (10) years in total.

3 Contract Managers

- 3.1 The Contract Managers at the Commencement Date of this Contract are:

- 3.1.1 for the Authority:

- Judi Nuttall, Category Manager

- 3.1.2 for the Supplier:

- Vijay Magon, Managing Director***

or as otherwise agreed between the Parties in writing.

4 Names and addresses for notices

- 4.1 Notices served under this Contract are to be delivered to:

- 4.1.1 for the Authority:

- Commercial Services

- nhsbsa.commercialservicesteam@nhs.net

- 4.1.2 for the Supplier:

Vijay Magon
Managing Director
CCube Solutions
13 Diamond Court
Opal Drive
Milton Keynes
MK15 0DU

admin@ccubesolutions.com

5 Management levels for escalation and dispute resolution

- 5.1 The management levels at which a Dispute may be dealt with as referred to as part of the Dispute Resolution Procedure are as follows:

Level	Authority representative	Supplier representative
1	Judi Nuttall, Category Manager	Vijay Magon, Managing Director
2	Steven Carr, Senior Commercial Manager	Vijay Magon, Managing Director
3	Sean Murphy, Head of Commercial Services	Marie Santerre, Finance Manager

6 Order of precedence

- 6.1 Subject always to Clause 1.10 of Schedule 4 (Definitions and Interpretations), should there be a conflict between any other parts of this Contract the order of priority for construction purposes shall be:
- 6.1.1 the provisions on the front page of the Order Form;
 - 6.1.2 Schedule 1: Key Provisions;
 - 6.1.3 Schedule 5: Specification and Tender Response Document (but only in respect of the Authority's requirements);
 - 6.1.4 Schedule 2: General Terms and Conditions;
 - 6.1.5 Schedule 6: Charging and Invoicing;
 - 6.1.6 Schedule 3: Information and Data Provisions;
 - 6.1.7 Schedule 4: Definitions and Interpretations;
 - 6.1.8 the order in which all subsequent Schedules, if any, appear; and
 - 6.1.9 any other documentation forming part of this Contract.
- 6.2 For the avoidance of doubt, Schedule 5 (Specification and Tender Response Document) shall include, without limitation, the Authority's requirements in the form of its specification and other statements and requirements, the Supplier's responses, proposals and/or method statements to meet those requirements, and any clarifications agreed by the Parties to the

Supplier's responses, proposals and/or method statements. Should there be a conflict between these parts of Schedule 5 (Specification and Tender Response Document), the order of priority for construction purposes shall be: (1) the Authority's requirements; (2) any clarification to the Supplier's responses, proposals and/or method statements; and (3) the Supplier's original responses, proposals and/or method statements.

7 Approved Sub-contractors

- 7.1 In accordance with Clause 28 of Schedule 2 (General Terms and Conditions), the Authority has given its prior written consent to the Supplier sub-contracting its obligations under this Contract to the Sub-contractors listed in the table below.

Sub-contractor name and address (if not the same as the registered office)	Registered office and company number	Related Product/Service description (as applicable)	IT (as applicable)	Role in delivery of the Services (where applicable)
OPEX Business Machines GMBH 29/32 Queensbrook, Bolton Technology Exchange, Spa Road, Bolton BL1 4AY, United Kingdom		Scanner supply and Support Services		

- 7.2 The Parties agree that they will update the table immediately above periodically to record any Sub-contractors appointed by the Supplier with the consent of the Authority after the Commencement Date for the purposes of the delivery of the Services.

Optional Key Provisions

- 8 Implementation Services ☐ (only applicable to this Contract if this box is checked and Schedule 8 (Implementation) is inserted)

Not used.

- 8.1 The Parties shall comply with the provisions of this Clause 8 of this Schedule 1 (Key Provisions), Schedule 5 (Specification and Tender Response Document) and Schedule 8 (Implementation) in relation to the provision of the Implementation Services.

Implementation Plan and Delays

- 8.2 The Supplier shall:

8.2.1 provide the Implementation Services;

8.2.2 comply with the Implementation Plan; and

8.2.3 ensure that each Milestone is Achieved on or before its Milestone Date.

Rectification Plan Process

8.3 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay in meeting its obligations under Clause 8.2 of this Schedule 1 (Key Provisions):

8.3.1 it shall:

- (i) notify the Authority as soon as possible and, in any event, within twenty four (24) hours of becoming aware;
- (ii) develop a draft Rectification Plan in order to address the impact of the Delay or anticipated Delay;
- (iii) submit the draft Rectification Plan to the Authority for approval in accordance with Clause 8.4 of this Schedule 1 (Key Provisions);
- (iv) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
- (v) be liable for Delay Payments.

8.4 The Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within ten (10) Business Days (or such other period as may be agreed between the Parties) of the notification referred to in Clause 8.3.1(i) of this Schedule 1 (Key Provisions).

8.5 The Authority may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers the draft Rectification Plan is inadequate because, for example, the draft Rectification Plan:

8.5.1 is insufficiently detailed to be capable of proper evaluation;

8.5.2 will take too long to complete;

8.5.3 will not prevent reoccurrence of the Delay; and/or

8.5.4 will rectify the Delay but in a manner which is unacceptable to the Authority.

8.6 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 such reasons into account in its preparation of the revised draft Rectification Plan. The Supplier shall submit a revised draft Rectification Plan to the Authority for review within five (5) Business Days (or such other period as may be agreed between the Parties) of the Authority's notice rejecting the original draft Rectification Plan.

8.7 If the Authority consents to the draft Rectification Plan:

8.7.1 the Supplier shall immediately start work on the actions set out in the Rectification Plan to ensure compliance with the dates contained therein; and

- 8.7.2 the Authority may no longer terminate this Contract on the grounds of the relevant Delay.
- 8.8 In the event of a Rectification Plan Failure the Authority may terminate this Contract by issuing a Termination Notice to the Supplier.

Testing and Achievement of Milestones

- 8.9 The Parties shall comply with the provisions of Part C (Testing) of Schedule 8 (Implementation) in relation to the procedures to determine whether a Milestone or Test has been achieved in relation to the implementation and acceptance of the relevant Software.
- 8.10 The Supplier shall provide the:
- 8.10.1 Installation and Commissioning Services;
 - 8.10.2 Testing Services;
 - 8.10.3 Interfacing and Integration Services;
 - 8.10.4 Training Services;
 - 8.10.5 Data Migration Services; and
 - 8.10.6 Software Development Services,]

in accordance with the terms set out in Schedule 5 (Specification and Tender Response Document) and/or Schedule 8 (Implementation) and to meet the timeframes set out in the Implementation Plan.

- 9 **Specific time periods for inspection ☒ (only applicable to this Contract if this box is checked and Clause 9.1 of this Schedule 1 (Key Provisions) is completed)**
- 9.1 For the purposes of Clause 3.2 of Schedule 2 (General Terms and Conditions), the Authority shall visually inspect the IT Products within 1 week of the date of delivery of the relevant IT Products.
- 10 **Specific time periods for rights and remedies under Clause 3.6 of Schedule 2 (General Terms and Conditions) ☒ (only applicable to this Contract if this box is checked and Clause 10.1 of this Schedule 1 (Key Provisions) is completed)**
- 10.1 The Authority's rights and remedies under Clause 3.6 of Schedule 2 (General Terms and Conditions) shall cease 12 months from the date of delivery of the relevant IT Products.
- 11 **Supply of IT Products Commencement Date (where the supply of IT Products are to start at a date after the Commencement Date) ☐ (only applicable to this Contract if this box is checked)**
- 11.1 The IT Products shall be supplied by the relevant Milestone identified in the Implementation Plan. The Supplier shall provide any relevant Implementation Services in respect of the supply and delivery of the IT Products in accordance with the timeframes set out in the Implementation Plan.

11.2 The Long Stop Date referred to in Clause 15.5.1 of Schedule 2 (General Terms and Conditions) shall be *[insert date]*.

12 **Induction training for Services** ☐ **(only applicable to this Contract if this box is checked)**

12.1 The Supplier shall ensure that all Staff complete the Authority's induction training. All Staff shall complete the training in accordance with the dates specified in the Implementation Plan and all new Staff appointed throughout the Term shall also complete the training.

12.2 The Supplier shall further ensure that all Staff complete any extra training that the Authority makes available to its own staff and notifies the Supplier in writing that it is appropriate for the Staff.

13 **Different levels and/or types of insurance** ☒ **(only applicable to this Contract if this box is checked and the table sets out the requirements)**

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

<u>Type of insurance required</u>	<u>Minimum cover</u>
<u>Employer's Liability</u>	<u>£5,000,000</u>
<u>Public Liability</u>	<u>£2,000,000</u>
<u>Product liability insurance</u>	<u>£2,000,000</u>
<u>Professional Indemnity</u>	<u>£1,000,000</u>
<u>[Insert other types of insurance as appropriate]</u>	<u>[]</u>

14 **Assignment of Intellectual Property Rights in Deliverables (including relating to Software Development Services and/or Specially Written Software)** ☐ **(only applicable to this Contract if this box is checked)**

14.1 The Supplier confirms and agrees that all Intellectual Property Rights in and to the Deliverables developed by or on behalf of the Supplier as part of the Services (including any Specially Written Software and/or relating to any Software Development Services) including in accordance with Schedule 5 (Specification and Tender Response Document), shall be owned by the Authority. The Supplier hereby assigns with full title guarantee by way of present and future assignment all Intellectual Property Rights in and to such Deliverables developed by or on behalf of the Supplier as part of the Services (including any Specially Written Software and/or relating to any Software Development Services). The Supplier shall ensure that all Staff assign any Intellectual Property Rights they may have in and to such Deliverables to the Supplier to give effect to this Clause 14 of this Schedule 1 (Key Provisions) and that such Staff absolutely and irrevocably waive their moral rights in relation to such Deliverables. This Clause 14 of this Schedule 1 (Key Provisions) shall continue in full force and effect notwithstanding the expiry or earlier termination of this Contract.

- 14.2 The Supplier shall provide to the Authority copies of the Object Code and Source Code in the Specially Written Software and any other related Documentation in accordance with the dates specified in the Implementation Plan and in accordance with any other requirements of the Software Development Services.
- 14.3 Not Used
- 15 **Authority step-in rights ☒ (only applicable to this Contract if this box is checked and the Schedule inserted)**
- 15.1 If the Supplier is unable to provide the Services then the Authority shall be entitled to exercise Step-In Rights set out in Schedule 2.
- 16 **Guarantee ☐ (only applicable to this Contract if this box is checked)**
- 16.1 Promptly following the execution of this Contract, the Supplier shall, if it has not already delivered an executed deed of guarantee to the Authority, deliver the executed deed of guarantee in the form as set out in Schedule 16 (Guarantee) to the Authority as required by the procurement process followed by the Authority. Failure to comply with this Key Provision shall be an irremediable breach of this Contract.
- 17 **Termination for convenience ☒ (only applicable to this Contract if this box is checked and Clause 17.1 of this Schedule 1 (Key Provisions) is completed)**
- 17.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier at any time on three (3) months' written notice.
- 17.2 Not Used.
- 18 **Time of the essence ☒ (only applicable to this Contract if this box is checked)**
- 18.1 Time is of the essence as to any delivery dates in respect of the IT Products under this Contract and if the Supplier fails to meet any such delivery date this shall be deemed to be a breach incapable of remedy for the purposes of Clause 15.4(i) of Schedule 2 (General Terms and Conditions).
- 19 **Right to terminate following a specified number of material breaches ☒ (only applicable to this Contract if this box is checked and Clause 19.1 of this Schedule 1 (Key Provisions) is completed)**
- 19.1 Either Party may terminate this Contract by issuing a Termination Notice to the other Party if such other Party commits a material breach of this Contract in circumstances where it is served with a valid Breach Notice having already been served with at least two (2) previous valid Breach Notices within the last twelve (12) calendar month rolling period as a result of any previous material breaches of this Contract which are capable of remedy (whether or not the Party in breach has remedied the breach in accordance with a Remedial Proposal). The twelve (12) month rolling period is the twelve (12) months immediately preceding the date of the third Breach Notice.
- 20 **Escrow ☐ (only applicable to this Contract if this box is checked)**
- 20.1 The Supplier shall place the Deposited Software in escrow and enter into the Escrow Agreement.

21 **Supply Chain Protections ☒ (only applicable to this Contract if this box is checked)**

Appointment of Sub-contractors

- 21.1 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:
- 21.1.1 manage any Sub-contractors in accordance with Good Industry Practice;
 - 21.1.2 comply with its obligations under this Contract in the delivery of the Services; and
 - 21.1.3 assign, novate or otherwise transfer to the Authority or any Replacement Supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Contract.
- 21.2 Prior to Sub-contracting any of its obligations under this Contract, the Supplier shall notify the Authority in writing of:
- 21.2.1 the proposed Sub-contractor's name, registered office and company registration number; and
 - 21.2.2 the scope of any Services to be provided by the proposed Sub-contractor.
- 21.3 If requested by the Authority within (10) Business Days of receipt of the Supplier's notice issued pursuant to Clause 21.2 of this Schedule 1 (Key Provisions), the Supplier shall also provide:
- 21.3.1 a copy of the proposed Sub-contract; and
 - 21.3.2 any further information reasonably requested by the Authority.
- 21.4 The Authority may, within ten (10) Business Days of receipt of the Supplier's notice issued pursuant to Clause 21.4 of this Schedule 1 (Key Provisions) (or, if later, receipt of any further information requested pursuant to Clause 21.3 of this Schedule 1 (Key Provisions)), object to the appointment of the relevant Sub-contractor if it considers that:
- 21.4.1 the appointment of a proposed Sub-contractor may prejudice the provision of the IT Products and/or Services and/or may be contrary to the interests of the Authority;
 - 21.4.2 the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
 - 21.4.3 the proposed Sub-contractor employs unfit persons; and/or
 - 21.4.4 the proposed Sub-contractor should be excluded in accordance with Clause 21.11 of this Schedule 1 (Key Provisions);
- in which case, the Supplier shall not proceed with the proposed appointment.
- 21.5 If the Authority has not notified the Supplier that it objects to the proposed Sub-contractor's appointment by the later of ten (10) Business Days of receipt of:
- 21.5.1 the Supplier's notice issued pursuant to Clause 21.2 of this Schedule 1 (Key Provisions); and
 - 21.5.2 any further information requested by the Authority pursuant to Clause 21.3 of this Schedule 1 (Key Provisions),
- the Supplier may proceed with the proposed appointment.

Termination of Sub-contracts

- 21.6 The Authority may require the Supplier to terminate:

- 21.6.1 a Sub-contract where:
- (i) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination;
 - (ii) the relevant Sub-contractor or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;
 - (iii) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law; and/or
 - (iv) the Authority has found grounds for exclusion of the Sub-contractor in accordance with Clause 21.11 of this Schedule 1 (Key Provisions); and

Competitive Terms

- 21.7 If the Authority is able to obtain from any Sub-contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the supply of any IT Products or Services used by the Supplier or the Staff in the supply of the IT Products or Services, then the Authority may:
- 21.7.1 require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
 - 21.7.2 subject to Clause 21.6 of this Schedule 1 (Key Provisions), enter into a direct agreement with that Sub-contractor or third party in respect of the relevant item.
- 21.8 If the Authority exercises either of its options pursuant to Clause 21.7 of this Schedule 1 (Key Provisions), then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Process.
- 21.9 The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:
- 21.9.1 the Authority making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services; and
 - 21.9.2 any reduction in the Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

Retention of Legal Obligations

- 21.10 Notwithstanding the Supplier's right to Sub-contract pursuant to this Clause 21.10, of this Schedule 1 (Key Provisions) 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.

Exclusion of Sub-contractors

- 21.11 Where the Authority considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then:

21.11.1 if the Authority finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor; and/or

21.11.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to replace or not to appoint the Sub-contractor and the Supplier shall comply with such a requirement.

22 **Key Personnel** ☒ (only applicable to this Contract if this box is checked)

22.1 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term.

22.2 The table immediately below lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Commencement Date.

Key role	Name of Key Personnel	Responsibilities/ Authorities	Phase of the project during which they will be a member of Key Personnel	Minimum period in key role
Support	Barry Whitley	Support Manager		
Support	Carl Knight	Regional Service Manager		

22.3 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 in the table immediately above.

22.4 The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Requirements for the Authority) unless:

22.4.1 requested to do so by the Authority;

22.4.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;

22.4.3 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

22.4.4 the Supplier obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).

22.5 The Supplier shall:

22.5.1 notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of 2 (two) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);

22.5.2 ensure that any Key Role is not vacant for any longer than 10 (ten) Business Days;

22.5.3 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 (sixty) Business Days' notice;

- 22.5.4 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
- 22.5.5 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.

23 **Financial Distress ☒ (only applicable to this Contract if this box is checked)**

The Parties shall comply with the provisions of Schedule 17 (Financial Distress) in relation to the assessment of the financial standing of the Supplier and Sub-contractors and the consequences of a change to that financial standing.

24 **Publicity and Branding ☒ (only applicable to this Contract if this box is checked)**

- 24.1 Notwithstanding any legal obligations on the Supplier, and In addition to the provisions of Clause 1.5 (Confidentiality) of Schedule 3 (Information and Data Provisions) the Supplier shall not:
- 24.1.1 make any press announcements nor publicise this Contract or its contents in any way, above any legal requirements it must do so (which will be notified to the Authority 24 hours prior to the publication); nor
 - 24.1.2 use the Authority's name or brand in any promotion or marketing or announcement of orders without the prior written consent of the Authority, such consent shall not be unreasonably withheld or delayed.
- 24.2 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 and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

Extra Key Provisions

25 Schedules

25.1 The Parties shall comply with the provisions of:

Schedule 1 Key Provisions

Schedule 2 General Terms and Conditions

Schedule 3 Information and Data Provisions

Schedule 4 Definitions and Interpretations

Schedule 5 Specification and Tender Response Document

Schedule 6 Charging and Invoicing

Schedule 7 Standards

Schedule 8 Implementation

Schedule 9 Authority Obligations

Schedule 10 Change Control Process

Schedule 11 IT Products and Software Licences

Schedule 12 Support and Maintenance Services for IT Products

Schedule 13 Performance Levels

Schedule 14 Security Management and Policies

Schedule 15 Governance

Schedule 17 Financial Distress

Schedule 19 Exit Management

26 Purchase Orders

27 The Authority shall issue a Purchase Order to the Supplier in respect of any IT Products and/or Services to be supplied to the Authority under this Contract. The Supplier shall comply with the terms of such Purchase Order as a term of this Contract. For the avoidance of doubt, any actions or work undertaken by the Supplier under this Contract prior to the receipt of a Purchase Order covering the relevant IT Products and/or Services shall be undertaken at the Supplier's risk and expense and the Supplier shall only be entitled to invoice for IT Products and/or Services covered by a valid Purchase Order.

28 Supplier as Data Processor

28.1 The Parties acknowledge that the Authority is the Controller and the Supplier is the Processor in respect of Personal Data Processed under this Contract and that Clause 2.2 (Data Protection) of Schedule 3 (Information and Data Provisions) and the provisions of the Data Protection Protocol (set out in Annex 1 to Schedule 3 (Information and Data Provisions)) must be complied with by the Parties as a term of this Contract.

28.2 Processing Table:

Description	Details
Subject matter of the Processing:	Contract is in place between CCUBE and their clients who have consent, vital interests, public tasks and legitimate interests to process data as the controller. CCUBE perform the role of data processor for this type of <i>Personally Identifiable Information (PII)</i> .
Duration of the Processing:	01/04/2022 – 31/03/2023
Nature and purposes of the Processing:	It is provision of service to clients. This aligns with clients drive to digitise documentation, including reduction of paper records.
Type of Personal Data:	Full hospital medical records of patients, including: <ul style="list-style-type: none">• Genetics• ethnic origin• health (including mental health)• sex life
Categories of Data Subject:	Patients attended/attending the hospital
Plan for return and destruction of the data once the Processing is complete UNLESS requirement under union or member state law to preserve that type of data:	Not Applicable.

29 Licences granted by the Supplier

29.1 The Supplier grants to the Authority (or procure any relevant third party grants to the Authority) the Software Licences set out in Schedule 11 (IT Products and Software Licences) and the Authority shall be bound by the terms contained in the relevant Software Licences subject to the provisions in Schedule 11 (IT Products and Software Licences).

29.2 **SaaS Rights** The Supplier grants to the Authority and the Authorised User's throughout the Term of this Contract and during any Exit Period access and use of the Software Subscription Services (including the relevant Supplier Software) on the terms set out in Schedule 11 (IT Products and Software Licences) applicable to such Software Subscription Services.

30 **Licences granted by the Authority**

30.1 The Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use the Authority Software, the Authority Background IPRs, the Deliverables (including any Specially Written Software) and the Authority Data solely to the extent necessary for performing the Services in accordance with this Contract, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:

- (a) any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 1 (Confidentiality) of Schedule 3 (Information and Data Provisions); and
- (b) the Supplier shall not, without the Authority's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.

30.2 In the event of the termination or expiry of this Contract, the licence granted pursuant to Clause 30.1 of this Schedule 1 (Key Provisions) and any sub-licence granted by the Supplier in accordance with Clause 30.1 of this Schedule 1 (Key Provisions) shall terminate automatically on the date of such termination or expiry and the Supplier shall:

- (a) immediately cease all use of the Authority Software, the Authority Background IPRs, the Deliverables (including any Specially Written Software) and the Authority Data (as the case may be);
- (b) at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs, the Deliverables (including any Specially Written Software) and the Authority Data, provided that if the Authority has not made an election within 6 months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs, Deliverables (including any Specially Written Software) and the Authority Data (as the case may be); and
- (c) ensure, so far as reasonably practicable, that any Authority Software, the Authority Background IPRs, the Deliverables (including any Specially Written Software) and the Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Authority Software, the Authority Background IPRs, the Deliverables (including any Specially Written Software) and the Authority Data.

31 **Operational Services**

31.1 The Supplier shall provide the Support and Maintenance Services in accordance with:

- 31.1.1 the provisions of Schedule 5 (Specification and Tender Response Document); and
- 31.1.2 the terms set out in Schedule 12 (Support and Maintenance Services for IT Products). As part of the Support and Maintenance Services, the Supplier shall provide Updates and Upgrades in accordance with Schedule 12 (Support and Maintenance Services for IT Products).

31.2 The Supplier shall provide the Hosting Services in accordance with the provisions of:

- 31.2.1 Schedule 5 (Specification and Tender Response Document); and

- 31.2.2 Schedule 11 (IT Products and Software Licences).
- 31.3 The Supplier shall provide the Managed Services in accordance with the provisions of Schedule 5 (Specification and Tender Response Document).
- 31.4 The Supplier shall provide the Software Subscription Services in accordance with the provisions of:
 - 31.4.1 Schedule 5 (Specification and Tender Response Document); and
 - 31.4.2 Schedule 11 (IT Products and Software Licences).
- 31.5 The Supplier shall provide the Training Services in accordance with the provisions of Schedule 5 (Specification and Tender Response Document).
- 32 **Authority Data**
- 32.1 The Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors including the Authority Data, Authority Software and the Authority Background IPRs.
- 32.2 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 32.3 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- 32.4 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall:
 - 32.4.1 supply that Authority Data to the Authority as requested by the Authority in the format specified in Schedule 5 (Specification and Tender Response Document) or failing which as otherwise specified in this Contract;
 - 32.4.2 ensure that Authority Data is stored, processed and transmitted in a format agreed with the Authority which enables the Authority Data to be easily shared with and inputted into information systems in use by health care providers who need to receive copies of such Authority Data; and
 - 32.4.3 perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Business Continuity Plan. The Supplier shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than 6 (six) monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 32.5 The Supplier shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-contractor.
- 32.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the security requirements set out or referred to in this Contract.
- 32.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's default so as to be unusable, the Authority may:

- 32.7.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in the Business Continuity Plan and the Supplier shall do so as soon as practicable but not later than 5 (five) Business Days from the date of receipt of the Authority's notice; and/or
 - 32.7.2 itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the Business Continuity Plan.
- 32.8 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.
- 33 **Further Authority Obligations**
- 33.1 The Authority Obligations are set out in Schedule 9 (Authority Obligations).
- 34 **Key Performance Indicators**
- 34.1 The Supplier shall provide the Operational Services in such a manner so as to meet or exceed the relevant Target Performance Level for each Key Performance Indicator.
- 34.2 The Supplier shall comply with the provisions of Schedule 13 (Performance Levels) in relation to the monitoring and reporting on its performance against the KPIs.
- 34.3 If in any Service Period:
 - 34.3.1 a KPI Failure occurs, Service Credits shall be deducted from the Service Charges in accordance with the provisions of Schedule 13 (Performance Levels);
 - 34.3.2 a Serious KPI Failure or a Severe KPI Failure occurs, the Parties shall follow the process detailed in Clause 15.3 (Term and Termination) of Schedule 2 (General Terms and Conditions) in addition to Service Credits accruing in accordance with Clause 34.3.1 of this Schedule 1 (Key Provisions);
- 34.4 Service Credits shall be the Authority's exclusive financial remedy for a KPI Failure except where:
 - 34.4.1 the Supplier has in any Service Period accrued Service Credits in excess of the Service Credit Cap; and
 - 34.4.2 the KPI Failure:
 - (i) constitutes a Severe KPI Failure;
 - (ii) has arisen due to the wilful default by the Supplier or any Staff; or
 - (iii) results in:
 - (A) the corruption or loss of any Authority Data; and/or
 - (B) the Authority being required to make a compensation payment to one or more third parties;
 - 34.4.3 the Supplier has fraudulently misreported its performance against any Key Performance Indicator; and/or
 - 34.4.4 the Authority is otherwise entitled to or does terminate the Services.

Unacceptable KPI Failure

- 34.5 If in any Service Period an Unacceptable KPI Failure occurs:
- 34.5.1 the Authority shall (subject to the Service Credit Cap) be entitled to withhold and retain as compensation for the Unacceptable KPI Failure a sum equal to any Service Charges which would otherwise have been due to the Supplier in respect of that Service Period (such sum being “**Compensation for Unacceptable KPI Failure**”); and
 - 34.5.2 if the Authority withholds and retains such Compensation for Unacceptable KPI Failure, any service points and Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue,
- provided that the operation of this Clause 34.5 of this Schedule 1 (Key Provisions) shall be without prejudice to any right which the Authority may have to terminate this Contract and/or to claim damages from the Supplier as a result of such Unacceptable KPI Failure.
- 34.6 The Supplier:
- 34.6.1 agrees that the application of Clause 34.5 of this Schedule 1 (Key Provisions) is commercially justifiable where an Unacceptable KPI Failure occurs; and
 - 34.6.2 acknowledges that it has taken legal advice on the application of Clause 34.5 of this Schedule 1 (Key Provisions) and has had the opportunity to price for that risk when calculating the Service Charges.

Critical Performance Failure

- 34.7 If a Critical Performance Failure occurs, the Authority may terminate this Contract by issuing a Termination Notice to the Supplier.

35 Standards, policies and/or procedures

- 35.1 The following standards, policies and/or procedures shall apply, as appropriate, to the manufacture, supply and/or installation of the IT Products and/or the provision of the Services:
- 35.1.1 ISO 9001:2015 or equivalent;
 - 35.1.2 any other standards as identified in Schedule 7 (Standards); and
 - 35.1.3 any Policies as identified in Schedule 14 (Security Management and Policies).
- 35.2 The Supplier shall provide a copy of its quality assurance certificate (e.g. ISO 9001:2015) to the Authority on request.

36 Change Control Process

- 36.1 Any changes to this Contract, including to the IT Products and/or Services, may only be agreed in accordance with the Change Control Process set out in Schedule 10 (Change Control Process).

37 Staff Transfer (TUPE)

- 37.1 The Parties agree that at the commencement of the provision of Services by the Supplier TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions shall not apply so as to transfer the employment of any employees of the Authority or a Third Party to the Supplier.
- 37.2 If any person who is an employee of the Authority or a Third Party claims, or it is determined, that their contract of employment has been transferred from the Authority or Third Party to

the Supplier or a Sub-contractor pursuant to TUPE, or claims that their employment would have so transferred had they not resigned, then:

- 37.2.1 the Supplier will, within seven (7) days of becoming aware of that fact, give notice in writing to the Authority;
- 37.2.2 the Authority or Third Party may offer employment to such person within twenty-eight (28) days of the notification by the Supplier;
- 37.2.3 if such offer of employment is accepted, the Supplier or a Sub-contractor shall immediately release the person from their employment; and
- 37.2.4 if after that period specified in Clause 37.2.2 of Part A of this Schedule 1 (Key Provisions) has elapsed, no offer of employment has been made by the Authority or Third Party, or such offer has been made by the Authority or Third Party but not accepted within a reasonable time, the Supplier or Sub-contractor shall employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person and shall (where relevant) be bound to apply Fair Deal for Staff Pensions in respect of any such person.

38 **Security Management Plan**

- 38.1 The Supplier shall comply with the requirements of Schedule 14 (Security Management and Policies).
- 38.2 The Authority shall notify the Supplier of any changes or proposed changes to the Baseline Security Requirements.
- 38.3 If the Supplier believes that a change or proposed change to the Baseline Security Requirements will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Process.
- 38.4 Within twenty (20) Business Days after the Commencement Date, the Supplier shall prepare and submit to the Authority for approval a Security Management Plan in accordance with Schedule 14 (Security Management and Policies).

39 **Malicious Software**

- 39.1 The Supplier shall ensure that the IT Products and Services are designed, maintained and upgraded at all times so as to minimise the risk of attack by Malicious Software, including that the Supplier shall, at all times, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software in the Authority IT Infrastructure (or as otherwise agreed by the Parties).
- 39.2 Notwithstanding Clause 39.1 of this Schedule 1 (Key Provisions), if Malicious Software is found in the Authority IT Infrastructure, the Parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any losses and to restore the IT Products and Services to their desired operating efficiency.

39.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 39.2 of this Schedule 1 (Key Provisions) shall be borne by the Parties as follows:

39.3.1 by the Supplier where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier or the Authority Data (whilst the Authority Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Authority when provided to the Supplier; and

39.3.2 otherwise by the Authority.

40 Due Diligence

40.1 The Supplier acknowledges that:

40.1.1 the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Contract;

40.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;

40.1.3 it has entered into this Contract in reliance on its own due diligence;

40.1.4 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Commencement Date) of all relevant details relating to:

(i) Schedule 5 (Specification and Tender Response Document);

(ii) the suitability of the existing and future (to the extent that it is defined or reasonably foreseeable at the Commencement Date) Authority IT Infrastructure;

(iii) the operating processes and procedures and the working methods of the Authority;

(iv) the ownership, functionality, capacity, condition and suitability for use in the provision of the IT Products and performance of the Services of the Authority Materials and Authority IT Infrastructure;

(v) the existing contracts (including any licences, support, maintenance and other contracts relating to the Authority Infrastructure) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Contract and/or which the Supplier will require the benefit of for the provision of the IT Products and/or Services; and

40.1.5 it has advised the Authority in writing of:

(i) each aspect, if any, of the Authority IT Infrastructure or Authority Materials that is not suitable for the provision of the IT Products and Services;

(ii) the actions needed to remedy each such unsuitable aspect; and

(iii) a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions, and such actions, timetable and costs are fully reflected in the Authority Obligations as applicable.

- 40.2 The Supplier shall not be excused from the performance of any of its obligations under this Contract on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:
- 40.2.1 any unsuitable aspects of the Authority IT Infrastructure and/or Authority Materials;
 - 40.2.2 any misinterpretation of the Authority requirements as set out or referred to in this Contract including the Specification and Tender Response Document; and
 - 40.2.3 any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.
- 40.3 The Supplier shall promptly notify the Authority in writing if it becomes aware during the performance of this Contract of any inaccuracies in any information (including the Due Diligence Information) provided to it by the Authority during such due diligence which materially and adversely affects its ability to provide the IT Products and/or perform the Services or meet any KPIs.
- 40.4 The Supplier shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Supplier in accordance with Clause 40.3 of this Schedule 1 (Key Provisions) save where such additional costs or adverse effect on performance have been caused by the Supplier having been provided with fundamentally misleading information by or on behalf of the Authority and the Supplier could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Supplier shall be entitled to recover such reasonable additional costs from the Authority or shall be relieved from performance of certain obligations as shall be determined by the Change Control Process.

Schedule 2

General Terms and Conditions

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1 Supply of IT Products and the provision of Services

1.1 The Supplier shall supply the IT Products ordered by the Authority and provide the Services under this Contract:

- 1.1.1 promptly and in any event within any time limits as may be set out in this Contract;
- 1.1.2 in accordance with all other provisions of this Contract;
- 1.1.3 using reasonable skill and care;
- 1.1.4 in accordance with any quality assurance standards as set out in Schedule 1 (Key Provisions) and/or Schedule 5 (Specification and Tender Response Document);
- 1.1.5 in accordance with the Law and with Guidance;
- 1.1.6 in accordance with Good Industry Practice;
- 1.1.7 in accordance with the Policies; and
- 1.1.8 in a professional and courteous manner.

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

1.2 The Supplier shall perform the Implementation Services (if any) in accordance with any requirements as may be set out in Schedule 5 (Specification and Tender Response Document) and the provisions and timeframes set out in Schedule 8 (Implementation). Without limitation to the foregoing provisions of this Clause 1.2 of this Schedule 2 (General Terms and Conditions), the Supplier shall, if specified in Schedule 1 (Key Provisions), carry out all implementation activities fully in accordance with the Implementation Plan. **Note: Where the Implementation Plan is an Outline Implementation Plan, the Supplier shall, as part of implementation, develop the outline plan into a full Detailed Implementation Plan and agree this with the Authority in accordance with Schedule 8 (Implementation). Once this is agreed, the Supplier shall comply with the full Detailed Implementation Plan. Please note that this Contract is based on the assumption that there is only an Outline Implementation Plan in place from the outset but Schedule 8 (Implementation) contains provisions at Part B Clause 3 to deal with agreeing a Detailed Implementation Plan post signature.**

1.3 The Supplier shall commence:

- 1.3.1 supply of the IT Products on the Supply of IT Products Commencement Date; and
- 1.3.2 performance of the Services on the Services Commencement Date.

1.4 The Supplier shall comply fully with its obligations set out in Schedule 5 (Specification and Tender Response Document) (to include all obligations in relation to the quality, performance characteristics, supply, delivery, installation, commissioning, maintenance and training in relation to the IT Products and their use).

1.5 Unless otherwise agreed by the Parties in writing, the IT Products shall be new, consistent with any sample, and shall comply with any applicable specification set out in this Contract (to

include, without limitation, the provisions of the Authority's requirements set out in Schedule 5 (Specification and Tender Response Document) and the Supplier's response to such requirements) and any applicable manufacturers' specifications.

- 1.6 The Supplier shall ensure that all relevant consents, authorisations, licences and accreditations:
 - 1.6.1 required to supply the IT Products and provide the Implementation Services are in place prior to the delivery of any IT Products to the Authority; and
 - 1.6.2 required to provide the Operational Services are in place at the Actual Operational Services Commencement Date and are maintained throughout the Term.
- 1.7 If there are any incidents that in any way relate to or involve the use of the IT Products by the Authority, the Supplier shall cooperate fully with the Authority in relation to the Authority's application of the Policies on reporting and responding to all incidents, including serious incidents requiring investigation, and shall respond promptly to any reasonable and proportionate queries, questions and/or requests for information that the Authority may have in this context in relation to the IT Products.
- 1.8 If there are any quality, performance and/or safety related reports, notices, alerts or other communications issued by the Supplier or any regulatory or other body in relation to the IT Products, the Supplier shall promptly provide the Authority with a copy of any such reports, notices, alerts or other communications.
- 1.9 Upon receipt of any such reports, notices, alerts or other communications pursuant to Clause 1.8 of this Schedule 2 (General Terms and Conditions), the Authority shall be entitled to request further information from the Supplier and/or a meeting with the Supplier, and the Supplier shall cooperate fully with any such request.

2 Delivery of the IT Products and passing of risk and ownership in the IT Products

- 2.1 The Supplier shall deliver the IT Products in accordance with any delivery timescales, delivery dates and delivery instructions (to include, without limitation, as to delivery location and delivery times) set out in the Implementation Plan or as otherwise agreed with the Authority in writing.
- 2.2 Delivery shall be completed when the IT Products have been unloaded at the location specified by the Authority and such delivery has been received by a duly authorised agent, employee or location representative of the Authority. The Authority shall procure that such duly authorised agent, employee or location representative of the Authority is at the delivery location at the agreed delivery date and times in order to accept such delivery. Any arrangement by which the IT Products are collected by the Authority in return for a discount on the relevant Charges shall be agreed by the Parties in writing (where due to an emergency such arrangements cannot be committed to writing prior to collection, the Parties shall confirm such arrangements in writing as soon as possible following collection). Where the Authority collects the IT Products, collection is deemed delivery for the purposes of this Contract.
- 2.3 The Supplier shall ensure that a delivery note shall accompany each delivery of the IT Products. Such delivery note shall contain the information specified in Schedule 5 (Specification and Tender Response Document) or as otherwise agreed with the Authority in writing. Where such information requirements as to the content of delivery notes are not specified or separately

agreed, such delivery notes shall, as a minimum, contain the Authority's order number, the name and address of the Authority, a description and quantity of the IT Products, and shall show separately any extra agreed charges for containers and/or any other item not included in the relevant Charges or, where no charge is made, whether the containers are required to be returned.

- 2.4 Part deliveries and/or deliveries outside of the agreed delivery times/dates may be refused unless the Authority has previously agreed in writing to accept such deliveries. Where delivery of the IT Products is refused by the Authority in accordance with this Clause 2.4 of this Schedule 2 (General Terms and Conditions), the Supplier shall be responsible for all risks, costs and expenses associated with the re-delivery of the IT Products in accordance with the agreed delivery times/dates. Where the Authority accepts delivery more than five (5) days before the agreed delivery date, the Authority shall be entitled to charge the Supplier for the costs of insurance and storage of the IT Products until the agreed date for delivery.
- 2.5 Unless otherwise set out in Schedule 5 (Specification and Tender Response Document) or agreed with the Authority in writing, the Supplier shall be responsible for carriage, insurance, transport, all relevant licences, all related costs, and all other costs associated with the delivery of the IT Products to the delivery location and unloading of the IT Products at that location. Without limitation to the foregoing provision of this Clause 2.5 of this Schedule 2 (General Terms and Conditions), unless otherwise stated in Schedule 5 (Specification and Tender Response Document) or agreed with the Authority in writing, the Supplier shall be responsible for obtaining all export and import licences for the IT Products and shall be responsible for any delays to the delivery time due to such licences not being available when required. In the case of any IT Products supplied from outside the United Kingdom, the Supplier shall ensure that accurate information is provided to the Authority as to the country of origin of the IT Products and shall be liable to the Authority for any extra duties or taxes for which the Authority may be accountable should the country of origin prove to be different from that set out in Schedule 5 (Specification and Tender Response Document).
- 2.6 All third party carriers engaged to deliver the IT Products shall at no time be an agent of the Authority and accordingly the Supplier shall be liable to the Authority for the acts and omissions of all third party carriers engaged to deliver the IT Products to the Authority.
- 2.7 Risk in the IT Products shall pass to the Authority when the IT Products are delivered as specified in this Contract or, in the case of IT Products which require installation by the Supplier, when that installation process is complete.
- 2.8 Ownership of the IT Products shall pass to the Authority on the earlier of:
 - 2.8.1 full payment for such IT Products; or
 - 2.8.2 where the IT Products are consumables or are non-recoverable (e.g. used in clinical procedures), at the point such IT Products are taken into use. For the avoidance of doubt, where ownership passes in accordance with this Clause 2.8.2 of this Schedule 2 (General Terms and Conditions), then the full Charges for such IT Products shall be recoverable by the Supplier from the Authority as a debt if there is non-payment of a valid undisputed invoice issued by the Supplier to the Authority in relation to such IT Products.

- 2.9 All tools, equipment and materials of the Supplier required in the performance of the Supplier's obligations under this Contract shall be and remain at the sole risk of the Supplier, whether or not they are situated at a delivery location.

3 **Inspection, rejection, return and recall of the IT Products**

- 3.1 As relevant and proportionate to the IT Products in question and subject to reasonable written notice, the Supplier shall permit any person authorised by the Authority, to inspect work being undertaken in relation to the IT Products and/or the storage facilities used in the storage of the IT Products at all reasonable times at the Supplier's premises or at the premises of any Sub-contractor or agent of the Supplier in order to confirm that the IT Products are being manufactured and/or stored in accordance with Good Industry Practice and in compliance the requirements of this Contract and/or that stock holding and quality assurance processes are in accordance with the requirements of this Contract.

- 3.2 Without prejudice to the provisions of Clause 3.6 of this Schedule 2 (General Terms and Conditions) and subject to Clause 3.7 of this Schedule 2 (General Terms and Conditions), the Authority shall visually inspect the IT Products within a reasonable time following delivery (or such other period as may be set out in Schedule 1 (Key Provisions), if any) and may by written notice reject any IT Products found to be damaged or otherwise not in accordance with the requirements of this Contract ("**Rejected IT Products**"). The whole of any delivery may be rejected if a reasonable sample of the IT Products taken indiscriminately from that delivery is found not to conform in all material respects to the requirements of this Contract.

- 3.3 Without prejudice to the provisions of Clause 3.5 of this Schedule 2 (General Terms and Conditions), upon the rejection of any IT Products in accordance with Clauses 3.2 and/or 3.6 of this Schedule 2 (General Terms and Conditions), the Supplier shall at the Authority's written request:

3.3.1 collect the Rejected IT Products at the Supplier's risk and expense within ten (10) Business Days of issue of written notice from the Authority rejecting the IT Products; and

3.3.2 without extra charge, promptly (and in any event within twenty (20) Business Days or such other time agreed by the Parties in writing acting reasonably) supply replacements for the Rejected IT Products to the Authority subject to the Authority not cancelling its purchase obligations in accordance with Clause 3.5 of this Schedule 2 (General Terms and Conditions).

If the Supplier requests and the Authority accepts that the Rejected IT Products should be disposed of by the Authority rather than returned to the Supplier, the Authority reserves the right to charge the Supplier for the costs associated with the disposal of the Rejected IT Products and the Supplier shall promptly pay any such costs.

- 3.4 Risk and title in respect of any Rejected IT Products shall pass to the Supplier on the earlier of: (a) collection by the Supplier in accordance with Clause 3.3 of this Schedule 2 (General Terms and Conditions); or (b) immediately following the expiry of ten (10) Business Days from the Authority issuing written notification rejecting the IT Products. If Rejected IT Products are not collected within ten (10) Business Days of the Authority issuing written notification rejecting the IT Products, the Authority may return the Rejected IT Products at the Supplier's risk and expense and charge the Supplier for the cost of storage from the expiry of ten (10) Business Days from the date of notification of rejection.

- 3.5 Where the Authority rejects any IT Products in accordance with Clauses 3.2 and/or 3.6 of this Schedule 2 (General Terms and Conditions) and the Authority no longer requires replacement IT Products, the Authority may by written notice cancel its purchase obligations in relation to such quantity of Rejected IT Products. Should the Authority have paid for such Rejected IT Products the Supplier shall refund such payment to the Authority within thirty (30) days of the Authority cancelling such purchase obligations and informing the Supplier that the Authority does not require replacements for such Rejected IT Products.
- 3.6 Without prejudice to any other provisions of this Contract or any other warranties or guarantees applicable to the IT Products supplied and subject to Clause 3.7 of this Schedule 2 (General Terms and Conditions), if at any time following the date of the delivery of any IT Products, all or any part of such IT Products are found to be defective or otherwise not in accordance with the requirements of this Contract ("**Defective IT Products**"), the Supplier shall, at the Authority's discretion:
- 3.6.1 upon written request and without charge, promptly (and in any event within twenty (20) Business Days or such other time agreed by the Parties in writing acting reasonably) remedy the deficiency by repairing such Defective IT Products; or
- 3.6.2 upon written notice of rejection from the Authority, treat such Defective IT Products as Rejected IT Products in accordance with Clauses 3.2 to 3.5 of this Schedule 2 (General Terms and Conditions).
- 3.7 The Supplier shall be relieved of its liabilities under Clauses 3.2 to 3.5 (inclusive) and/or Clause 3.6 of this Schedule 2 (General Terms and Conditions) to the extent only that the IT Products are damaged, there are Defects in the IT Products and/or the IT Products fail to comply with the requirements of this Contract due, in each case, to any acts or omissions of the Authority.
- 3.8 The Authority's rights and remedies under Clause 3.6 of this Schedule 2 (General Terms and Conditions) shall cease within a reasonable period of time from the date on which the Authority discovers or might reasonably be expected to discover that the IT Products are Defective IT Products or within such other period as may be set out in Schedule 1 (Key Provisions), if any. For the avoidance of doubt, IT Products not used before their expiry date shall in no event be considered Defective IT Products following the date of expiry provided that at the point such IT Products were delivered to the Authority they met any shelf life requirements set out in Schedule 5 (Specification and Tender Response Document).
- 3.9 Where the Supplier is required by Law, Guidance, and/or Good Industry Practice to order a product recall ("**Requirement to Recall**") in respect of the IT Products, the Supplier shall:
- 3.9.1 promptly (taking into consideration the potential impact of the continued use of the IT Products on patients, service users and the Authority as well as compliance by the Supplier with any regulatory requirements) notify the Authority in writing of the recall together with the circumstances giving rise to the recall;
- 3.9.2 from the date of the Requirement to Recall treat the IT Products the subject of such recall as Defective IT Products in accordance with Clause 3.6 of this Schedule 2 (General Terms and Conditions);
- 3.9.3 consult with the Authority as to the most efficient method of executing the recall of the IT Products and use its reasonable endeavours to minimise the impact on the Authority of the recall; and

- 3.9.4 indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the Authority as a result of such Requirement to Recall.

4 Operation of the Services

- 4.1 The Services shall be provided at such Authority premises and at such locations within those premises, as may be set out in Schedule 5 (Specification and Tender Response Document) or as otherwise agreed by the Parties in writing ("**Premises and Locations**").
- 4.2 Subject to the Supplier and its Staff complying with all relevant Policies applicable to such Premises and Locations, the Authority shall grant reasonable access to the Supplier and its Staff to such Premises and Locations to enable the Supplier to provide the Services.
- 4.3 Subject to Clause 4.4 of this Schedule 2 (General Terms and Conditions), any access granted to the Supplier and its Staff under Clause 4.2 of this Schedule 2 (General Terms and Conditions) shall be non-exclusive and revocable. Such access shall not be deemed to create any greater rights or interest than so granted (to include, without limitation, any relationship of landlord and tenant) in the Premises and Locations. The Supplier warrants that it shall carry out all such reasonable further acts to give effect to this Clause 4.3 of this Schedule 2 (General Terms and Conditions).
- 4.4 Where, in order to provide the Services, the Supplier requires any greater rights to use or occupy any specific Premises and Locations over and above such reasonable access rights granted in accordance with Clause 4.2 and Clause 4.3 of this Schedule 2 (General Terms and Conditions), such further rights shall be limited to any rights granted to the Supplier by the Authority in accordance with any licence and/or lease entered into by the Supplier.
- 4.5 Where it is provided for by a specific mechanism set out in Schedule 5 (Specification and Tender Response Document), the Authority may increase, reduce or otherwise vary the Premises and Locations in accordance with such mechanism subject to the provisions of any licence or lease entered into by the Parties as referred to at Clause 4.4 of this Schedule 2 (General Terms and Conditions). Where there is no such specific mechanism set out in Schedule 5 (Specification and Tender Response Document), any variations to the Premises and Locations where the Services are to be provided shall be agreed by the Parties in accordance with Clause 21 of this Schedule 2 (General Terms and Conditions). If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the Dispute Resolution Procedure.
- 4.6 Unless otherwise set out in Schedule 5 (Specification and Tender Response Document) or otherwise agreed by the Parties in writing, any equipment or other items provided by the Authority for use by the Supplier:
- 4.6.1 shall be provided at the Authority's sole discretion;
- 4.6.2 shall be inspected by the Supplier in order that the Supplier can confirm to its reasonable satisfaction that such equipment and/or item is fit for its intended use and shall not be used by the Supplier until it has satisfied itself of this;
- 4.6.3 must be returned to the Authority within any agreed timescales for such return or otherwise upon the request of the Authority; and

- 4.6.4 shall be used by the Supplier at the Supplier's risk and the Supplier shall upon written request by the Authority reimburse the Authority for any loss or damage relating to such equipment or other items caused by the Supplier (fair wear and tear exempted).
- 4.7 If the Services, or any part of them, are regulated by any regulatory body, the Supplier shall ensure that at the Actual Operational Services Commencement Date it has in place all relevant registrations and shall maintain such registrations during the Term. The Supplier shall notify the Authority forthwith in writing of any changes to such registration or any other matter relating to its registration that would affect the delivery or the quality of Services.
- 4.8 The Supplier shall notify the Authority forthwith in writing:
- 4.8.1 of any pending inspection of the Services, or any part of them, by a regulatory body immediately upon the Supplier becoming aware of such inspection; and
- 4.8.2 of any failure of the Services, or any part of them, to meet the quality standards required by a regulatory body, promptly and in any event within two (2) Business Days of the Supplier becoming aware of any such failure. This shall include without limitation any informal feedback received during or following an inspection raising concerns of any nature regarding the provision of the Services.
- 4.9 Following any inspection of the Services, or any part of them, by a regulatory body, the Supplier shall provide the Authority with a copy of any report or other communication published or provided by the relevant regulatory body in relation to the provision of the Services.
- 4.10 Upon receipt of notice pursuant to Clause 4.8 of this Schedule 2 (General Terms and Conditions) or any report or communication pursuant to Clause 4.9 of this Schedule 2 (General Terms and Conditions), the Authority shall be entitled to request further information from the Supplier and/or a meeting with the Supplier, and the Supplier shall cooperate fully with any such request.
- 4.11 Where applicable, the Supplier shall implement and comply with the Policies on reporting and responding to all incidents and accidents, including serious incidents requiring investigation, shall complete the Authority's incident and accident forms in accordance with the Policies and provide reasonable support and information as requested by the Authority to help the Authority deal with any incident or accident relevant to the Services. The Supplier shall ensure that its Contract Manager informs the Authority's Contract Manager in writing forthwith upon (a) becoming aware that any serious incidents requiring investigation and/or notifiable accidents have occurred; or (b) the Supplier's Contract Manager having reasonable cause to believe any serious incidents and/or notifiable accidents requiring investigation have occurred. The Supplier shall ensure that its Contract Manager informs the Authority's Contract Manager in writing within forty eight (48) hours of all other incidents and/or accidents that have or may have an impact on the Services.
- 4.12 The Supplier shall, as reasonably required by the Authority, cooperate with any other service providers to the Authority and/or any other third parties as may be relevant in the provision of the Services.
- 4.13 To the extent relevant to the Services, the Supplier shall have in place and operate a complaints procedure which complies with the requirements of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.

- 4.14 Each Party shall inform the other of all complaints from or on behalf of patients or other service users arising out of or in connection with the provision of the Services within twenty four (24) hours of receipt of each complaint and shall keep the other Party updated on the manner of resolution of any such complaints.
- 4.15 Should the Authority be of the view, acting reasonably, that the Supplier can no longer provide the Services, then without prejudice to the Authority's rights and remedies under this Contract, the Authority shall be entitled to exercise its Step-In Rights if Schedule 1 (Key Provisions) refers to the Authority having such rights under this Contract.
- 4.16 The Supplier shall be relieved from its obligations under this Contract to provide the Services to the extent that it is prevented from complying with any such obligations due to any acts, omissions or defaults of the Authority. To qualify for such relief, the Supplier must notify the Authority promptly (and in any event within five (5) Business Days) in writing of the occurrence of such act, omission, or default of the Authority together with the potential impact on the Supplier's obligations.

5 Staff and Lifescience Industry Accredited Credentialing Register

- 5.1 Subject to the requirements of this Contract and any Law, the Supplier shall be entirely responsible for the employment and conditions of service of Staff. The Supplier shall ensure that such conditions of employment are consistent with its obligations under this Contract.
- 5.2 The Supplier will employ sufficient Staff to ensure that it complies with its obligations under this Contract. This will include the Supplier providing a sufficient reserve of trained and competent Staff to supply the IT Products and/or provide the Services during Staff holidays or absence.
- 5.3 The Supplier shall use reasonable endeavours to ensure the continuity of all Staff in the provision of the Services and, where any member of Staff is designated as key to the provision of the Services as set out in Schedule 5 (Specification and Tender Response Document) or as otherwise agreed between the Parties in writing, any redeployment and/or replacement of such member of Staff by the Supplier shall be subject to the prior written approval of the Authority, such approval not to be unreasonably withheld or delayed.
- 5.4 The Supplier shall ensure that all Staff are aware of, and at all times comply with, the Policies.
- 5.5 The Supplier shall:
- 5.5.1 employ only those Staff who are careful, skilled and experienced in the duties required of them;
 - 5.5.2 ensure that every member of Staff is properly and sufficiently trained and instructed;
 - 5.5.3 ensure all Staff have the qualifications to carry out their duties;
 - 5.5.4 maintain throughout the Term all appropriate licences and registrations with any relevant bodies (at the Supplier's expense) in respect of the Staff;
 - 5.5.5 ensure all Staff comply with such registration, continuing professional development and training requirements or recommendations appropriate to their

role including those from time to time issued by the Department of Health or any relevant regulatory body or any industry body in relation to such Staff; and

- 5.5.6 comply with the Authority's staff vetting procedures and other staff protocols, as may be relevant to this Contract and which are notified to the Supplier by the Authority in writing.
- 5.6 The Supplier shall not deploy in the provision of the Services any person who has suffered from, has signs of, is under treatment for, or who is suffering from any medical condition which is known to, or does potentially, place the health and safety of the Authority's staff, patients, service users or visitors at risk unless otherwise agreed in writing with the Authority.
- 5.7 The Supplier shall ensure that all potential Staff or persons performing any of the Services during the Term who may reasonably be expected in the course of performing any of the Services under this Contract to have access to or come into contact with children or other vulnerable persons and/or have access to or come into contact with persons receiving health care services:
 - 5.7.1 are questioned concerning their Convictions; and
 - 5.7.2 obtain appropriate disclosures from the Disclosure and Barring Service (or other appropriate body) as required by Law and/or the Policies before the Supplier engages the potential staff or persons in the provision of the Services.
- 5.8 The Supplier shall take all necessary steps to ensure that such potential staff or persons obtain standard and enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) and shall ensure all such disclosures are kept up to date. The obtaining of such disclosures shall be at the Supplier's cost and expense.
- 5.9 The Supplier shall ensure that no person is employed or otherwise engaged in the provision of the Services without the Authority's prior written consent if:
 - 5.9.1 the person has disclosed any Convictions upon being questioned about their Convictions in accordance with Clause 5.7.1 of this Schedule 2 (General Terms and Conditions);
 - 5.9.2 the person is found to have any Convictions following receipt of standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) in accordance with Clause 5.7.2 of this Schedule 2 (General Terms and Conditions); or
 - 5.9.3 the person fails to obtain standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) upon request by the Supplier in accordance with Clause 5.7.2 of this Schedule 2 (General Terms and Conditions).
- 5.10 In addition to the requirements of Clause 5.7 to Clause 5.9 of this Schedule 2 (General Terms and Conditions), where the Services are or include regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 the Supplier:
 - 5.10.1 warrants that it shall comply with all requirements placed on it by the Safeguarding Vulnerable Groups Act 2006;

- 5.10.2 warrants that at all times it has and will have no reason to believe that any member of Staff is barred in accordance with the Safeguarding Vulnerable Groups Act 2006; and
- 5.10.3 shall ensure that no person is employed or otherwise engaged in the provision of the Services if that person is barred from carrying out, or whose previous conduct or records indicate that they would not be suitable to carry out, any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person.
- 5.11 The Supplier shall ensure that the Authority is kept advised at all times of any member of Staff who, subsequent to their commencement of employment as a member of Staff receives a Conviction or whose previous Convictions become known to the Supplier or whose conduct or records indicate that they are not suitable to carry out any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person. The Supplier shall only be entitled to continue to engage or employ such member of Staff with the Authority's written consent and with such safeguards being put in place as the Authority may reasonably request. Should the Authority withhold consent the Supplier shall remove such member of Staff from the provision of the Services forthwith.
- 5.12 The Supplier shall immediately provide to the Authority any information that the Authority reasonably requests to enable the Authority to satisfy itself that the obligations set out in Clause 5.7 to Clause 5.11 of this Schedule 2 (General Terms and Conditions) have been met.
- 5.13 The Authority may at any time request that the Supplier remove and replace any member of Staff from the provision of the Services, provided always that the Authority will act reasonably in making such a request. Prior to making any such request the Authority shall raise with the Supplier the Authority's concerns regarding the member of Staff in question with the aim of seeking a mutually agreeable resolution. The Authority shall be under no obligation to have such prior discussion should the Authority have concerns regarding patient or service user safety.
- 5.14 Unless otherwise confirmed by the Authority in writing, the Supplier shall ensure full compliance (to include with any implementation timelines) with any Guidance issued by the Department of Health and Social Care and/or any requirements and/or Policies issued by the Authority (to include as may be set out as part of any procurement documents leading to the award of this Contract) in relation to the adoption of, and compliance with, any scheme or schemes to verify the credentials of Supplier representatives that visit NHS premises (to include use of the Lifescience Industry Accredited Credentialing Register). Once compliance with any notified implementation timelines has been achieved by the Supplier, the Supplier shall, during the Term, maintain the required level of compliance in accordance with any such Guidance, requirements and Policies.

6 Business continuity

- 6.1 The Supplier shall use reasonable endeavours to ensure its Business Continuity Plan operates effectively alongside the Authority's business continuity plan where relevant to the supply of the IT Products and the provision of the Services. The Supplier shall also ensure that its Business Continuity Plan complies on an ongoing basis with any specific business continuity requirements, as may be set out in Schedule 5 (Specification and Tender Response Document).

6.2 Throughout the Term, the Supplier will ensure its Business Continuity Plan provides for continuity during a Business Continuity Event. The Supplier confirms and agrees such Business Continuity Plan details and will continue to detail robust arrangements that are reasonable and proportionate to:

6.2.1 the criticality of this Contract to the Authority; and

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

regarding continuity of the supply of the IT Products and the provision of the Services during and following a Business Continuity Event.

6.3 The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Contract to the Authority and the size and scope of the Supplier's business operations. The Supplier shall promptly provide to the Authority, at the Authority's written request, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that the Supplier tests its Business Continuity Plan in accordance with the requirements of this Clause 6.3 of this Schedule 2 (General Terms and Conditions) and reasonable and proportionate information regarding the outcome of such tests. The Supplier shall provide to the Authority a copy of any updated or revised Business Continuity Plan within fourteen (14) Business Days of any material update or revision to the Business Continuity Plan.

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

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

6.6 During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to supply the IT Products and provide the Services in accordance with this Contract.

7 Authority Obligations

7.1 Subject to the Supplier supplying the IT Products and providing the Services in accordance with this Contract, the Authority will pay the Supplier for the IT Products and/or Services in accordance with Clause 9 (Price and Payment) of this Schedule 2 (General Terms and Conditions).

7.2 The Authority shall, as appropriate, provide copies of or give the Supplier access to such of the Policies that are relevant to the supply of the IT Products and the provision of the Services.

7.3 The Authority shall comply with the Authority Obligations, as may be referred to in Schedule 1 (Key Provisions).

- 7.4 The Authority shall provide the Supplier with any reasonable and proportionate cooperation necessary to enable the Supplier to comply with its obligations under this Contract. The Supplier shall at all times provide reasonable advance written notification to the Authority of any such cooperation necessary in circumstances where such cooperation will require the Authority to plan for and/or allocate specific resources in order to provide such cooperation.

8 Contract management

- 8.1 Each Party shall appoint and retain a Contract Manager who shall be the primary point of contact for the other Party in relation to matters arising from this Contract. Should this Contract Manager be replaced, the Party replacing this Contract Manager shall promptly inform the other Party in writing of the name and contact details for the new Contract Manager. Any Contract Manager appointed shall be of sufficient seniority and experience to be able to make decisions on the day to day operation of this Contract. The Supplier confirms and agrees that it will be expected to work closely and cooperate fully with the Authority's Contract Manager.
- 8.2 Each Party shall ensure that its representatives (to include, without limitation, its Contract Manager) shall attend review meetings on a regular basis to review the performance of the Supplier under this Contract and to discuss matters arising generally under this Contract. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day to day operation of this Contract. Review meetings shall take place at the frequency specified in Schedule 5 (Specification and Tender Response Document). Should Schedule 5 (Specification and Tender Response Document) not state the frequency, then the first such meeting shall take place on a date to be agreed on or around the end of the first month after the Commencement Date. Subsequent meetings shall take place at monthly intervals or as may otherwise be agreed in writing between the Parties.
- 8.3 Two weeks prior to each review meeting (or at such time and frequency as may be specified in Schedule 5 (Specification and Tender Response Document) the Supplier shall provide a written contract management report to the Authority regarding the supply of the IT Products, the provision of the Services and the operation of this Contract. Unless otherwise agreed by the Parties in writing, such contract management report shall contain:
- 8.3.1 details of the performance of the Supplier when assessed in accordance with the KPIs since the last such performance report;
 - 8.3.2 details of any complaints by the Authority regarding the supply of IT Products or provision of Services and any complaints from or on behalf of patients or other service users, their nature and the way in which the Supplier has responded to such complaints since the last review meeting written report;
 - 8.3.3 the information specified in Schedule 5 (Specification and Tender Response Document);
 - 8.3.4 a status report in relation to the implementation of any current remedial proposals by either Party; and
 - 8.3.5 such other information as reasonably required by the Authority.
- 8.4 Unless specified otherwise in Schedule 5 (Specification and Tender Response Document), the Authority shall take minutes of each review meeting and shall circulate draft minutes to the

Supplier within a reasonable time following such review meeting. The Supplier shall inform the Authority in writing of any suggested amendments to the minutes within five (5) Business Days of receipt of the draft minutes. If the Supplier does not respond to the Authority within such five (5) Business Days the minutes will be deemed to be approved. Where there are any differences in interpretation of the minutes, the Parties will use their reasonable endeavours to reach agreement. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the Dispute Resolution Procedure.

- 8.5 The Supplier shall provide such management information as the Authority may request from time to time within seven (7) Business Days of the date of the request. The Supplier shall supply the management information to the Authority in such form as may be specified by the Authority and, where requested to do so, the Supplier shall also provide such management information to another Contracting Authority, whose role it is to analyse such management information in accordance with UK government policy (to include, without limitation, for the purposes of analysing public sector expenditure and planning future procurement activities) ("**Third Party Body**"). The Supplier confirms and agrees that the Authority may itself provide the Third Party Body with management information relating to the IT Products and Services purchased, any payments made under this Contract, and any other information relevant to the operation of this Contract.
- 8.6 Upon receipt of management information supplied by the Supplier to the Authority and/or the Third Party Body, or by the Authority to the Third Party Body, the Parties hereby consent to the Third Party Body and the Authority:
- 8.6.1 storing and analysing the management information and producing statistics; and
- 8.6.2 sharing the management information or any statistics produced using the management information with any other Contracting Authority.
- 8.7 If the Third Party Body and/or the Authority shares the management information or any other information provided under Clause 8.6 of this Schedule 2 (General Terms and Conditions), any Contracting Authority receiving the management information shall, where such management information is subject to obligations of confidence under this Contract and such management information is provided direct by the Authority to such Contracting Authority, be informed of the confidential nature of that information by the Authority and shall be requested by the Authority not to disclose it to any body that is not a Contracting Authority (unless required to do so by Law).
- 8.8 The Authority may make changes to the type of management information which the Supplier is required to supply and shall give the Supplier at least one (1) month's written notice of any changes.

9 **Price and Payment**

- 9.1 The Charges shall be calculated as set out in Schedule 6 (Charging and Invoicing) and payable from the dates set out therein.
- 9.2 Unless otherwise stated in Schedule 6 (Charging and Invoicing) the Charges:
- 9.2.1 shall remain fixed during the Term; and

9.2.2 in respect of the IT Products and Services, is the entire price payable by the Authority to the Supplier in respect of the provision of the IT Products and Services and includes, without limitation:

- (i) packaging, packing materials, addressing, labelling, loading, delivery to and unloading at the delivery location, the costs of any import or export licences, all appropriate taxes (excluding VAT), duties and tariffs, any expenses arising from import and export administration, any installation costs and associated works, the costs of all associated documentation and information supplied or made accessible to the Authority in any media, and any training in relation to the use, storage, handling or operation of the IT Products and Services;
- (ii) any royalties, licence fees or similar expenses in respect of the making, use or exercise by the Supplier of any Intellectual Property Rights for the purposes of performing this Contract, and any Software Licences granted to the Authority; and
- (iii) costs and expenses in relation to supplies and materials used by the Supplier or any third party in the manufacture of the IT Products or provision of the Services, and any other costs incurred by the Supplier in association with the manufacture, supply or installation of the IT Products and provision of the Services; and
- (iv) is the entire price payable by the Authority to the Supplier in respect of the IT Products and Services and includes, without limitation, all consumables used by the Supplier, travel costs, accommodation expenses, the cost of Staff and all appropriate taxes (excluding VAT), duties and tariffs and any expenses arising from import and export administration.

9.3 Unless stated otherwise in the Schedule 6 (Charging and Invoicing):

9.3.1 where Schedule 1 (Key Provisions) confirm that the payment profile for this Contract is monthly in arrears, the Supplier shall invoice the Authority, within fourteen (14) days of the end of each calendar month, the relevant proportion of the Charges in respect of the IT Products supplied or the Services provided in compliance with this Contract in the preceding calendar month; or

9.3.2 where Clauses 9.3.1 or 9.3.2 of this Schedule 2 (General Terms and Conditions) do not apply, the Supplier shall invoice the Authority for the IT Products and Services in accordance with Schedule 6 (Charging and Invoicing).

Each invoice shall contain such information and be addressed to such individual as the Authority may inform the Supplier from time to time.

9.4 The Charges are exclusive of VAT, which, if properly chargeable, the Authority shall pay at the prevailing rate subject to receipt from the Supplier of a valid and accurate VAT invoice. Such VAT invoices shall show the VAT calculations as a separate line item.

9.5 Where the Charges are or may become subject to any pricing requirements of any voluntary and/or statutory pricing regulation schemes, the Parties shall comply with such pricing requirements as required by Law from time to time and specifically as required by the statutory

pricing regulation scheme (and any future regulation) or to the extent applicable to the Supplier from time to time as an industry member of a voluntary scheme, including any reductions in price by reason of the application of such schemes.

- 9.6 The Authority shall verify and pay each valid and undisputed invoice received in accordance with Clause 9.3 of this Schedule 2 (General Terms and Conditions) within thirty (30) days of receipt of such invoice at the latest. However, the Authority shall use its reasonable endeavours to pay such undisputed invoices sooner in accordance with any applicable government prompt payment targets. If there is undue delay in verifying the invoice in accordance with this Clause 9.6 of this Schedule 2 (General Terms and Conditions), the invoice shall be regarded as valid and undisputed for the purposes this Clause 9.6 of this Schedule 2 (General Terms and Conditions) after a reasonable time has passed.
- 9.7 Where the Authority raises a query with respect to an invoice the Parties shall liaise with each other and agree a resolution to such query within thirty (30) days of the query being raised. If the Parties are unable to agree a resolution within thirty (30) days the query shall be referred to dispute resolution in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, the Authority shall not be in breach of any of its payment obligations under this Contract in relation to any queried or disputed invoice sums unless the process referred to in this Clause 9.7 of this Schedule 2 (General Terms and Conditions) has been followed and it has been determined that the queried or disputed invoice amount is properly due to the Supplier and the Authority has then failed to pay such sum within a reasonable period following such determination.
- 9.8 The Supplier shall pay to the Authority any Service Credits and/or other sums and/or deductions (to include, without limitation, deductions relating to a reduction in the Charges) that may become due in accordance with the provisions of this Contract. For the avoidance of doubt, the Authority may invoice the Supplier for such sums or deductions at any time in the event that they have not automatically been credited to the Authority in accordance with the provisions of this Contract. Such invoice shall be paid by the Supplier within thirty (30) days of the date of such invoice.
- 9.9 The Authority reserves the right to set-off:
- 9.9.1 any monies due to the Supplier from the Authority as against any monies due to the Authority from the Supplier under this Contract; and
- 9.9.2 any monies due to the Authority from the Supplier as against any monies due to the Supplier from the Authority under this Contract.
- 9.10 Where the Authority is entitled to receive any sums (including, without limitation, any costs, charges or expenses) from the Supplier under this Contract, the Authority may invoice the Supplier for such sums. Such invoices shall be paid by the Supplier within thirty (30) days of the date of such invoice.
- 9.11 If a Party fails to pay any undisputed sum properly due to the other Party under this Contract, the Party due such sum shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

10 **Warranties**

10.1 The Supplier represents and warrants on the Commencement Date and continuing for the duration of the Term:

- 10.1.1 the IT Products and Services shall be suitable for the purposes and/or treatments as referred to in Schedule 5 (Specification and Tender Response Document), be of satisfactory quality, fit for their intended purpose and shall comply with the standards and requirements set out in this Contract;
- 10.1.2 unless otherwise confirmed by the Authority in writing (to include, without limitation, as part of Schedule 5 (Specification and Tender Response Document), it will ensure that the IT Products and Services and any products purchased by the Supplier partially or wholly for the purpose of providing the Services comply with requirements five (5) to eight (8), as set out in Annex 1 of the Cabinet Office Procurement Policy Note – Implementing Article 6 of the Energy Efficiency Directive (Action Note 07/14 3rd June 2014), to the extent such requirements apply to the relevant IT Products and Services;
- 10.1.3 it shall ensure that prior to actual delivery to the Authority the IT Products and/or Services are manufactured, stored, distributed and/or performed using reasonable skill and care and in accordance with Good Industry Practice;
- 10.1.4 without prejudice to the generality of the warranty at Clause 10.1.3 of this Schedule 2 (General Terms and Conditions), it shall ensure that, the IT Products and/or Services are manufactured, stored, distributed and/or performed in accordance with good manufacturing practice and/or good warehousing practice and/or good distribution practice, as may be defined under any Law, Guidance and/or Good Industry Practice relevant to the IT Products and/or Services and in accordance with any specific instructions of the manufacturer or developer of the IT Products and/or Services;
- 10.1.5 it shall ensure that all facilities used in the manufacture, development, storage and distribution of the IT Products and/or performance of the Services are kept in a state and condition necessary to enable the Supplier to comply with its obligations in accordance with this Contract;
- 10.1.6 it has, or the manufacturer or developer of the IT Products has, manufacturing and warehousing capacity sufficient to comply with its obligations under this Contract;
- 10.1.7 it will ensure sufficient stock levels to comply with its obligations under this Contract;
- 10.1.8 it shall ensure that the transport and delivery of the IT Products means that they are delivered in good and useable condition;
- 10.1.9 where the IT Products are required to be stored at a certain temperature or held in certain conditions, it shall provide, or shall procure the provision of, complete and accurate temperature/condition records for each delivery of the IT Products during the period of transport and/or storage and/or implementation of the IT Products from the point of manufacture or development to the point of delivery to the Authority;

- 10.1.10 where there is any instruction information, including without limitation patient information leaflets, that accompany the IT Products and/or Services, it shall provide a sufficient number of copies to the Authority and provide updated copies should the instruction information change at any time during the Term;
- 10.1.11 all IT Products and/or Services delivered to and/or performed for the Authority shall comply with any shelf life requirements set out in this Contract;
- 10.1.12 it shall not make any significant changes to the IT Products and/or Services without the prior written consent of the Authority;
- 10.1.13 any equipment it uses in the development, manufacture, implementation, delivery, or installation of the IT Products and/or Services shall comply with all relevant Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification;
- 10.1.14 it has and shall as relevant maintain all rights, consents, authorisations, licences and accreditations required to supply the IT Products (including the granting of the Software Licences) and/or perform the Services;
- 10.1.15 it has, and shall ensure its Staff shall have, and shall maintain throughout the Term, all appropriate licences and registrations with the relevant bodies to fulfil its obligations under this Contract;
- 10.1.16 it has all rights, consents, authorisations, licences and accreditations required to provide the IT Products and/or Services and shall maintain such consents, authorisations, licences and accreditations throughout the Term;
- 10.1.17 it has and shall maintain a properly documented system of quality controls and processes covering all aspects of its obligations under this Contract and/or under Law and/or Guidance and shall at all times comply with such quality controls and processes;
- 10.1.18 it shall not make any significant changes to its system of quality controls and processes in relation to the IT Products and/or Services without notifying the Authority in writing at least twenty one (21) days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);
- 10.1.19 where any act of the Supplier requires the notification to and/or approval by any regulatory or other competent body in accordance with any Law and Guidance, the Supplier shall comply fully with such notification and/or approval requirements;
- 10.1.20 that the Supplier is the exclusive, legal and beneficial owner of all rights, title and interest in the Intellectual Property Rights vested in the IT Products and/or that it has obtained all authorisations, consents and licences necessary for the provision of the IT Products and/or required for the performance of the Services under this Contract;
- 10.1.21 receipt of the IT Products, Deliverables and/or Services by or on behalf of the Authority and use of the IT Products, Deliverables and/or Services or of any other item or information supplied or made available to the Authority will not infringe

any third party rights, to include without limitation any Intellectual Property Rights;

- 10.1.22 it will comply with all Law, Guidance, Policies and the Supplier Code of Conduct in so far as is relevant to the supply of the IT Products and/or the provision of the Services;
- 10.1.23 it will provide the Services using reasonable skill and care and in accordance with Good Industry Practice and shall fulfil all requirements of this Contract using appropriately skilled, trained and experienced staff;
- 10.1.24 unless otherwise set out in Schedule 5 (Specification and Tender Response Document) and/or as otherwise agreed in writing by the Parties, it has and/or shall procure all resources, equipment, consumables and other items and facilities required to provide the IT Products and/or the Services;
- 10.1.25 without limitation to the generality of Clause 10.1.22 of this Schedule 2 (General Terms and Conditions), it shall comply with all health and safety processes, requirements safeguards, controls, and training obligations in accordance with its own operational procedures, Law, Guidance, Policies, Good Industry Practice, the requirements of Schedule 5 (Specification and Tender Response Document) and any notices or instructions given to the Supplier by the Authority and/or any competent body, as relevant to the supply of the IT Products, the provision of the Services and the Supplier's access to the Premises and Locations in accordance with this Contract;
- 10.1.26 without prejudice to any specific notification requirements set out in this Contract, it will promptly notify the Authority of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the IT Products and/or the performance of the Services and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;
- 10.1.27 any equipment it uses in the provision of the IT Products and/or Services shall comply with all relevant Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification and shall remain the Supplier's risk and responsibility at all times;
- 10.1.28 it shall use Good Industry Practice to ensure that any information and communications technology systems and/or related hardware and/or software it uses are free from corrupt data, viruses, worms and any other computer programs or code which might cause harm or disruption to the Authority's information and communications technology systems and use reasonable endeavours to avoid the introduction of Malicious Software in respect of the provision of the IT Products and performance of the Services and the interface with the Authority IT Infrastructure;
- 10.1.29 it shall: (i) comply with all relevant Law and Guidance and shall use Good Industry Practice to ensure that there is no slavery or human trafficking in its supply chains; and (ii) notify the Authority immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains;

- 10.1.30 it shall at all times conduct its business in a manner that is consistent with any anti-slavery Policy of the Authority and shall provide to the Authority any reports or other information that the Authority may request as evidence of the Supplier's compliance with this Clause 10.1.30 and/or as may be requested or otherwise required by the Authority in accordance with its anti-slavery Policy;
 - 10.1.31 it will fully and promptly respond to all requests for information and/or requests for answers to questions regarding this Contract, the IT Products, the provision of the Services, any complaints and any Disputes at the frequency, in the timeframes and in the format as requested by the Authority from time to time (acting reasonably);
 - 10.1.32 all information included within the Supplier's responses to any documents issued by the Authority as part of the procurement relating to the award of this Contract (to include, without limitation, as referred to in Schedule 5 (Specification and Tender Response Document) and Schedule 6 (Charging and Invoicing) and all accompanying materials is accurate;
 - 10.1.33 it has the right and authority to enter into this Contract and that it has the capability and capacity to fulfil its obligations under this Contract;
 - 10.1.34 it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Contract and the documents referred to in this Contract;
 - 10.1.35 all necessary actions to authorise the execution of and performance of its obligations under this Contract have been taken before such execution;
 - 10.1.36 there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Supplier;
 - 10.1.37 there are no material agreements existing to which the Supplier is a party which prevent the Supplier from entering into or complying with this Contract;
 - 10.1.38 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Contract; and
 - 10.1.39 it has satisfied itself as to the nature and extent of the risks assumed by it under this Contract and has gathered all information necessary to perform its obligations under this Contract and all other obligations assumed by it.
- 10.2 Where the sale, manufacture, assembly, importation, storage, distribution, supply, delivery, or installation of the IT Products under this Contract relates to medical devices and/or medicinal products (both as defined under any relevant Law and Guidance), the Supplier warrants and undertakes that it will comply with any such Law and Guidance relating to such activities in relation to such medical devices and/or medicinal products. In particular, but without limitation, the Supplier warrants that:
- 10.2.1 at the point such IT Products are supplied to the Authority, all such IT Products which are medical devices shall have valid CE marking as required by Law and Guidance and that all relevant marking, authorisation, registration, approval and documentation requirements as required under Law and Guidance relating to the

sale, manufacture, assembly, importation, storage, distribution, supply, delivery, or installation of such IT Products shall have been complied with. Without limitation to the foregoing provisions of this Clause 10.2 of this Schedule 2 (General Terms and Conditions), the Supplier shall, upon written request from the Authority, make available to the Authority evidence of the grant of such valid CE marking, and evidence of any other authorisations, registrations, approvals or documentation required;

- 10.2.2 at the point such IT Products are supplied to the Authority, all such IT Products which are medicinal products shall have a valid marketing authorisation as required by Law and Guidance in order to supply the IT Products to the Authority and that all relevant authorisation, labelling, registration, approval and documentation requirements as required under Law and Guidance relating to the sale, manufacture, assembly, importation, storage, distribution, supply or delivery of such IT Products shall have been complied with. Without limitation to the foregoing provisions of this Clause 10.2 of this Schedule 2 (General Terms and Conditions), the Supplier shall, upon written request from the Authority, make available to the Authority evidence of the grant of any required valid marketing authorisation, and evidence of any other authorisations, labelling, registrations, approvals or documentation required; and
- 10.2.3 it shall maintain, and no later than any due date when it would otherwise expire, obtain a renewal of, any authorisation, registration or approval (including without limitation CE marking and/or marketing authorisation) required in relation to the IT Products in accordance with Law and Guidance until such time as the IT Products expire or the Authority notifies the Supplier in writing that it has used or disposed of all units of the IT Products supplied under this Contract.
- 10.3 If the Supplier is in breach of Clause 10.2 of this Schedule 2 (General Terms and Conditions), then, without prejudice to any other right or remedy of the Authority, the Authority shall be entitled to reject and/or return the IT Products and the Supplier shall, subject to Clause 13.2 (Limitation of Liability) of this Schedule 2 (General Terms and Conditions), indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the Authority as a result of such breach.
- 10.4 The Supplier agrees to use reasonable endeavours to assign to the Authority upon request the benefit of any warranty, guarantee or similar right which it has against any third party manufacturer or supplier of the IT Products and/or Services in full or part.
- 10.5 The Supplier warrants that all information, data and other records and documents required by the Authority as set out in Schedule 5 (Specification and Tender Response Document) shall be submitted to the Authority in the format and in accordance with any timescales set out in Schedule 5 (Specification and Tender Response Document).
- 10.6 Without prejudice to the generality of Clause 10.5 of this Schedule 2 (General Terms and Conditions), the Supplier acknowledges that a failure by the Supplier to submit accurate invoices and other information on time to the Authority may result in the commissioner of health services, or other entity responsible for reimbursing costs to the Authority, delaying or failing to make relevant payments to the Authority. Accordingly, the Supplier warrants that it shall submit accurate invoices and other information on time to the Authority.

- 10.7 The Supplier warrants and undertakes to the Authority that it shall comply with any eProcurement Guidance as it may apply to the Supplier and shall carry out all reasonable acts required of the Supplier to enable the Authority to comply with such eProcurement Guidance.
- 10.8 The Supplier warrants and undertakes to the Authority that, as at the Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non Compliance. If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 10.8.1 notify the Authority in writing of such fact within five (5) Business Days of its occurrence; and
- 10.8.2 promptly provide to the Authority:
- (i) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- 10.9 The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that any of the warranties set out in Clause 10 of this Schedule 2 (General Terms and Conditions) have been breached or there is a risk that any warranties may be breached.
- 10.10 Any warranties provided under this Contract are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.

11 **Intellectual property**

- 11.1 Without prejudice to Clause 29.1 of Schedule 1 (Key Provisions) and subject always to Schedule 11 (IT Products and Software Licences), the Supplier hereby grants to the Authority, for the life of the use of IT Products by the Authority or receipt of the Services by the Authority, an irrevocable, royalty-free, non-exclusive licence of any Intellectual Property Rights required for the purposes of receiving and using, and to the extent necessary to receive and use, the IT Products (to include any associated technical or other documentation and information supplied or made accessible to the Authority in any media) and/or receive the Services in accordance with this Contract.
- 11.2 Unless specified otherwise in the Key Provisions and/or in the Specification and Tender Response Document, the Supplier hereby grants to the Authority, for the life of the use by the Authority of any Deliverables supplied to the Authority in any format as part of the IT Products and/or Services, an irrevocable, royalty-free, non-exclusive licence to use, modify, adapt or enhance such items in the course of the Authority's normal business operations. For the avoidance of doubt, unless specified otherwise in Schedule 1 (Key Provisions) and/or in Schedule 5 (Specification and Tender Response Document), the Authority shall have no rights to commercially exploit (e.g. by selling to third parties) any deliverables, matter or any other output supplied to the Authority in any format as part of the Services.

12 Indemnity

12.1 Without prejudice to any other express indemnities set out in this Contract, the Supplier shall be liable to the Authority for, and shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings in respect of:

12.1.1 any injury or allegation of injury to any person, including injury resulting in death;

12.1.2 any loss of or damage to property (whether real or personal);

12.1.3 any breach of Clauses 10.1.20 and/or 10.1.21 (Warranties) and/or Clause 11 (Intellectual Property) of this Schedule 2 (General Terms and Conditions);

12.1.4 any loss, damage or destruction of Authority Data and/or Confidential Information of the Authority;

12.1.5 any disclosure or dissemination of Confidential Information of the Authority; and/or

12.1.6 any failure by the Supplier to commence the delivery of the Services by the Services Commencement Date and/or failure to achieve a Key Milestone;

that arise or result from the Supplier's negligent acts or omissions or breach of Contract in connection with the performance of this Contract including the supply of IT Products and provision of the Services, except to the extent that such loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings have been caused by any act or omission by, or on behalf of, or in accordance with the instructions of, the Authority.

12.2 Liability under Clauses 12.1.1, 12.1.3, 12.1.4, 12.1.5 and 17.13 (Staff information and application of TUPE at the end of this Contract) of this Schedule 2 (General Terms and Conditions) and Clause 2.6 (Data Protection) of Schedule 3 (Information and Data Provisions) shall be unlimited. Liability under Clauses 3 (Inspection, retention, return and recall of the IT Products), 10.3 (Warranties) and 12.1.2 of this Schedule 2 (General Terms and Conditions) shall be subject to the limitation of liability set out in Clause 13 (Limitation of Liability) of this Schedule 2 (General Terms and Conditions).

12.3 In relation to all third party claims against the Authority, which are the subject of any indemnity given by the Supplier under this Contract, the Authority shall use its reasonable endeavours, upon a written request from the Supplier, to transfer the conduct of such claims to the Supplier unless restricted from doing so. Such restrictions may include, without limitation, any restrictions:

12.3.1 relating to any legal, regulatory, governance, information governance, or confidentiality obligations on the Authority; and/or

12.3.2 relating to the Authority's membership of any indemnity and/or risk pooling arrangements.

Such transfer shall be subject to the Parties agreeing appropriate terms for such conduct of the third party claim by the Supplier (to include, without limitation, the right of the Authority

to be informed and consulted on the ongoing conduct of the claim following such transfer and any reasonable cooperation required by the Supplier from the Authority).

12.4 The Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and keep the Authority indemnified, against all Losses incurred by, awarded against or agreed to be paid arising from an IPRs Claim.

12.5 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:

12.5.1 procure for the Authority the right to continue using the relevant item which is subject to the IPRs Claim; or

12.5.2 replace or modify the relevant item with non-infringing substitutes provided that:

(i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;

(ii) the replaced or modified item does not have an adverse effect on any other services or the Authority IT Infrastructure;

(iii) there is no additional cost to the Authority; and

(iv) the terms and condition of this Contract shall apply to the replaced or modified Services.

12.6 If the Supplier elects to procure a licence in accordance with Clause 12.5.1 or to modify or replace an item pursuant to Clause 12.5.2, but this has not avoided or resolved the IPRs Claim, then:

12.6.1 the Authority may terminate this Contract (if subsisting) with immediate effect by written notice to the Supplier; and

12.6.2 without prejudice to the indemnity set out in Clause 12.1 and/or 12.4, 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.

13 **Limitation of liability**

13.1 Nothing in this Contract shall exclude, restrict or otherwise limit the liability of either Party:

13.1.1 for death or personal injury resulting from its negligence;

13.1.2 for fraud or fraudulent misrepresentation; or

13.1.3 in any other circumstances where liability may not be limited or excluded under any applicable law.

13.2 Subject to Clauses 12.2 (Indemnity), 13.1, 13.3 and 13.5 of this Schedule 2 (General Terms and Conditions), the total liability of each Party to the other under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to the greater of: (a) five million GBP (£5,000,000); or (b) one

hundred and twenty five percent (125%) of the total Charges paid or payable by the Authority to the Supplier for the IT Products and Services.

- 13.3 There shall be no right to claim Losses under or in connection with this Contract whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any Losses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged. For the avoidance of doubt, without limitation, the Parties agree that for the purposes of this Contract the following costs, expenses and/or loss of income shall be direct recoverable Losses (to include under any relevant indemnity) provided such costs, expenses and/or loss of income are properly evidenced by the claiming Party:

13.3.1 extra costs incurred purchasing replacement or alternative IT Products and/or services substantially similar or the same in nature as the IT Products and Services;

13.3.2 any additional operational and/or administrative costs and expenses incurred by the Authority;

13.3.3 costs incurred in relation to any IT Products safety recall;

13.3.4 costs associated with advising, screening, testing, treating, retreating or otherwise providing healthcare to patients;

13.3.5 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty;

13.3.6 the costs of extra management time; and/or

13.3.7 loss of income due to an inability to provide health care services,

in each case to the extent to which such costs, expenses and/or loss of income arise or result from the other Party's breach of contract, negligent act or omission, breach of statutory duty, and/or other liability under or in connection with this Contract.

- 13.4 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which that Party is entitled to bring a claim against the other pursuant to this Contract.

- 13.5 If the total Charges paid or payable by the Authority to the Supplier over the Term:

13.5.1 is less than or equal to one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 (General Terms and Conditions) shall be replaced with one million pounds (£1,000,000);

13.5.2 is less than or equal to three million pounds (£3,000,000) but greater than one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 (General Terms and Conditions) shall be replaced with three million pounds (£3,000,000); and

13.5.3 is equal to, exceeds or will exceed ten million pounds (£10,000,000), but is less than fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 (General Terms and Conditions) shall be replaced with ten million pounds (£10,000,000) and the figure of one hundred

and twenty five percent (125%) at Clause 13.2 of this Schedule 2 (General Terms and Conditions) shall be deemed to have been deleted and replaced with one hundred and fifteen percent (115%).

- 13.6 Clause 13 of this Schedule 2 (General Terms and Conditions) shall survive the expiry of or earlier termination of this Contract for any reason.

14 **Insurance**

- 14.1 Subject to Clauses 14.2 and 14.3 of this Schedule 2 (General Terms and Conditions) and unless otherwise confirmed in writing by the Authority, as a minimum level of protection, the Supplier shall put in place and/or maintain in force at its own cost with a reputable commercial insurer, insurance arrangements in respect of employer's liability, public liability, product liability and professional indemnity in accordance with Good Industry Practice with the minimum cover per claim of the greater of five million pounds (£5,000,000) or any sum as required by Law unless otherwise agreed with the Authority in writing. These requirements shall not apply to the extent that the Supplier is a member and maintains membership of each of the indemnity schemes run by the NHS Litigation Authority.
- 14.2 Without limitation to any insurance arrangements as required by Law, the Supplier shall put in place and/or maintain the different types and/or levels of indemnity arrangements explicitly required by the Authority, if specified in Schedule 1 (Key Provisions).
- 14.3 Provided that the Supplier maintains all indemnity arrangements required by Law, the Supplier may self-insure in order to meet other relevant requirements referred to at Clauses 14.1 and 14.2 of this Schedule 2 (General Terms and Conditions) on condition that such self-insurance arrangements offer the appropriate levels of protection and are approved by the Authority in writing prior to the Commencement Date.
- 14.4 The amount of any indemnity cover and/or self-insurance arrangements shall not relieve the Supplier of any liabilities under this Contract. It shall be the responsibility of the Supplier to determine the amount of indemnity and/or self-insurance cover that will be adequate to enable it to satisfy its potential liabilities under this Contract. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover and/or self-insurance arrangement is insufficient to cover the settlement of any claim.
- 14.5 The Supplier warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which its insurance cover may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances repayable in whole or in part.
- 14.6 The Supplier shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to the Authority that insurance arrangements taken out by the Supplier pursuant to Clause 14 of this Schedule 2 (General Terms and Conditions) and Schedule 1 (Key Provisions) are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
- 14.7 Upon the expiry or earlier termination of this Contract, the Supplier shall ensure that any ongoing liability it has or may have arising out of this Contract shall continue to be the subject of appropriate indemnity arrangements for the period of twenty one (21) years from termination or expiry of this Contract or until such earlier date as that liability may reasonably be considered to have ceased to exist.

15 **Term and Termination**

15.1 This Contract shall commence on the Commencement Date and, unless terminated earlier in accordance with the terms of this Contract or the general law, shall continue until the end of the Term.

15.2 The Authority shall be entitled to extend the Term on one or more occasions by giving the Supplier written notice no less than three (3) months prior to the date on which this Contract would otherwise have expired, provided that the duration of this Contract shall be no longer than the total term specified in Schedule 1 (Key Provisions).

15.3 In the case of a breach of any of the terms of this Contract by either Party that is capable of remedy (including, without limitation any breach of any KPI and, subject to Clause 9.7 (Price and Payment) of this Schedule 2 (General Terms and Conditions), any breach of any payment obligations under this Contract), the non-breaching Party may, without prejudice to its other rights and remedies under this Contract, issue a Breach Notice and shall allow the Party in breach the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Party in breach ("**Remedial Proposal**") before exercising any right to terminate this Contract in accordance with Clause 15.4(ii) of this Schedule 2 (General Terms and Conditions). Such Remedial Proposal must be agreed with the non-breaching Party (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Party in breach in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Party in breach to:

15.3.1 put forward and agree a Remedial Proposal with the non-breaching Party in relation to the relevant default or breach within a period of ten (10) Business Days (or such other period as the non-breaching Party may agree in writing) from written notification of the relevant default or breach from the non-breaching Party;

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

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

shall be deemed, for the purposes of Clause 15.4(ii) of this Schedule 2 (General Terms and Conditions), a material breach of this Contract by the Party in breach not remedied in accordance with an agreed Remedial Proposal.

15.4 Either Party may terminate this Contract by issuing a Termination Notice to the other Party if such other Party commits a material breach of any of the terms of this Contract which is:

(i) not capable of remedy; or

(ii) in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal.

15.5 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier if:

- 15.5.1 the Supplier has not reached the Actual Operational Services Commencement Date by the Long Stop Date;
 - 15.5.2 the Supplier, or any third party guaranteeing the obligations of the Supplier under this Contract, ceases or threatens to cease carrying on its business; suspends making payments on any of its debts or announces an intention to do so; is, or is deemed for the purposes of any Law to be, unable to pay its debts as they fall due or insolvent; enters into or proposes any composition, assignment or arrangement with its creditors generally; takes any step or suffers any step to be taken in relation to its winding-up, dissolution, administration (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) otherwise than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation; has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed (in each case, whether out of court or otherwise) in respect of it or any of its assets; has any security over any of its assets enforced; or any analogous procedure or step is taken in any jurisdiction;
 - 15.5.3 the Supplier undergoes a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 (other than for an intra-group change of control) without the prior written consent of the Authority and the Authority shall be entitled to withhold such consent if, in the reasonable opinion of the Authority, the proposed change of control will have a material impact on the performance of this Contract or the reputation of the Authority;
 - 15.5.4 the Supplier purports to assign, Sub-contract, novate, create a trust in or otherwise transfer or dispose of this Contract in breach of Clause 28.1 (Assignment, Novation and Sub-Contracting) of this Schedule 2 (General Terms and Conditions);
 - 15.5.5 pursuant to and in accordance with Schedule 1 (Key Provisions) and Clauses 15.6, 23.8 (Force Majeure); 25.2, 25.4 (Conflicts of interest and prevention of fraud); and 29.2 (Prohibited Acts) of this Schedule 2 (General Terms and Conditions) and Clause 4 of Schedule 17 (Financial Distress); or
 - 15.5.6 the warranty given by the Supplier pursuant to Clause 10.8 (Warranties) of this Schedule 2 (General Terms and Conditions) is materially untrue, the Supplier commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause 10.8 (Warranties) of this Schedule 2 (General Terms and Conditions), or the Supplier fails to provide details of proposed mitigating factors as required by Clause 10.8 (Warranties) of this Schedule 2 (General Terms and Conditions) that in the reasonable opinion of the Authority are acceptable.
- 15.6 If the Authority, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Supplier and/or any third party guaranteeing the obligations of the Supplier under this Contract and/or any material Sub-contractor of the Supplier when compared to any information provided to and/or assessed by the Authority as part of any procurement process or other due diligence leading to the award of this Contract to the Supplier or the entering into a Sub-contract by the Supplier, the following process shall apply:

- 15.6.1 the Authority may (but shall not be obliged to) give notice to the Supplier requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Contract on such reasonable and proportionate terms as the Authority may require within a reasonable time period as specified in such notice;
- 15.6.2 a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 15.6 of this Schedule 2 (General Terms and Conditions) in accordance with any reasonable timescales specified in any such notice issued by the Authority shall be deemed a breach of this Contract by the Supplier and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and
- 15.6.3 a failure to resolve such breach in accordance with such Dispute Resolution Procedure by the end of the escalation stage of such process shall entitle, but shall not compel, the Authority to terminate this Contract in accordance with Clause 15.4(i) of this Schedule 2 (General Terms and Conditions).

In order that the Authority may act reasonably in exercising its discretion in accordance with Clause 15.6 of this Schedule 2 (General Terms and Conditions), the Supplier shall provide the Authority with such reasonable and proportionate up-to-date financial or other information relating to the Supplier or any relevant third party entity upon request.

- 15.7 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier where:
 - 15.7.1 this Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure;
 - 15.7.2 the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract;
 - 15.7.3 this Contract should not have been awarded to the Supplier in view of a serious infringement of obligations under European law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU; or
 - 15.7.4 there has been a failure by the Supplier and/or one of its Sub-contractors to comply with legal obligations in the fields of environmental, social or labour Law. Where the failure to comply with legal obligations in the fields of environmental, social or labour Law is a failure by one of the Supplier's Sub-contractors, the Authority may request the replacement of such Sub-contractor and the Supplier shall comply with such request as an alternative to the Authority terminating this Contract under this Clause 15.7.4 of this Schedule 2 (General Terms and Conditions).
- 15.8 If the Authority novates this Contract to any body that is not a Contracting Authority, from the effective date of such novation, the rights of the Authority to terminate this Contract in accordance with Clause 15.5.2 to Clause 15.5.4 of this Schedule 2 (General Terms and Conditions) shall be deemed mutual termination rights and the Supplier may terminate this Contract by issuing a Termination Notice to the entity assuming the position of the Authority

if any of the circumstances referred to in such Clauses apply to the entity assuming the position of the Authority.

- 15.9 Within twelve (12) months of the Commencement Date or such other date as agreed by the Parties in writing, the Supplier shall develop and agree an Exit Plan (as defined in Schedule 19 (Exit Management)) with the Authority consistent with the Exit Requirements, which shall ensure continuity of the Services on expiry or earlier termination of this Contract. The Supplier shall provide the Authority with the first draft of an Exit Plan within six (6) months of the Commencement Date or such other date as agreed by the Parties in writing. The Parties shall review and, as appropriate, update the Exit Plan on each anniversary of the Commencement Date of this Contract. If the Parties cannot agree an Exit Plan in accordance with the timescales set out in this Clause 15.9 of this Schedule 2 (General Terms and Conditions) (such agreement not to be unreasonably withheld or delayed), such failure to agree shall be deemed a Dispute, which shall be referred to and resolved in accordance with the Dispute Resolution Procedure.

16 Consequences of expiry or early termination of this Contract

- 16.1 Subject to the provision set out in Clause 16.6 of this Schedule 2 (General Terms and Conditions), upon expiry or earlier termination of this Contract, the Authority agrees to pay the Supplier for:
- 16.1.1 the IT Products which have been supplied by the Supplier and not rejected by the Authority in accordance with this Contract prior to the expiry or earlier termination of this Contract; and
 - 16.1.2 the Services which have been completed by the Supplier in accordance with this Contract prior to expiry or earlier termination of this Contract.
- 16.2 Immediately following expiry or earlier termination of this Contract and/or in accordance with any timescales as set out in the agreed Exit Plan:
- 16.2.1 the Supplier shall comply with its obligations under any agreed Exit Plan;
 - 16.2.2 save for Personal Data, all other data and documents and records (whether stored electronically or otherwise) relating in whole or in part to the IT Products and/or Services, including without limitation relating to patients or other service users, and all other items provided on loan or otherwise to the Supplier by the Authority shall be delivered by the Supplier to the Authority provided that the Supplier shall be entitled to keep copies to the extent that: (a) the content does not relate solely to this Contract; (b) the Supplier is required by Law and/or Guidance to keep copies; or (c) the Supplier was in possession of such data, documents and records prior to the Commencement Date; and
 - 16.2.3 any Personal Data Processed by the Supplier on behalf of the Authority shall be returned to the Authority or destroyed in accordance with the relevant provisions of the Data Protection Protocol.
- 16.3 The Supplier shall retain all data relating to the provision of the IT Products and/or performance of the Services that are not transferred or destroyed pursuant to Clause 16.2 of this Schedule 2 (General Terms and Conditions) for the period set out in Clause 24.1 (Records, retention and right of audit) of this Schedule 2 (General Terms and Conditions).

- 16.4 The Supplier shall cooperate fully with the Authority or, as the case may be, any Replacement Supplier during any re-procurement and handover period prior to and following the expiry or earlier termination of this Contract. This cooperation shall extend to providing access to all information relevant to the operation of this Contract, as reasonably required by the Authority to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements.
- 16.5 Immediately upon expiry or earlier termination of this Contract any property license or lease entered into in accordance with Clause 4.4 of this Schedule 2 (General Terms and Conditions) shall automatically terminate.
- 16.6 If the Authority terminates this Contract in accordance with Clause 15.5.1 (Term and Termination) of this Schedule 2 (General Terms and Conditions), the Authority shall be entitled to a refund of any sums paid under this Contract provided the Authority informs the Supplier in writing of its intention to claim such refund no later than thirty (30) days of the effective date of such termination. Should the Authority seek a refund in respect of IT Products already delivered, the Authority shall return such IT Products to the Supplier at the Supplier's written request and at the Supplier's cost and expense.
- 16.7 The expiry or earlier termination of this Contract for whatever reason shall not affect any rights or obligations of either Party which accrued prior to such expiry or earlier termination.
- 16.8 The expiry or earlier termination of this Contract shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.
- 16.9 The Parties shall comply with their respective obligations in Schedule 19 (Exit Management).

17 Staff information and the application of TUPE at the end of the Contract

- 17.1 Upon the day which is no greater than nine (9) months before the expiry of this Contract or as soon as the Supplier is aware of the proposed termination of this Contract, the Supplier shall, within twenty eight (28) days of receiving a written request from the Authority and to the extent permitted by Law, supply to the Authority and keep updated all information required by the Authority as to the terms and conditions of employment and employment history of any Staff (including all employee liability information identified in regulation 11 of TUPE) and the Supplier shall warrant such information is full, complete and accurate.
- 17.2 No later than twenty eight (28) days prior to the Subsequent Transfer Date, the Supplier shall or shall procure that any Sub-contractor shall provide a final list to the Successor and/or the Authority, as appropriate, containing the names of all the Subsequent Transferring Employees whom the Supplier or Sub-contractor expects will transfer to the Successor or the Authority and all employee liability information identified in regulation 11 of TUPE in relation to the Subsequent Transferring Employees.
- 17.3 If the Supplier shall, in the reasonable opinion of the Authority, deliberately not comply with its obligations under Clauses 17.1 and 17.2 of this Schedule 2 (General Terms and Conditions), the Authority may withhold payment under Clause 9 (Price and Payment) of this Schedule 2 (General Terms and Conditions).
- 17.4 The Supplier shall be liable to the Authority for, and shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any deficiency or

inaccuracy in the information which the Supplier is required to provide under Clauses 17.1 and 17.2 of this Schedule 2 (General Terms and Conditions).

- 17.5 Subject to Clauses 17.6 and 17.7 of this Schedule 2 (General Terms and Conditions), during the period of nine (9) months preceding the expiry of this Contract or after notice of termination of this Contract has been served by either Party, the Supplier shall not, and shall procure that any Sub-contractor shall not, without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed:
- 17.5.1 make, propose or permit any material changes to the terms and conditions of employment or other arrangements of any of the Staff;
 - 17.5.2 increase or seek to increase the emoluments (excluding cost of living increases awarded in the ordinary course of business) payable to any of the Staff;
 - 17.5.3 replace any of the Staff or increase the total number of employees providing the Services;
 - 17.5.4 deploy any person other than the Staff to perform the Services;
 - 17.5.5 terminate or give notice to terminate the employment or arrangements of any of the Staff;
 - 17.5.6 increase the proportion of working time spent on the Services by any of the Staff;
or
 - 17.5.7 introduce any new contractual term or customary practice concerning the making of any lump sum payment on the termination of employment of any of the Staff.
- 17.6 Clause 17.5 of this Schedule 2 (General Terms and Conditions) shall not prevent the Supplier or any Sub-contractor from taking any of the steps prohibited in that Clause in circumstances where the Supplier or Sub-contractor is required to take such a step pursuant to any changes in legislation or pursuant to a collective agreement in force at that time.
- 17.7 Where the obligations on the Supplier under Clause 17 of this Schedule 2 (General Terms and Conditions) are subject to the Data Protection Legislation, the Supplier will, and shall procure that any Sub-contractor will, use its best endeavours to seek the consent of the Staff to disclose any information covered under the Data Protection Legislation and utilise any other exemption or provision within the Data Protection Legislation which would allow such disclosure.
- 17.8 Having as appropriate gained permission from any Sub-contractor, the Supplier hereby permits the Authority to disclose information about the Staff to any Interested Party provided that the Authority informs the Interested Party in writing of the confidential nature of the information.
- 17.9 The Parties agree that where a Successor or the Authority provides the Services or services which are fundamentally the same as the Services in the immediate or subsequent succession to the Supplier or Sub-contractor (in whole or in part) on expiry or early termination of this Contract (howsoever arising) TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions may apply in respect of the subsequent provision of the Services or services which are fundamentally the same as the Services. If TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions apply then Clause 17.11 to Clause 17.14 of this Schedule 2 (General Terms and Conditions).

- 17.10 If on the termination or at the end of this Contract TUPE does not apply, then all Employment Liabilities and any other liabilities in relation to the Staff shall remain with the Supplier or Sub-contractor as appropriate. The Supplier will, and shall procure that any Sub-contractor shall, indemnify and keep indemnified the Authority in relation to any Employment Liabilities arising out of or in connection with any allegation or claim raised by any Staff.
- 17.11 In accordance with TUPE, and any other policy or arrangement applicable, the Supplier shall, and will procure that any Sub-contractor shall, comply with its obligations to inform and consult with the appropriate representatives of any of its employees affected by the subsequent transfer of the Services or services which are fundamentally the same as the Services.
- 17.12 The Supplier will and shall procure that any Sub-contractor will on or before any Subsequent Transfer Date:
- 17.12.1 pay all wages, salaries and other benefits of the Subsequent Transferring Employees and discharge all other financial obligations (including reimbursement of any expenses and any contributions to retirement benefit schemes) in respect of the period between the Transfer Date and the Subsequent Transfer Date;
 - 17.12.2 account to the proper authority for all PAYE, tax deductions and national insurance contributions payable in respect of the Subsequent Transferring Employees in the period between the Transfer Date and the Subsequent Transfer Date;
 - 17.12.3 pay any Successor or the Authority, as appropriate, the amount which would be payable to each of the Subsequent Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Subsequent Transfer Date;
 - 17.12.4 pay any Successor or the Authority, as appropriate, the amount which fairly reflects the progress of each of the Subsequent Transferring Employees towards achieving any commission, bonus, profit share or other incentive payment payable after the Subsequent Transfer Date wholly or partly in respect of a period prior to the Subsequent Transfer Date; and
 - 17.12.5 subject to any legal requirement, provide to the Successor or the Authority, as appropriate, all personnel records relating to the Subsequent Transferring Employees including, without prejudice to the generality of the foregoing, all records relating to national insurance, PAYE and income tax. The Supplier shall for itself and any Sub-contractor warrant that such records are accurate and up to date.
- 17.13 The Supplier will and shall procure that any Sub-contractor will indemnify and keep indemnified the Authority and/or a Successor in relation to any Employment Liabilities arising out of or in connection with any claim arising from:
- 17.13.1 the Supplier's or Sub-contractor's failure to perform and discharge its obligations under Clause 17.12 of this Schedule 2 (General Terms and Conditions);
 - 17.13.2 any act or omission by the Supplier or Sub-contractor in respect of the Subsequent Transferring Employees occurring on or before the Subsequent Transfer Date;

- 17.13.3 any allegation or claim by any person who is not a Subsequent Transferring Employee but who alleges that their employment should transfer or has transferred to the Successor or the Authority, as appropriate;
 - 17.13.4 any emoluments payable to a person employed or engaged by the Supplier or Sub-contractor (including without limitation all wages, accrued holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and other contributions) payable in respect of any period on or before the Subsequent Transfer Date;
 - 17.13.5 any allegation or claim by any of the Subsequent Transferring Employees on the grounds that the Successor or Authority, as appropriate, has failed to continue a benefit provided by the Supplier or Sub-contractor as a term of such Subsequent Transferring Employee's contract as at the Subsequent Transfer Date where it was not reasonably practicable for the Successor or Authority, as appropriate, to provide an identical benefit but where the Successor or Authority, as appropriate, has provided (or offered to provide where such benefit is not accepted by the Subsequent Transferring Employee) an alternative benefit which, taken as a whole, is no less favourable to such Subsequent Transferring Employee; and
 - 17.13.6 any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the Successor's or Authority's failure to comply with regulation 13(4) of TUPE.
- 17.14 The Supplier will, or shall procure that any Sub-contractor will, on request by the Authority provide a written and legally binding indemnity in the same terms as set out in Clause 17.13 of this Schedule 2 (General Terms and Conditions) to any Successor in relation to any Employment Liabilities arising up to and including the Subsequent Transfer Date.
- 17.15 The Supplier will indemnify and keep indemnified the Authority and/or any Successor in respect of any Employment Liabilities arising from any act or omission of the Supplier or Sub-contractor in relation to any other Staff who is not a Subsequent Transferring Employee arising during any period whether before, on or after the Subsequent Transfer Date.
- 17.16 If any person who is not a Subsequent Transferring Employee claims or it is determined that their contract of employment has been transferred from the Supplier or any Sub-contractor to the Authority or Successor pursuant to TUPE or claims that their employment would have so transferred had they not resigned, then:
- 17.16.1 the Authority will, or shall procure that the Successor will, within seven (7) days of becoming aware of that fact, give notice in writing to the Supplier;
 - 17.16.2 the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within twenty eight (28) days of the notification by the Authority or Successor;
 - 17.16.3 if such offer of employment is accepted, the Authority will, or shall procure that the Successor will, immediately release the person from their employment; and
 - 17.16.4 if after the period in Clause 17.16.2 of this Schedule 2 (General Terms and Conditions) has elapsed, no such offer of employment has been made or such offer

has been made but not accepted, the Authority will, or shall procure that the Successor will (whichever is the provider of the Services or services of the same or similar nature to the Services), employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person after the Subsequent Transfer Date.

18 Packaging, identification, end of use and coding requirements

- 18.1 The Supplier shall comply with all obligations imposed on it by Law relevant to the IT Products in relation to packaging, identification, and obligations following end of use by the Authority.
- 18.2 Unless otherwise specified in Schedule 5 (Specification and Tender Response Document) or otherwise agreed with the Authority in writing, the IT Products shall be securely packed in trade packages of a type normally used by the Supplier for deliveries of the same or similar IT Products in the same quantities within the United Kingdom.
- 18.3 The Supplier shall comply with any labelling requirements in respect of the IT Products: (a) specified in Schedule 5 (Specification and Tender Response Document); (b) agreed with the Authority in writing; and/or (c) required to comply with Law or Guidance.
- 18.4 The Supplier shall ensure that all IT Products that are required by Law or Guidance to bear any safety information, environmental information, any mark, tab, brand, label, serial numbers or other device indicating place of origin, inspection by any government or other body or standard of quality at the point such IT Products are delivered shall comply with such requirements at the point of delivery.
- 18.5 Unless otherwise set out in Schedule 5 (Specification and Tender Response Document) or agreed with the Authority in writing, the Supplier shall collect without charge any returnable containers and/or packages (including pallets) within twenty one (21) days of the date of the relevant delivery. Empty containers and/or packages not so removed may be returned by the Authority at the Supplier's expense or otherwise disposed of at the Authority's discretion. The Supplier shall credit the Authority in full for any containers for which the Authority has been charged upon their collection, return and/or disposal by the Authority in accordance with this Clause 18.5 of this Schedule 2 (General Terms and Conditions).
- 18.6 Unless otherwise confirmed and/or agreed by the Authority in writing and subject to Clause 18.7 of this Schedule 2 (General Terms and Conditions), the Supplier shall ensure full compliance with any Guidance issued by the Department of Health in relation to the adoption of GS1 and PEPPOL standards (to include, without limitation, any supplier compliance timeline and other policy requirements published by the Department of Health in relation to the adoption of GS1 and PEPPOL standards for master data provision and exchange, barcode labelling, and purchase-to-pay transacting).
- 18.7 Once compliance with any published timelines has been achieved by the Supplier pursuant to Clause 18.6 of this Schedule 2 (General Terms and Conditions), the Supplier shall, during the Term, maintain the required level of compliance relating to the IT Products in accordance with any such requirements and Guidance referred to as part of this Contract.
- 18.8 Once Product Information relating to IT Products is placed by the Supplier into a GS1 certified data pool, the Supplier shall, during the Term, keep such information updated with any changes to the product data relating to the IT Products.

19 **Sustainable development**

- 19.1 The Supplier shall comply in all material respects with applicable environmental, social and labour Law requirements in force from time to time in relation to the IT Products and Services. Where the provisions of any such Law are implemented by the use of voluntary agreements, the Supplier shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in Schedule 5 (Specification and Tender Response Document). Without prejudice to the generality of the foregoing, the Supplier shall:
- 19.1.1 comply with all Policies and/or procedures and requirements set out in Schedule 5 (Specification and Tender Response Document) in relation to any stated environmental, social and labour requirements, characteristics and impacts of the IT Products and Services and the Supplier's supply chain;
- 19.1.2 maintain relevant policy statements documenting the Supplier's significant labour, social and environmental aspects as relevant to the IT Products and Services being supplied and provided and as proportionate to the nature and scale of the Supplier's business operations; and
- 19.1.3 maintain plans and procedures that support the commitments made as part of the Supplier's significant labour, social and environmental policies, as referred to at Clause 19.1.2 of this Schedule 2 (General Terms and Conditions).
- 19.2 The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier's compliance with the provisions of Clause 19 of this Schedule 2 (General Terms and Conditions).

20 **Electronic product and services information**

- 20.1 Where requested by the Authority, the Supplier shall provide the Authority the Product Information and the Services Information in such manner and upon such media as agreed between the Supplier and the Authority from time to time for the sole use by the Authority.
- 20.2 The Supplier warrants that the Product Information and the Services Information is complete and accurate as at the date upon which it is delivered to the Authority and that the Product Information and the Services Information shall not contain any data or statement which gives rise to any liability on the part of the Authority following publication of the same in accordance with Clause 20 of this Schedule 2 (General Terms and Conditions).
- 20.3 If the Product Information and/or the Services Information ceases to be complete and accurate, the Supplier shall promptly notify the Authority in writing of any modification or addition to or any inaccuracy or omission in the Product Information and/or the Services Information.
- 20.4 The Supplier grants the Authority a perpetual, non-exclusive, royalty free licence to use and exploit the Product Information and the Services Information and any Intellectual Property Rights in the Product Information and the Services Information for the purpose of illustrating the range of IT Products and services (including, without limitation, the IT Products and Services) available pursuant to the Authority's contracts from time to time. Subject to Clause 20.5 of this Schedule 2 (General Terms and Conditions), no obligation to illustrate or advertise the Product Information or the Services Information is imposed on the Authority, as a consequence of the licence conferred by this Clause 20.4 of this Schedule 2 (General Terms and Conditions).

- 20.5 The Authority may reproduce for its sole use the Product Information and the Services Information provided by the Supplier in the Authority's product and/or services catalogues from time to time which may be made available on any NHS communications networks in electronic format and/or made available on the Authority's external website and/or made available on other digital media from time to time.
- 20.6 Before any publication of the Product Information and the Services Information (electronic or otherwise) is made by the Authority, the Authority will submit a copy of the relevant sections of the Authority's product and/or services catalogues to the Supplier for approval, such approval not to be unreasonably withheld or delayed. For the avoidance of doubt the Supplier shall have no right to compel the Authority to exhibit the Product Information and/or the Services Information in any product and/or services catalogues as a result of the approval given by it pursuant to this Clause 20.6 of this Schedule 2 (General Terms and Conditions) or otherwise under the terms of this Contract.
- 20.7 If requested in writing by the Authority, and to the extent not already agreed as part of Schedule 5 (Specification and Tender Response Document) and Schedule 1 (Key Provisions) the Supplier and the Authority shall discuss and seek to agree in good faith arrangements to use any Electronic Trading System.

21 Change Management

- 21.1 The Supplier acknowledges to the Authority that the Authority's requirements for the IT Products and/or Services may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to this Contract (including to Schedule 5 (Specification and Tender Response Document)) as may be requested by the Authority from time to time.
- 21.2 Subject to Clause 21.3 of this Schedule 2 (General Terms and Conditions), any change to the IT Products and/or Services or other variation to this Contract shall only be binding once it has been agreed in accordance with the Change Control Process in writing and signed by an authorised representative of both Parties in the form of a Change Authorisation Note.
- 21.3 Any change to the Data Protection Protocol shall be made in accordance with the relevant provisions of that protocol.

22 Dispute Resolution

- 22.1 During any Dispute, including a Dispute as to the validity of this Contract, it is agreed that the Supplier shall continue its performance of the provisions of this Contract (unless the Authority requests in writing that the Supplier does not do so).
- 22.2 In the case of a Dispute arising out of or in connection with this Contract the Supplier and the Authority shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the Dispute and follow the procedure set out in Clause 22.3 of this Schedule 2 (General Terms and Conditions) as the first stage in the Dispute Resolution Procedure.
- 22.3 If any Dispute arises out of this Contract either Party may serve a notice on the other Party to commence formal resolution of the Dispute. The Parties shall first seek to resolve the Dispute by escalation in accordance with the management levels as set out in Clause 5 (management levels for escalation and dispute resolution) of Schedule 1 (Key Provisions). Respective representatives at each level, as set out in Clause 5 (management levels for escalation and

dispute resolution) of Schedule 1 (Key Provisions) shall have five (5) Business Days at each level during which they will use their reasonable endeavours to resolve the Dispute before escalating the matter to the next level until all levels have been exhausted. Level 1 will commence on the date of service of the Dispute Notice. The final level of the escalation process shall be deemed exhausted on the expiry of five (5) Business Days following escalation to that level unless otherwise agreed by the Parties in writing.

- 22.4 If the procedure set out in Clause 22.3 of this Schedule 2 (General Terms and Conditions) has been exhausted and fails to resolve such Dispute, as part of the Dispute Resolution Procedure, the Parties will attempt to settle it by mediation. The Parties shall, acting reasonably, attempt to agree upon a mediator. In the event that the Parties fail to agree a mediator within five (5) Business Days following the exhaustion of all levels of the escalation procedure at Clause 22.3 of this Schedule 2 (General Terms and Conditions), the mediator shall be nominated and confirmed by the Centre for Effective Dispute Resolution, London.
- 22.5 The mediation shall commence within twenty eight (28) days of the confirmation of the mediator in accordance with Clause 22.4 of this Schedule 2 (General Terms and Conditions) or at such other time as may be agreed by the Parties in writing. Neither Party will terminate such mediation process until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour or one Party has failed to participate in the mediation process. After this time, either Party may terminate the mediation process by notification to the other Party (such notification may be verbal provided that it is followed up by written confirmation). The Authority and the Supplier will cooperate with any person appointed as mediator providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine, or in the absence of such determination such costs will be shared equally.
- 22.6 Nothing in this Contract shall prevent:
- 22.6.1 the Authority taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the supply of the IT Products and/or the provision of the Services; or
- 22.6.2 either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party or that relates to the safety of patients and other service users or the security of Confidential Information, pending resolution of the relevant Dispute in accordance with the Dispute Resolution Procedure.
- 22.7 Clause 22 of this Schedule 2 (General Terms and Conditions) shall survive the expiry of or earlier termination of this Contract for any reason.

23 **Force majeure**

- 23.1 Subject to Clause 23.2 of this Schedule 2 (General Terms and Conditions) neither Party shall be liable to the other for any failure to perform all or any of its obligations under this Contract nor liable to the other Party for any loss or damage arising out of the failure to perform its obligations to the extent only that such performance is rendered impossible by a Force Majeure Event.
- 23.2 The Supplier shall only be entitled to rely on a Force Majeure Event and the relief set out in Clause 23 of this Schedule 2 (General Terms and Conditions) and will not be considered to be in default or liable for breach of any obligations under this Contract if:

- 23.2.1 the Supplier has fulfilled its obligations pursuant to Clause 6 (Business Continuity) of this Schedule 2 (General Terms and Conditions);
- 23.2.2 the Force Majeure Event does not arise directly or indirectly as a result of any wilful or negligent act or default of the Supplier; and
- 23.2.3 the Supplier has complied with the procedural requirements set out in Clause 23 of this Schedule 2 (General Terms and Conditions).
- 23.3 Where a Party is (or claims to be) affected by a Force Majeure Event it shall use reasonable endeavours to mitigate the consequences of such a Force Majeure Event upon the performance of its obligations under this Contract, and to resume the performance of its obligations affected by the Force Majeure Event as soon as practicable.
- 23.4 Where the Force Majeure Event affects the Supplier's ability to perform part of its obligations under this Contract the Supplier shall fulfil all such contractual obligations that are not so affected and shall not be relieved from its liability to do so.
- 23.5 If either Party is prevented or delayed in the performance of its obligations under this Contract by a Force Majeure Event, that Party shall as soon as reasonably practicable serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.
- 23.6 Subject to service of such notice, the Party affected by such circumstances shall have no liability for its failure to perform or for any delay in performance of its obligations affected by the Force Majeure Event only for so long as such circumstances continue and for such time after they cease as is necessary for that Party, using its best endeavours, to recommence its affected operations in order for it to perform its obligations.
- 23.7 The Party claiming relief shall notify the other in writing as soon as the consequences of the Force Majeure Event have ceased and of when performance of its affected obligations can be resumed.
- 23.8 If the Supplier is prevented from performance of its obligations as a result of a Force Majeure Event, the Authority may at any time, if the Force Majeure Event subsists for thirty (30) days or more, terminate this Contract by issuing a Termination Notice to the Supplier.
- 23.9 Following such termination in accordance with Clause 23.8 of this Schedule 2 (General Terms and Conditions) and subject to Clause 23.10 of this Schedule 2 (General Terms and Conditions), neither Party shall have any liability to the other.
- 23.10 Any rights and liabilities of either Party which have accrued prior to such termination in accordance with Clause 23.8 of this Schedule 2 (General Terms and Conditions) shall continue in full force and effect unless otherwise specified in this Contract.
- 24 **Records retention and right of audit**
- 24.1 Subject to any statutory requirement and Clause 24.2 of this Schedule 2 (General Terms and Conditions), the Supplier shall keep secure and maintain for the Term and six (6) years afterwards, or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to this Contract.

- 24.2 Where any records could be relevant to a claim for personal injury such records shall be kept secure and maintained for a period of twenty one (21) years from the date of expiry or earlier termination of this Contract.
- 24.3 The Authority shall have the right to audit the Supplier's compliance with this Contract. The Supplier shall permit or procure permission for the Authority or its authorised representative during normal business hours having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records reasonably required to audit the Supplier's compliance with its obligations under this Contract.
- 24.4 Should the Supplier Sub-contract any of its obligations under this Contract, the Authority shall have the right to audit and inspect such third party. The Supplier shall procure permission for the Authority or its authorised representative during normal business hours no more than once in any twelve (12) months, having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records used in the performance of the Supplier's obligations under this Contract that are Sub-contracted to such third party. The Supplier shall cooperate with such audit and inspection and accompany the Authority or its authorised representative if requested.
- 24.5 The Supplier shall grant to the Authority or its authorised representative, such access to those records as they may reasonably require in order to check the Supplier's compliance with this Contract for the purposes of:
- 24.5.1 the examination and certification of the Authority's accounts; or
- 24.5.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economic efficiency and effectiveness with which the Authority has used its resources.
- 24.6 The Comptroller and Auditor General may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to provide such oral and/or written explanations as they consider necessary. Clause 24 of this Schedule 2 (General Terms and Conditions) does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Supplier under sections 6(3)(d) and 6(5) of the National Audit Act 1983.
- 24.7 The Supplier shall provide reasonable cooperation to the Authority, its representatives and any regulatory body in relation to any audit, review, investigation or enquiry carried out in relation to the subject matter of this Contract.
- 24.8 The Supplier shall provide all reasonable information as may be reasonably requested by the Authority to evidence the Supplier's compliance with the requirements of this Contract.

25 **Conflicts of interest and the prevention of fraud**

- 25.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Contract. The Supplier will disclose to the Authority full particulars of any such conflict of interest which may arise.

- 25.2 The Authority reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Contract. The actions of the Authority pursuant to this Clause 25.2 of this Schedule 2 (General Terms and Conditions) shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the Authority.
- 25.3 The Supplier shall take all reasonable steps to prevent Fraud by Staff and the Supplier (including its owners, members and directors). The Supplier shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 25.4 If the Supplier or its Staff commits Fraud the Authority may terminate this Contract and recover from the Supplier the amount of any direct loss suffered by the Authority resulting from the termination.

26 **Equality and human rights**

26.1 The Supplier shall:

- 26.1.1 ensure that (a) it does not, whether as employer, a supplier of IT Products or as provider of the Services, engage in any act or omission that would contravene the Equality Legislation, and (b) it complies with all its obligations as an employer, a supplier of IT Products or provider of the Services as set out in the Equality Legislation and take reasonable endeavours to ensure its Staff do not unlawfully discriminate within the meaning of the Equality Legislation;
- 26.1.2 in the management of its affairs and the development of its equality and diversity policies, cooperate with the Authority in light of the Authority's obligations to comply with its statutory equality duties whether under the Equality Act 2010 or otherwise. The Supplier shall take such reasonable and proportionate steps as the Authority considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age; and
- 26.1.3 the Supplier shall impose on all its Sub-contractors and suppliers, obligations substantially similar to those imposed on the Supplier by Clause 26 of this Schedule 2 (General Terms and Conditions).
- 26.2 The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier's compliance with the provisions of Clause 26 of this Schedule 2 (General Terms and Conditions).

27 **Notice**

- 27.1 Subject to Clause 22.5 (Dispute Resolution) of Schedule 2 (General Terms and Conditions), any notice required to be given by either Party under this Contract shall be in writing quoting the date of this Contract and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in Schedule 1 (Key Provisions) or such other person as one Party may inform the other Party in writing from time to time.
- 27.2 A notice shall be treated as having been received:

- 27.2.1 if delivered by hand within normal business hours when so delivered or, if delivered by hand outside normal business hours, at the next start of normal business hours; or
- 27.2.2 if sent by first class recorded delivery mail on a normal Business Day, at 9.00 am on the second Business Day subsequent to the day of posting, or, if the notice was not posted on a Business Day, at 9.00 am on the third Business Day subsequent to the day of posting; or
- 27.2.3 if sent by email, if sent within normal business hours when so sent or, if sent outside normal business hours, at the next start of normal business hours provided the sender has either received an electronic confirmation of delivery or has telephoned the recipient to inform the recipient that the email has been sent.

28 Assignment, novation and Sub-contracting

- 28.1 The Supplier shall not, except where Clause 28.2 of this Schedule 2 (General Terms and Conditions) applies, assign, Sub-contract, novate, create a trust in, or in any other way dispose of the whole or any part of this Contract without the prior consent in writing of the Authority such consent not to be unreasonably withheld or delayed. If the Supplier Sub-contracts any of its obligations under this Contract, every act or omission of the Sub-contractor shall for the purposes of this Contract be deemed to be the act or omission of the Supplier and the Supplier shall be liable to the Authority as if such act or omission had been committed or omitted by the Supplier itself.
- 28.2 Notwithstanding Clause 28.1 of this Schedule 2 (General Terms and Conditions), the Supplier may assign to a third party ("**Assignee**") the right to receive payment of any sums due and owing to the Supplier under this Contract for which an invoice has been issued. Any assignment under this Clause 28.2 of this Schedule 2 (General Terms and Conditions) shall be subject to:
 - 28.2.1 the deduction of any sums in respect of which the Authority exercises its right of recovery under Clause 9.9 (Price and Payment) of this Schedule 2 (General Terms and Conditions);
 - 28.2.2 all related rights of the Authority in relation to the recovery of sums due but unpaid;
 - 28.2.3 the Authority receiving notification of the assignment and the date upon which the assignment becomes effective together with the Assignee's contact information and bank account details to which the Authority shall make payment;
 - 28.2.4 the provisions of Clause 9 (Price and Payment) of this Schedule 2 (General Terms and Conditions) continuing to apply in all other respects after the assignment which shall not be amended without the prior written approval of the Authority; and
 - 28.2.5 payment to the Assignee being full and complete satisfaction of the Authority's obligation to pay the relevant sums in accordance with this Contract.
- 28.3 Any authority given by the Authority for the Supplier to Sub-contract any of its obligations under this Contract shall not impose any duty on the Authority to enquire as to the competency of any authorised Sub-contractor. The Supplier shall ensure that any authorised

Sub-contractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such Sub-contractor are fully in accordance with this Contract.

- 28.4 Where the Supplier enters into a Sub-contract in respect of any of its obligations under this Contract relating to the manufacture, supply, delivery or installation of or training in relation to the IT Products or the provision of the Services, the Supplier shall include provisions in each such Sub-contract, unless otherwise agreed with the Authority in writing, which:
- 28.4.1 contain at least equivalent obligations as set out in this Contract in relation to such manufacture, supply, delivery or installation of or training in relation to the IT Products or the performance of the Services to the extent relevant to such Sub-contracting;
 - 28.4.2 contain at least equivalent obligations as set out in this Contract in respect of confidentiality, information security, data protection, Intellectual Property Rights, compliance with Law and Guidance and record keeping;
 - 28.4.3 contain a prohibition on the Sub-contractor Sub-contracting, assigning or novating any of its rights or obligations under such Sub-contract without the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed);
 - 28.4.4 contain a right for the Authority to take an assignment or novation of the Sub-contract (or part of it) upon expiry or earlier termination of this Contract;
 - 28.4.5 requires the Supplier or other party receiving IT Products or services under the contract to consider and verify invoices under that contract in a timely fashion;
 - 28.4.6 provides that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 28.4.5 of this Schedule 2 (General Terms and Conditions), the invoice shall be regarded as valid and undisputed for the purpose of Clause 28.4.7 of this Schedule 2 (General Terms and Conditions) after a reasonable time has passed;
 - 28.4.7 requires the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
 - 28.4.8 permitting the Supplier to terminate, or procure the termination of, the relevant Sub-contract in the event the Sub-contractor fails to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour Law where the Supplier is required to replace such Sub-contractor in accordance with Clause 15.7.4 (Term and Termination) of this Schedule 2 (General Terms and Conditions);
 - 28.4.9 permitting the Supplier to terminate, or to procure the termination of, the relevant Sub-contract where the Supplier is required to replace such Sub-contractor in accordance with Clause 28.5 of this Schedule 2 (General Terms and Conditions); and

- 28.4.10 requires the Sub-contractor to include a clause to the same effect as this Clause 28.4 of this Schedule 2 (General Terms and Conditions) in any Sub-contract which it awards.
- 28.5 Where the Authority considers that the grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015 apply to any Sub-contractor, then:
- 28.5.1 if the Authority finds there are compulsory grounds for exclusion, the Supplier shall ensure, or shall procure, that such Sub-contractor is replaced or not appointed; or
- 28.5.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to ensure, or to procure, that such Sub-contractor is replaced or not appointed and the Supplier shall comply with such a requirement.
- 28.6 The Supplier shall pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed. Where the Authority pays the Supplier's valid and undisputed invoices earlier than thirty (30) days from verification in accordance with any applicable government prompt payment targets, the Supplier shall use its reasonable endeavours to pay its relevant Sub-contractors within a comparable timeframe from verifying that an invoice is valid and undisputed.
- 28.7 The Authority shall upon written request have the right to review any Sub-contract entered into by the Supplier in respect of the supply of the IT Products and/or the provision of the Services and the Supplier shall provide a certified copy of any Sub-contract within five (5) Business Days of the date of a written request from the Authority. For the avoidance of doubt, the Supplier shall have the right to redact any confidential pricing information in relation to such copies of Sub-contracts.
- 28.8 The Authority may at any time transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract and the Supplier warrants that it will carry out all such reasonable further acts required to effect such transfer, assignment, novation, sub-contracting or disposal. If the Authority novates this Contract to any body that is not a Contracting Authority, from the effective date of such novation, the party assuming the position of the Authority shall not further transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed by the Supplier.

29 **Prohibited Acts**

- 29.1 The Supplier warrants and represents that:
- 29.1.1 it has not committed any offence under the Bribery Act 2010 or done any of the following ("**Prohibited Acts**"):
- (i) offered, given or agreed to give any officer or employee of the Authority any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with the Authority or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the Authority; or

- (ii) in connection with this Contract paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Authority; and
- 29.1.2 it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.
- 29.2 If the Supplier or its Staff (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Supplier in relation to this or any other agreement with the Authority:
 - 29.2.1 the Authority shall be entitled:
 - (i) to terminate this Contract and recover from the Supplier the amount of any loss resulting from the termination;
 - (ii) to recover from the Supplier the amount or value of any gift, consideration or commission concerned; and
 - (iii) to recover from the Supplier any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;
 - 29.2.2 any termination under Clause 29.2.1 of this Schedule 2 (General Terms and Conditions) shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Authority; and
 - 29.2.3 notwithstanding the Dispute Resolution Procedure, any Dispute relating to:
 - (i) the interpretation of Clause 29 of this Schedule 2 (General Terms and Conditions); or
 - (ii) the amount or value of any gift, consideration or commission,shall be determined by the Authority, acting reasonably, and the decision shall be final and conclusive.

30 **General**

- 30.1 Each of the Parties is independent of the other and nothing contained in this Contract shall be construed to imply that there is any relationship between the Parties of partnership or of principal/agent or of employer/employee nor are the Parties hereby engaging in a joint venture and accordingly neither of the Parties shall have any right or authority to act on behalf of the other nor to bind the other by agreement or otherwise, unless expressly permitted by the terms of this Contract.
- 30.2 Failure or delay by either Party to exercise an option or right conferred by this Contract shall not of itself constitute a waiver of such option or right.
- 30.3 The delay or failure by either Party to insist upon the strict performance of any provision, term or condition of this Contract or to exercise any right or remedy consequent upon such breach

shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.

- 30.4 Any provision of this Contract which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Contract and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.
- 30.5 Each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this Contract and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in this Contract or unless such representation, undertaking or warranty was made fraudulently.
- 30.6 Each Party shall bear its own expenses in relation to the preparation and execution of this Contract including all costs, legal fees and other expenses so incurred.
- 30.7 The rights and remedies provided in this Contract are independent, cumulative and not exclusive of any rights or remedies provided by general law, any rights or remedies provided elsewhere under this Contract or by any other contract or document. In this Clause 30.7 of this Schedule 2 (General Terms and Conditions), right includes any power, privilege, remedy, or proprietary or security interest.
- 30.8 Unless otherwise expressly stated in this Contract, a person who is not a party to this Contract shall have no right to enforce any terms of it which confer a benefit on such person except that a Successor and/or a Third Party may directly enforce any indemnities or other rights provided to it under this Contract. No such person shall be entitled to object to or be required to consent to any amendment to the provisions of this Contract.
- 30.9 This Contract, any variation in writing signed by an authorised representative of each Party and any document referred to (explicitly or by implication) in this Contract or any variation to this Contract, contain the entire understanding between the Supplier and the Authority relating to the supply of the IT Products and the provision of the Services to the exclusion of all previous agreements, confirmations and understandings and there are no promises, terms, conditions or obligations whether oral or written, express or implied other than those contained or referred to in this Contract. Nothing in this Contract seeks to exclude either Party's liability for Fraud. Any tender conditions and/or disclaimers set out in the Authority's procurement documentation leading to the award of this Contract shall form part of this Contract.
- 30.10 This Contract, and any Dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.
- 30.11 Subject to Clause 22 (Dispute Resolution) of this Schedule 2 (General Terms and Conditions), the Parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any Dispute or claim that arises out of or in connection with this Contract or its subject matter.

30.12 All written and oral communications and all written material referred to under this Contract shall be in English.

Schedule 3

Information and Data Provisions

1 Confidentiality

1.1 In respect of any Confidential Information it may receive directly or indirectly from the other Party ("**Discloser**") and subject always to the remainder of Clause 1 of this Schedule 3 (Information and Data Provisions), each Party ("**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser's prior written consent provided that:

1.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date;

1.1.2 the provisions of Clause 1 of this Schedule 3 (Information and Data Provisions) shall not apply to any Confidential Information:

- (i) which is in or enters the public domain other than by breach of this Contract or other act or omissions of the Recipient;
- (ii) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
- (iii) which is authorised for disclosure by the prior written consent of the Discloser;
- (iv) which the Recipient can demonstrate was in its possession without any obligation of confidentiality prior to receipt of the Confidential Information from the Discloser; or
- (v) which the Recipient is required to disclose purely to the extent to comply with the requirements of any relevant stock exchange.

1.2 Nothing in Clause 1 of this Schedule 3 (Information and Data Provisions) shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Freedom of Information Act 2000 ("**FOIA**"), Codes of Practice on Access to Government Information, on the Discharge of Public Authorities' Functions or on the Management of Records ("**Codes of Practice**") or the Environmental Information Regulations 2004 ("**Environmental Regulations**").

1.3 The Authority may disclose the Supplier's Confidential Information:

1.3.1 on a confidential basis, to any Contracting Authority (the Parties agree that all Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority);

1.3.2 on a confidential basis, to any consultant, contractor or other person engaged by the Authority and/or the Contracting Authority receiving such information;

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

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

- 1.4 The Supplier may only disclose the Authority's Confidential Information, and any other information provided to the Supplier by the Authority in relation to this Contract, to the Supplier's Staff or professional advisors who are directly involved in the performance of or advising on the Supplier's obligations under this Contract. The Supplier shall ensure that such Staff or professional advisors are aware of and shall comply with the obligations in Clause 1 of this Schedule 3 (Information and Data Provisions) as to confidentiality and that all information, including Confidential Information, is held securely, protected against unauthorised use or loss and, at the Authority's written discretion, destroyed securely or returned to the Authority when it is no longer required. The Supplier shall not, and shall ensure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of performing the Supplier's obligations in this Contract.
- 1.5 For the avoidance of doubt, save as required by Law or as otherwise set out in this Schedule 3 (Information and Data Provisions), the Supplier shall not, without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed), announce that it has entered into this Contract and/or that it has been appointed as a Supplier to the Authority and/or make any other announcements about this Contract.
- 1.6 Clause 1 of this Schedule 3 (Information and Data Provisions) shall remain in force:
 - 1.6.1 without limit in time in respect of Confidential Information which comprises Personal Data or which relates to national security; and
 - 1.6.2 for all other Confidential Information for a period of three (3) years after the expiry or earlier termination of this Contract unless otherwise agreed in writing by the Parties.

2 **Data protection**

- 2.1 The Parties acknowledge their respective duties under Data Protection Legislation and shall give each other all reasonable assistance as appropriate or necessary to enable each other to comply with those duties. For the avoidance of doubt, the Supplier shall take reasonable steps to ensure it is familiar with the Data Protection Legislation and any obligations it may have under such Data Protection Legislation and shall comply with such obligations.

- 2.2 Where the Supplier is Processing Personal Data under or in connection with this Contract, the Parties shall comply with the Data Protection Protocol.
- 2.3 The Supplier and the Authority shall ensure that Personal Data is safeguarded at all times in accordance with the Law, and this obligation will include (if transferred electronically) only transferring Personal Data (a) if essential, having regard to the purpose for which the transfer is conducted; and (b) that is encrypted in accordance with any international data encryption standards for healthcare, and as otherwise required by those standards applicable to the Authority under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).
- 2.4 Where, as a requirement of this Contract, the Supplier is Processing Personal Data relating to patients and/or service users as part of the Services, the Supplier shall:
- 2.4.1 complete and publish an annual information governance assessment using the NHS Data Security and Protection Toolkit;
 - 2.4.2 achieve a minimum level 2 performance against all requirements in the relevant NHS Data Security and Protection Toolkit;
 - 2.4.3 nominate an information governance lead able to communicate with the Supplier's board of directors or equivalent governance body, who will be responsible for information governance and from whom the Supplier's board of directors or equivalent governance body will receive regular reports on information governance matters including details of all incidents of data loss and breach of confidence;
 - 2.4.4 report all incidents of data loss and breach of confidence in accordance with Department of Health and/or the NHS England and/or Health and Social Care Information Centre guidelines;
 - 2.4.5 put in place and maintain policies that describe individual personal responsibilities for handling Personal Data and apply those policies vigorously;
 - 2.4.6 put in place and maintain a policy that supports its obligations under the NHS Care Records Guarantee (being the rules which govern information held in the NHS Care Records Service, which is the electronic patient/service user record management service providing authorised healthcare professionals access to a patient's integrated electronic care record);
 - 2.4.7 put in place and maintain agreed protocols for the lawful sharing of Personal Data with other NHS organisations and (as appropriate) with non-NHS organisations in circumstances in which sharing of that data is required under this Contract;
 - 2.4.8 where appropriate, have a system in place and a policy for the recording of any telephone calls in relation to the Services, including the retention and disposal of those recordings;
 - 2.4.9 at all times comply with any information governance requirements and/or processes as may be set out in Schedule 5 (Specification and Tender Response Document); and

- 2.4.10 comply with any new and/or updated requirements, Guidance and/or Policies notified to the Supplier by the Authority from time to time (acting reasonably) relating to the Processing and/or protection of Personal Data.
- 2.5 Where any Personal Data is Processed by any Sub-contractor of the Supplier in connection with this Contract, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 2 of this Schedule 3 (Information and Data Provisions), as if such Sub-contractor were the Supplier.
- 2.6 The Supplier shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings whatsoever or howsoever arising from the Supplier's unlawful or unauthorised Processing, destruction and/or damage to Personal Data in connection with this Contract.
- 3 **Freedom of Information and Transparency**
- 3.1 The Parties acknowledge the duties of Contracting Authorities under the FOIA, Codes of Practice and Environmental Regulations and shall give each other all reasonable assistance as appropriate or necessary to enable compliance with those duties.
- 3.2 The Supplier shall assist and cooperate with the Authority to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Supplier agrees:
- 3.2.1 that this Contract and any recorded information held by the Supplier on the Authority's behalf for the purposes of this Contract are subject to the obligations and commitments of the Authority under the FOIA, Codes of Practice and Environmental Regulations;
- 3.2.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA, Codes of Practice and Environmental Regulations is a decision solely for the Authority;
- 3.2.3 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier itself is subject to the FOIA, Codes of Practice and Environmental Regulations it will liaise with the Authority as to the contents of any response before a response to a request is issued and will promptly (and in any event within two (2) Business Days) provide a copy of the request and any response to the Authority;
- 3.2.4 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier is not itself subject to the FOIA, Codes of Practice and Environmental Regulations, it will not respond to that request (unless directed to do so by the Authority) and will promptly (and in any event within two (2) Business Days) transfer the request to the Authority;
- 3.2.5 that the Authority, acting in accordance with the Codes of Practice issued and revised from time to time under both section 45 of FOIA, and regulation 16 of the Environmental Regulations, may disclose information concerning the Supplier and this Contract; and

- 3.2.6 to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA and the Environmental Regulations) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of FOIA, and providing copies of all information requested by the Authority within five (5) Business Days of that request and without charge.
- 3.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations, the content of this Contract is not Confidential Information.
- 3.4 Notwithstanding any other term of this Contract, the Supplier consents to the publication of this Contract in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations.
- 3.5 In preparing a copy of this Contract for publication under Clause 3.4 of this Schedule 3 (Information and Data Provisions), the Authority may consult with the Supplier to inform decision making regarding any redactions but the final decision in relation to the redaction of information will be at the Authority's absolute discretion.
- 3.6 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Contract.
- 3.7 Where any information is held by any Sub-contractor of the Supplier in connection with this Contract, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 3 of this Schedule 3 (Information and Data Provisions), as if such Sub-contractor were the Supplier.

4 Information Security

- 4.1 Without limitation to any other information governance requirements set out in this Schedule 3 (Information and Data Provisions), the Supplier shall:
- 4.1.1 notify the Authority forthwith of any information security breaches or near misses (including without limitation any potential or actual breaches of confidentiality or actual information security breaches) in line with the Authority's information governance Policies; and
- 4.1.2 fully cooperate with any audits or investigations relating to information security and any privacy impact assessments undertaken by the Authority and shall provide full information as may be reasonably requested by the Authority in relation to such audits, investigations and assessments.
- 4.2 Where required in accordance with Schedule 5 (Specification and Tender Response Document), the Supplier will ensure that it puts in place and maintains an information Security Management Plan appropriate to this Contract, the type of Services being provided and the obligations placed on the Supplier. The Supplier shall ensure that such plan is consistent with any relevant Policies, Guidance, Good Industry Practice and with any relevant quality standards as may be set out in the Key Provisions and/or Schedule 5 (Specification and Tender Response Document).

- 4.3 Where required in accordance with Schedule 5 (Specification and Tender Response Document), the Supplier shall obtain and maintain certification under the HM Government Cyber Essentials Scheme at the level set out in Schedule 5 (Specification and Tender Response Document).

ANNEX 1

DATA PROTECTION PROTOCOL

1 DATA PROTECTION

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor. The only Processing that the Supplier is authorised to do is listed by the Authority in the table (the "**Processing Table**") set out in Clause 27.2 in Schedule 1 (Key Provisions) and may not be determined by the Supplier.
- 1.2 The Supplier shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
- 1.3 The Supplier shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Authority, include:
 - 1.3.1 a systematic description of the envisaged Processing operations and the purpose of the Processing;
 - 1.3.2 an assessment of the necessity and proportionality of the Processing operations in relation to the Services;
 - 1.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 1.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.4 The Supplier shall, in relation to any Personal Data Processed in connection with its obligations under this Contract:
 - 1.4.1 process that Personal Data only in accordance with the Processing Table, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Authority before Processing the Personal Data unless prohibited by Law;
 - 1.4.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - 1.4.3 ensure that :
 - (i) the Staff do not Process Personal Data except in accordance with this Contract (and in particular the Processing Table);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Supplier's duties under this Data Protection Protocol;
 - (B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;

- (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
- 1.4.4 not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
 - (i) the Authority or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the GDPR or Article 37 of the Law Enforcement Directive (Directive (EU) 2016/680)) as determined by the Authority;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
 - (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Authority with respect to the Processing of the Personal Data;
- 1.4.5 at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination or expiry of this Contract unless the Supplier is required by Law to retain the Personal Data.
- 1.5 Subject to Clause 1.6 of this Data Protection Protocol, the Supplier shall notify the Authority immediately if it:
 - 1.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 1.5.2 receives a request to rectify, block or erase any Personal Data;
 - 1.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 1.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this Contract;
 - 1.5.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 1.5.6 becomes aware of a Data Loss Event.
- 1.6 The Supplier's obligation to notify under Clause 1.5 of this Data Protection Protocol shall include the provision of further information to the Authority in phases, as details become available.
- 1.7 Taking into account the nature of the Processing, the Supplier shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 1.5 of this Data Protection Protocol (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

- 1.7.1 the Authority with full details and copies of the complaint, communication or request;
- 1.7.2 such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- 1.7.3 the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
- 1.7.4 assistance as requested by the Authority following any Data Loss Event;
- 1.7.5 assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- 1.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Data Protection Protocol. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
 - 1.8.1 the Authority determines that the Processing is not occasional;
 - 1.8.2 the Authority determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 1.8.3 the Authority determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.9 The Supplier shall allow for audits of its Processing activity by the Authority or the Authority's designated auditor.
- 1.10 The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 1.11 Before allowing any Sub-processor to Process any Personal Data related to this Contract, the Supplier must:
 - 1.11.1 notify the Authority in writing of the intended Sub-processor and Processing;
 - 1.11.2 obtain the written consent of the Authority;
 - 1.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Data Protection Protocol such that they apply to the Sub-processor; and
 - 1.11.4 provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- 1.12 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
- 1.13 The Authority may, at any time on not less than thirty (30) Business Days' notice, revise this Data Protection Protocol 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).
- 1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than thirty (30) Business Days' notice to the Supplier amend this Data Protection Protocol to ensure that it complies with any guidance issued by the Information Commissioner's Office.

- 1.15 The Supplier shall comply with any further instructions with respect to Processing issued by the Authority by written notice. Any such further written instructions shall be deemed to be incorporated into the Processing Table from the date at which such notice is treated as having been received by the Supplier in accordance with Clause 27.2 (Notice) of Schedule 2 (General Terms and Conditions) of this Contract.

Subject to Clauses 1.13, 1.14, and 1.15 of this Data Protection Protocol, any change or other variation to this Data Protection Protocol shall only be binding once it has been agreed in writing and signed by an authorised representative of both Parties.

Schedule 4

Definitions and Interpretations

1 Definitions

- 1.1 In this Contract the following words shall have the following meanings unless the context requires otherwise:

“Achieve”	means: (a) in respect of a Test, to successfully pass a Test without any Test Issues; and and “Achieved” and “Achievement” shall be construed accordingly;
“Actual Operational Services Commencement Date”	means: (a) the date the Supplier actually commences delivery of all of the Services; OR (b) means the actual Go-Live Date; OR
“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 with, that body corporate from time to time;
“Authority Background IPRs”	means: (a) IPRs owned by the Authority before the Commencement Date, including IPRs contained in any of the Authority’s know-how documentation and IPRs owned by the Authority; (b) IPRs created at any time by the Authority independently of this Contract; and/or (c) Crown Copyright which is not available to the Supplier otherwise than under this Contract, but excluding IPRs owned by the Authority subsisting in the Authority Software;
“Authority Confirmation”	means the written confirmation provided (or deemed to be provided) by the Authority that the IT Products appear to have been correctly supplied, installed and commissioned ready for use;
“Authority Data”	means: (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of

	<p>any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <ul style="list-style-type: none"> (i) supplied to the Supplier by or on behalf of the Authority; and/or (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Contract; or <p>(b) any Personal Data for which the Authority is the Data Controller;</p>
“Authority IT Infrastructure”	means the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Supplier in connection with this Contract which is owned by the Authority or licensed to it by a third party and which interfaces with the IT Products or which is necessary for the Authority to receive the IT Products and/or Services;
“Authority Materials”	<p>means the Authority Data together with any materials, documentation, information, programs and codes supplied by the Authority to the Supplier, the IPRs in which:</p> <ul style="list-style-type: none"> (a) are owned or used by or on behalf of the Authority; and (b) are or may be used in connection with the provision or receipt of the Services, but excluding (where applicable) any Specially Written Software, Supplier Software, Third Party Software and Documentation relating to Supplier Software or Third Party Software;
“Authority Obligations”	means the Authority's obligations set out in Schedule 9 (Authority Obligations);
“Authority Software”	means software which is owned by or licensed to the Authority (other than under or pursuant to this Contract) and which is or will be used by the Supplier for the purposes of providing the IT Products and/or Services;
“Authority”	means the public authority identified within the table within the Order Form including its successors and assigns;
“Authorised Users”	means any employee, contractors, or agents of the Authority and any healthcare providers or other persons authorised by the Authority to access and use the IT Products and/or Services and/or to submit or receive Authority Data through access and use of the IT Products and/or Services, in accordance with this Contract;

“Available”	has the meaning given in Schedule 13 (Performance Levels);
“Baseline Security Requirements”	has the meaning set out in Annex 1 of Schedule 14 (Security Management and Policies);
“Breach Notice”	means a written notice of breach given by one Party to the other, notifying the Party receiving the notice of its breach of this Contract;
“Breach of Security”	<p>means the occurrence of:</p> <p>(a) any unauthorised access to or use of the IT Products and/or Services, the Premises and Locations, the Authority IT Infrastructure (to the extent that it is under the control of the Supplier) and/or any IT, information or data (including the Confidential Information and the Authority Data) used by the Authority and/or the Supplier in connection with this Contract; and/or</p> <p>(b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Authority Data), including any copies of such information or data, used by the Authority and/or the Supplier in connection with this Contract,</p> <p>in either case as more particularly set out in this Contract;</p>
“Business Continuity Event”	means any event or issue that could impact on the operations of the Supplier and its ability to supply the IT Products and/or provide the Services including an influenza pandemic and any Force Majeure Event;
“Business Continuity Plan”	means the Supplier’s business continuity plan which includes its plans for continuity of the supply of the IT Products and the provision of the Services during a Business Continuity Event;
“Business Day”	means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales;
“Cabinet Office Statement”	means the Cabinet Office Statement of Practice – Staff Transfers in the Public Sector 2000 (as revised 2013) as may be amended or replaced;
“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:

	<p>(a) Government Department;</p> <p>(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</p> <p>(c) Non-Ministerial Department; or</p> <p>(d) Executive Agency;</p>
“Change Advisory Board”	means a group made up of Authority (and as applicable Supplier) representatives to consider Change Requests;
“Change Authorisation Note”	means the form used by the Parties to set out the agreed Contract Change and which shall be substantially in the form of Appendix 3 to Schedule 10 (Change Control Process) or other such form agreed between the Parties;
“Change Communication”	means any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to Schedule 10 (Change Control Process);
“Change Control Process”	means the change control process set out in Schedule 10 (Change Control Process);
“Change in Law”	means a change in any Law which affects or relates to the Authority and/or has an impact on the provision of the IT Products and/or Services, which comes into force after the Commencement Date;
“Change of Control”	means a change in Control of the Supplier or a Sub-contractor;
“Change Request”	means a written request for a proposed change to this Contract which shall be substantially in the form of Appendix 1 to Schedule 10 (Change Control Process) or other such form agreed between the Parties;
“Charges”	means the total price exclusive of VAT that is payable to the Supplier by the Authority under this Contract for the full and proper performance by the Supplier of its obligations under this Contract over the Term and which are set out or referred to in Schedule 6 (Charging and Invoicing), including, where applicable, Milestone Payments and Service Charges;
“Codes of Practice”	has the meaning given to the term in Clause 1.2 of Schedule 3 (Information and Data Provisions);
“Commencement Date”	means the date set out in the Order Form at the front of this document;
“Commercially Sensitive Information”	means information of a commercially sensitive nature relating to the Supplier, its IPRs or its business or which

	the Supplier has indicated to the Authority, in writing, that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;
“Confidential Information”	<p>means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of this Contract including any procurement process which is:</p> <ul style="list-style-type: none"> (a) Personal Data including without limitation which relates to any patient or other service user or his or her treatment or clinical or care history; (b) designated as confidential by either party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored); and/or (c) Policies and such other documents which the Supplier may obtain or have access to through the Authority's intranet;
“Contract Change”	means any agreed change to this Contract other than an Operational Change;
“Contract Manager”	means for the Authority and for the Supplier the individuals specified in Schedule 1 (Key Provisions) or such other person notified by a Party to the other Party from time to time in accordance with Clause 8.1 (Contract Management) of Schedule 2 (General Terms and Conditions);
“Contract”	means the Order Form and all schedules attached to the Order Form;
“Contract Year”	<ul style="list-style-type: none"> (a) a period of 12 months commencing on the Commencement Date; or (b) thereafter a period of 12 months commencing on each anniversary of the Commencement Date; <p>provided that the final Contract Year shall end on the expiry or termination of the Term;</p>
“Contracting Authority”	means any contracting authority as defined in regulation 3 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than the Authority;
“Control”	means the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “Controls” and “Controlled” shall be interpreted accordingly;

“Controller”	has the same meaning as set out in the GDPR;
“Convictions”	means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 or any replacement or amendment to that Act);
“Critical Performance Failure”	means either: (a) the Supplier incurs Service Credits of more than as detailed in schedule 13 (b) the Supplier accruing Service Credits which meet or exceed the Service Credit Cap;
“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 Migration Services”	means the data migration services set out in this Contract (including, without limitation, Schedule 5 (Specification and Tender Response Document), which sets out the requirements of the Authority as issued to tenderers as part of the procurement process and the Supplier’s response to these requirements);
“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 Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Law as amended from time to time; and (iii) all applicable Law about the processing of personal data and privacy;
“Data Protection Officer” and “Data Subject”	have the same meanings as set out in the GDPR;
“Data Protection Protocol”	means any document of that name as provided to the Supplier by the Authority (as amended from time to time in accordance with its terms), which shall include, without limitation, any such document appended to Schedule 3 (Information and Data Provisions) of this Contract;

“Data Subject Access 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;
“Defect”	<p>means:</p> <ul style="list-style-type: none"> (a) any error, damage or defect in the manufacturing of the IT Products and/or Services; (b) any error or failure of code within the Software which causes it to malfunction or to produce unintelligible or incorrect results; (c) any failure of the IT Products and/or Services to provide the performance, features and functionality specified in Schedule 5 (Specification and Tender Response Document) or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant IT Products and/or Services from meeting its associated Test Success Criteria; or (d) any failure of the IT Products and/or Services to operate in conjunction with or interface with any other IT Products and/or Services in order to provide the performance, features and functionality specified in Schedule 5 (Specification and Tender Response Document) or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant IT Products and/or Services from meeting its associated Test Success Criteria;
“Defective IT Products”	has the meaning given under Clause 3.6 of Schedule 2 (General Terms and Conditions);
“Deliverable”	means any deliverables, materials and outputs of the Services including anything done, created or provided by or on behalf of the Supplier in the course of providing the Services, including documents, analyses, information, software (other than the Supplier Software or Third Party Software), developments (including Specially Written Software and/or relating to Software Development Services), modifications, materials, documentation, and any other tangible or intangible output of the Services, whether or not specified in this Contract.
“Delay Payments”	means the amounts payable by the Supplier to the Authority in respect of a Delay in Achieving a Milestone as set out in Schedule 6 (Charging and Invoicing);

“Delay”	<p>means:</p> <p>(a) a delay in the Achievement of a Milestone by its Milestone Date caused by an act or omission or default of the Supplier;</p> <p>(b) a delay caused by an act or omission or default of the Supplier in the design, development, testing or implementation of a deliverable by the relevant date set out in the Implementation Plan; and/or</p> <p>(c) a delay caused by a Defect;</p>
“Deposited Software”	means the software identified as such in Schedule 11 (IT Products and Software Licences) including the Source Code, database schema, and user documentation;
“Detailed Implementation Plan”	the plan developed and revised from time to time in accordance with Schedule 8 (Implementation);
“Dispute Notice”	means a written notice served by one Party to the other stating that the Party serving the notice believes there is a Dispute;
“Dispute Resolution Procedure”	means the process for resolving Disputes as set out in, Clause 22 (Dispute Resolution) of Schedule 2 (General Terms and Conditions). For the avoidance of doubt, the Dispute Resolution Procedure is subject to Clause 29.2.3 (Prohibited Acts) of Schedule 2 (General Terms and Conditions);
“Dispute(s)”	means any dispute, difference or question of interpretation or construction arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the IT Products and/or Services, any matters of contractual construction and interpretation relating to this Contract, or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
“Documentation”	means all applicable electronic and hardcopy documentation for use of the IT Products and Services that is made available to the Authority, including, without limitation, online help files, user manuals, administrator guides, release notes, specifications, technical information references and training materials including any updates thereto from time to time provided always that excluded from this definition will be any updated Documentation that has a material adverse effect on the Authority's ability to perform its obligations under this Contract and/or receive the benefit of the IT Products

	and/or Services (when compared with the original Documentation at the Commencement Date);
“DOTAS”	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
“Due Diligence Information”	means any information supplied to the Supplier by or on behalf of the Authority prior to the Commencement Date;
“Electronic Trading System(s)”	means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as the Authority may specify from time to time;
“Emergency Maintenance”	means ad hoc and unplanned maintenance provided by the Supplier where: <ul style="list-style-type: none"> (a) the Authority reasonably suspects that the relevant IT Products and/or Services (as applicable), or any part of the relevant IT Products and/or Services (as applicable), has or may have developed a fault, and notifies the Supplier of the same; or (b) the Supplier reasonably suspects that the relevant IT Products and/or Services (as applicable), or any part t relevant IT Products and/or Services (as applicable), has or may have developed a fault;
“Employee Transfer Date”	means the Transferred Staff’s first day of employment with the Supplier (or its Sub-contractor);
“Employment Liabilities”	means all claims, demands, actions, proceedings, damages, compensation, tribunal awards, fines, costs (including reasonable legal costs), expenses and all other liabilities whatsoever;
“Environmental Regulations”	has the meaning given to the term in Clause 1.2 (Confidentiality) of Schedule 3 (Information and Data Provisions);

“eProcurement Guidance”	means the NHS eProcurement Strategy available via: http://www.gov.uk/government/collections/nhs-procurement together with any further Guidance issued by the Department of Health in connection with it;
“Equality Legislation”	means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998;
“Equipment”	means the items of equipment (if any) specified in Schedule 11 (IT Products and Software Licences) which are required to meet the Authority requirements specified in the Specification and Tender Response Document (Schedule 5);
“Escrow Agreement”	Not used
“Exit Manager”	means the respective individual appointed by each Party pursuant to Clause 2.1 of Schedule 19 (Exit Management);
“Exit Period”	means the period identified as such in the Exit Plan;
“Exit Plan”	means the plan to be agreed by the Parties (and updated on an annual basis) pursuant to Clause 15.9 of Schedule 2 (General Terms and Conditions);
“Exit Requirements”	means the Authority’s exit requirements, as set out in Schedule 19 (Exit Management), which the Supplier must comply with during the Term and/or in relation to any expiry or early termination of this Contract;
“Fair Deal for Staff Pensions”	means guidance issued by HM Treasury entitled “Fair Deal for staff pensions: staff transfer from central government” issued in October 2013 (as amended, supplemented or replaced);
“Financial Distress Event”	means the occurrence of one or more of the events listed in Clause 3.1 of Schedule 17 (Financial Distress);
“Financial Distress Service Continuity Plan”	means a plan setting out how the Supplier will ensure the continued performance and delivery of the IT Products and/or Services in accordance with this Contract in the event that the Supplier suffers a Financial Distress Event;

“FOIA”	has the meaning given to the term in Clause 1.2 (Confidentiality) of Schedule 3 (Information and Data Provisions);
“Force Majeure Event”	<p>means any event beyond the reasonable control of the Party in question to include, without limitation:</p> <ul style="list-style-type: none"> (a) war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict materially affecting either Party’s ability to perform its obligations under this Contract; (b) acts of terrorism; (c) flood, storm or other natural disasters; (d) fire; (e) unavailability of public utilities and/or access to transport networks to the extent no diligent supplier could reasonably have planned for such unavailability as part of its business continuity planning; (f) government requisition or impoundment to the extent such requisition or impoundment does not result from any failure by the Supplier to comply with any relevant regulations, laws or procedures (including such laws or regulations relating to the payment of any duties or taxes) and subject to the Supplier having used all reasonable legal means to resist such requisition or impoundment; (g) compliance with any local law or governmental order, rule, regulation or direction applicable outside of England and Wales that could not have been reasonably foreseen; (h) industrial action which affects the ability of the Supplier to supply the IT Products and/or to provide the Services, but which is not confined to the workforce of the Supplier or the workforce of any Sub-contractor of the Supplier; and (i) a failure in the Supplier’s and/or Authority’s supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties; <p>but excluding, for the avoidance of doubt, the withdrawal of the United Kingdom from the European Union and any related circumstances, events, changes or requirements;</p>

“Fraud”	means any offence under any law in respect of fraud in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the government, parliament or any Contracting Authority;
“GDPR”	means the General Data Protection Regulation (Regulation (EU) 2016/679);
“General Anti-Abuse Rule”	means: (a) legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
“Go-Live Criteria”	Not used
“Go-Live Date”	Not used
“Good Industry Practice”	means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier and/or service provider engaged in the manufacture and/or supply of IT products and/or the provision of services similar to the IT Products and Services under the same or similar circumstances as those applicable to this Contract; including in accordance with any codes of practice published by relevant trade associations;
“Governance Board”	has the meaning set out in Schedule 15 (Governance);
“Guidance”	means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the IT Products and/or Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Authority and/or have been published and/or notified to the Supplier by the Department of Health, Monitor, NHS England, the Medicines and Healthcare Products Regulatory Agency, the European Medicine Agency, the European Commission, the Care Quality Commission and/or any other regulator or competent body;
“Halifax Abuse Principle”	means the principle explained in the CJEU Case C-255/02 Halifax and others;
“Hardware”	means the items of hardware and equipment (if any) specified in Schedule 11 (IT Products and Software Licences) which are required to meet the Authority requirements specified in the Specification and Tender Response Document (Schedule 5);

“Help Desk”	means the single point of contact help desk set up and operated by the Supplier for the purposes of this Contract;
“HM Government Cyber Essentials Scheme”	means the HM Government Cyber Essentials Scheme as further defined in the documents relating to this scheme published at: https://www.gov.uk/government/publications/cyber-essentials-scheme-overview ;
“Hosting Services”	means the hosting services set out in this Contract (including, without limitation, Schedule 5 (Specification and Tender Response Document), which sets out the requirements of the Authority as issued to tenderers as part of the procurement process and the Supplier's response to these requirements);
“Impact Assessment”	means an assessment of a Change Request substantially in the form of Appendix 2 of Schedule 10 (Change Control Process) or other such form agreed between the Parties;
“Implementation Plan”	Not used
“Implementation Services”	means any or all of the following: (a) Installation and Commissioning Services; (b) Testing Services; (c) Interfacing and Integration Services; (d) Data Migration Services; (e) Software Development Services; (f) Training Services; Which will be performed as detailed in a Statement of work
“Installation and Commissioning Services”	means the installation and commissioning and testing services set out in this Contract (including, without limitation, Schedule 5 (Specification and Tender Response Document) and Schedule 8 (Implementation);
“Intellectual Property Rights”	means: (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

	<p>domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>(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</p> <p>(c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
“Interested Party”	means any organisation which has a legitimate interest in providing services of the same or similar nature to the Services in immediate or proximate succession to the Supplier or any Sub-contractor and who had confirmed such interest in writing to the Authority;
“Interfacing and Integration Services”	means the interfacing and integration services set out in this Contract (including, without limitation, Schedule 5 (Specification and Tender Response Document) and Schedule 8 (Implementation));
“IPRs Claim”	means any claim against the Authority of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Intellectual Property Rights save for any such claim to the extent that it is caused by any use by or on behalf of that Authority of any Intellectual Property Rights, or the use of the Authority Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Contract or for a purpose not reasonably to be inferred from Schedule 5 (Specification and Tender Response Document) or the provisions of this Contract;
“IT Products”	means all items of Hardware, Equipment and/or Software and other IT products, materials or items as specified Schedule 11 (IT Products and Software Licences) that the Supplier is required to supply and/or licence to the Authority under this Contract (including under Schedule 5 (Specification and Tender Response Document) which sets out the requirements of the Authority in respect of any IT Products as issued to tenderers as part of the procurement process and the Supplier’s response to these requirements);
“Key Milestone”	means a Milestone identified as a Key Milestone in the Implementation Plan;

“Key Performance Indicator” or “KPI”	means the key performance indicators as set out in Schedule 13 (Performance Levels);
“Key Personnel”	means those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in the table in Clause 22.2 of Schedule 1 (Key Provisions) against each Key Role as at the Commencement Date or as amended from time to time in accordance with Clause 22 (Key Personnel) of Schedule 1 (Key Provisions);
“Key Provisions”	means the key provisions set out in Schedule 1 (Key Provisions) (including those identified as “Optional Key Provisions” or “Extra Key Provisions”);
“Key Roles”	means a role described as a Key Role in in the table in Clause 22.2 of Schedule 1 (Key Provisions) and any additional roles added from time to time in accordance with Clause 22 (Key Personnel) of Schedule 1 (Key Provisions);
“Known Vulnerability”	<p>means any Vulnerability that has either:</p> <ul style="list-style-type: none"> (a) been assigned a Common Vulnerabilities and Exposures (CVE) number; (b) been disclosed on the National Vulnerability Database available at the website operated by the US National Institute of Standards and Technology (NIST) from to time to time; or <p>been disclosed on the internet, or any public database, such that it would be revealed by reasonable searches conducted in accordance with good industry practice;</p>
“KPI Failure”	means a Minor KPI Failure or Material KPI Failure (as the context so requires);
“Latent Vulnerability”	means any instances of typical classes of Vulnerability. For example, buffer overflows, cross-site scripting (XSS) and Structure Query Language (SQL) injection;
“Law”	<p>means any applicable legal requirements including, without limitation:</p> <ul style="list-style-type: none"> (a) any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument as applicable in England and Wales; (b) any applicable European Union obligation, directive, regulation, decision, law or right (including any such obligations, directives, regulations, decisions, laws or rights that are incorporated into the law of England and Wales or given effect in England and Wales by any applicable statute, proclamation, delegated or

	<p>subordinate legislation, bye-law, order, regulation or instrument);</p> <p>(c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;</p> <p>(d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;</p> <p>(e) requirements set by any regulatory body as applicable in England and Wales;</p> <p>(f) any relevant code of practice as applicable in England and Wales; and</p> <p>(g) any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above);</p>
“Long Stop Date”	means the date, if any, specified in Schedule 1 (Key Provisions);
“Losses”	means all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law;
“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;
“Managed Services”	means the managed services set out in this Contract (including, without limitation, Schedule 5 (Specification and Tender Response Document), which sets out the requirements of the Authority as issued to tenderers as part of the procurement process and the Supplier's response to these requirements);
“Material KPI Failure”	<p>means:</p> <p>(a) a Serious KPI Failure; or</p> <p>(b) a Severe KPI Failure;</p> <p>As detailed in Schedule 13</p>
“Measures”	means any measures proposed by the Supplier or any Sub-contractor within the meaning of regulation 13(2)(d) of TUPE;

“Milestone Achievement Certificate”	means the certificate granted by the Authority when the Supplier has Achieved a Milestone, which is in substantially the same form as that set out in Appendix B to Part C of Schedule 8 (Implementation);
“Milestone Date”	means the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
“Milestone Payment(s)”	means a payment identified in Schedule 6 (Charges and Invoicing) to be made following the issue of a Milestone Achievement Certificate;
“Milestone”	means an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date;
“Minor KPI Failure”	has the meaning as set out against each KPI in Schedule 13 (Performance Levels);
“Monthly Service Charges”	Means an amount equal to one twelfth (1/12th) of the annual Service Charges;
“Named User”	means any person who is authenticated by the Software Subscription Services to register to access and use the Software Subscription Services (including the relevant Supplier Software). A Named User license is personal to the individual to whom the license is allocated and may not be used by any other individual save that the Authority may, from time to time, nominate which individual users are entitled to seek authentication as Named Users and therefore authorised to use the Software Subscription Services (including the Supplier Software) and the Authority shall notify the Supplier of changes to such individual Named Users;
“New Releases”	means an item produced primarily to extend, alter or improve the IT Products and/or Services by providing additional functionality or performance enhancement (whether or not Defects in the IT Products and/or Services are also corrected) while still retaining the original designated purpose of that item;

“NHS Body”	has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of 4 to the Health and Social Care Act 2012;
“NHS”	means the National Health Service;
“Non-performed Services”	has the meaning give under Clause 12.1 of Schedule 12 (Support and Maintenance Services for IT Products);
“Object Code”	means software and/or data in machine-readable, compiled object code form;
“Occasion of Tax Non-Compliance”	<p>means:</p> <ul style="list-style-type: none"> (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or (b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion;
“On Call Hours”	Detailed in Schedule 13 and Schedule 5
“Operational Change”	<p>means any change in the Supplier's operational procedures which in all respects, when implemented:</p> <ul style="list-style-type: none"> (a) will not affect the Charges or the Supplier's costs of performing the Services and will not result in any other costs to the Authority; (b) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services; (c) will not adversely affect the interfaces or interoperability of the Services with any of the

	Authority IT Infrastructure; and (d) will not require a formal change to this Contract;
“Operational Services Commencement Date”	means the date identified in the Implementation Plan upon which the Operational Services are to commence;
“Operational Services”	means the following: (a) [Support and Maintenance Services]; (b) [Hosting Services]; (c) [Managed Services]; (d) [Software Subscription Services]; and (e) [Training Services].
“Order Form”	means the order form set out at the front of this document;
“Outline Implementation Plan”	means the outline plan set out at Appendix 1 of Schedule 8 (Implementation);
“Party”	means the Authority or the Supplier as appropriate and Parties means both the Authority and the Supplier;
“Payment Commencement Date”	means the date specified as such in the Implementation Plan;
“Performance Monitoring Report”	means the [monthly] report prepared by the Supplier in accordance with Schedule 13 (Performance Levels);
“Performance Monitoring System”	means the Supplier’s documentation and process for monitoring the Services in order to ensure the Supplier is complying with the KPIs and to identify any KPI Failures or other Defects or defaults or acts or omissions with an adverse impact on the Supplier’s performance and/or delivery of the IT Products and Services;
“Permitted Maintenance”	has the meaning given it in Clause 3.1 of Schedule 12 (Support and Maintenance Services for IT Products);
“Personal Data Breach”	has the same meaning as set out in the GDPR;
“Personal Data”	has the same meaning as set out in the GDPR;
“Planned Downtime”	See Schedule 13 and schedule 5

“Policies”	means the policies, rules and procedures of the Authority as notified to the Supplier from time to time including those identified in the Appendix to Schedule 14 (Security Management and Policies);
“Premises and Locations”	has the meaning given under Clause 4.1 (Operation of the Services) of Schedule 2 (General Terms and Conditions);
“Priority 1” or “P1” “Priority 2” or “P2” “Priority 3” or “P3” “Priority 4” or “P4” “Priority 5” or “P5”	have the meanings set out in Schedule 13 (Performance Levels);
“Process”	has the same meaning as set out in the GDPR. Processing and Processed shall be construed accordingly;
“Processor”	has the same meaning as set out in the GDPR;
“Product Information”	means information concerning the IT Products as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 20 (Electronic product and services information) of Schedule 2 (General Terms and Conditions) for inclusion in the Authority's product catalogue from time to time;
“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 such measures adopted by it;
“Purchase Order”	means the purchase order required by the Authority's financial systems;
“Rectification Plan Failure”	means: <ul style="list-style-type: none"> (a) the Supplier failing to submit or resubmit a draft Rectification Plan in accordance with Clause 8 of Schedule 1 (Key Provisions); (b) the Authority, acting reasonably, rejecting a draft of a revised Rectification Plan submitted by the Supplier; (c) following the successful consent to a Rectification Plan by the Authority, a Delay recurring within a period of 6 months for the

	same (or substantially the same) root cause as that of the original Delay;
“Rectification Plan”	means a plan to address the impact of, and prevent the reoccurrence of, a Delay;
“Rejected IT Products”	has the meaning given under Clause 3.2 (Inspection, rejection, return and recall of the IT Products) of Schedule 2 (General Terms and Conditions);
“Release Event(s)”	means events which will trigger the release of the Deposited Software to a duly authorised officer of the Authority under the Escrow Agreement and/or the terms of Schedule 18 (Escrow);
“Relevant Tax Authority”	means HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
“Remedial Proposal”	has the meaning given under Clause 15.3 (Term and Termination) of Schedule 2 (General Terms and Conditions);
“Replacement Services”	means any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination of this Contract, whether those services are provided by the Authority internally and/or by any third party;
“Replacement Supplier”	means any third party service provider of Replacement Services appointed by the Authority from time to time (or where the Authority is providing replacement Services for its own account, the Authority);
“Requirement to Recall”	has the meaning given under Clause 3.9 of Schedule 2 (General Terms and Conditions);
“Resolution Time”	means the elapsed time to resolve any relevant KPI Failure;
“Security Management Plan”	means the security management plan developed pursuant to Schedule 14 (Security Management and Policies);
“Security Tests”	means tests to validate the security of all relevant processes, systems, incident response plans, patches to vulnerabilities and mitigations to Breaches of Security;

“Serious KPI Failure”	has the meaning as set out against each KPI in Schedule 13 (Performance Levels);
“Service Availability”	has the meaning given in Schedule 13 (Performance Levels);
“Service Downtime”	means any period of time during which any of the relevant Operational Services are not Available;
“Service Charges”	means the component of the annual Charges that relate to the provision of Services as set out in the Schedule 5 (Specification and Tender Response Document) excluding Milestone Payments;
“Service Credit Cap”	has the meaning given in Schedule 13 (Performance Levels);
“Service Credits”	means credits payable by the Supplier due to the occurrence of one (1) or more KPI Failures, calculated in accordance with Schedule 13
“Service Hours”	means in relation to any Service, the hours for which that Service is to be operational as set out in the Specification and Tender Response Document (Schedule 5) and or as otherwise specified in this Contract;
“Service Incident”	means a reported occurrence of a failure to deliver any part of the relevant Operational Services in accordance with the Specification and Tender Response Document (Schedule 5) and/or the KPIs;
“Service Period”	means a calendar month, save that: (a) the first service period shall begin on the Services Commencement Date and shall expire at the end of the calendar month in which the Services Commencement 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;
“Services Commencement Date”	means the date delivery of the Services shall commence as specified in Schedule 1 (Key Provisions). If no date

	is specified in Schedule 1 (Key Provisions) this date shall be the Commencement Date;
“Services Information”	means information concerning the Services as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 20 (Electronic product and services information) of Schedule 2 (General Terms and Conditions) for inclusion in the Authority's services catalogue from time to time;
“Services”	means any and all of the services to be provided by the Supplier under this Contract including the relevant Implementation Services, Operational Services and any Transition Services;
“Severe KPI Failure”	has the meaning set out against each KPI in Schedule 13 (Performance Levels);
“Software Development Services”	means the development and/or configuration services set out in this Contract (including, without limitation, Schedule 5 (Specification and Tender Response Document), which sets out the requirements of the Authority as issued to tenderers as part of the procurement process and the Supplier's response to these requirements) and which may relate to (but not be limited to) Specially Written Software and/or Interfacing and Integration Services;
“Software Licences”	means (as applicable) the licences granted by the Supplier to the Authority pursuant to Schedule 11 (IT Products and Software Licences) and/or any licences granted by the Supplier to the Authority in respect of access and use of any Software Subscription Services;
“Software Subscription Services”	means the Supplier's software-as-a-service Supplier Software applications and related services set forth in Schedule 11 (IT Products and Software Licences);
“Software”	means Specially Written Software, Supplier Software and Third Party Software;
“Source Code”	means computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use,

	reproduction, maintenance, modification and enhancement of such software;
“Specially Written Software”	<p>means any software developed for the Authority or its designated users pursuant to the Software Development Services including any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-contractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including:</p> <ul style="list-style-type: none"> (a) any Supplier Background IPRs or Third Party IPRs that are embedded in or which are an integral part of such software; and (b) any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Contract;
“Specification and Tender Response Document”	means the document set out in Schedule 5 (Specification and Tender Response Document) as amended and/or updated in accordance with this Contract;
“Staff”	means any employee, agent, consultant and/or contractor of the Supplier or Sub-contractor who is either partially or fully engaged in the provision of the IT Products and performance of the Services;
“Step-In Rights”	means the step-in rights, if any, referred to in Schedule 1 (Key Provisions);
“Sub-contract”	means a contract between two or more suppliers, at any stage of remoteness from the Supplier in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract;
“Sub-contractor”	means a party to a Sub-contract other than the Supplier;
“Sub-processor”	means any third party appointed to Process Personal Data on behalf of the Supplier related to this Contract;
“Subscription Access Rights”	means the type and quantity of user rights granted to the Authority in respect of Authorised Users permitted access and use of the Software Subscription Services during the Term as specified in Schedule 11 (IT Products and Software Licences) and as may be increased from time to time (in accordance with the provisions of Schedule 11 (IT Products and Software Licences) and the Change Control Process;

“Subsequent Transfer Date”	means the point in time, if any, at which services which are fundamentally the same as the Services (either in whole or in part) are first provided by a Successor or the Authority, as appropriate, giving rise to a relevant transfer under TUPE;
“Subsequent Transferring Employees”	means any employee, agent, consultant and/or contractor who, immediately prior to the Subsequent Transfer Date, is wholly or mainly engaged in the performance of services fundamentally the same as the Services (either in whole or in part) which are to be undertaken by the Successor or Authority, as appropriate;
“Successor”	means any third party who provides IT products and/or services fundamentally the same as the IT Products and/or Services (either in whole or in part) in immediate or subsequent succession to the Supplier upon the expiry or earlier termination of this Contract;
“Supplier Background IPRs”	means: (a) Intellectual Property Rights owned by the Supplier before the Commencement Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's know-how or generic business methodologies; and/or (b) Intellectual Property Rights created by the Supplier independently of this Contract, which in each case is or will be used before or during the Term for designing, testing, implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;
“Supplier Code of Conduct”	means the code of that name published by the Government Commercial Function originally dated September 2017, as may be amended, restated, updated, re-issued or re-named from time to time;
“Supplier Location(s)”	Detailed in Schedule 5
“Supplier Software”	means the software identified as such in Schedule 11 (IT Products and Software Licences);
“Supplier”	means the supplier named on the form of Contract on the first page;

“Supplier's Change Manager”	[insert definition if relevant in the context of Schedule 15 (Governance);
“Supply of IT Products Commencement Date”	means the date supply of the IT Products shall commence as specified in Schedule 1 (Key Provisions). If no date is specified in Schedule 1 (Key Provisions) this date shall be the Commencement Date;
“Support and Maintenance Inventory”	means the maintenance inventory as referred to at Clause 5.1.1 of Schedule 12 (Support and Maintenance Services for IT Products);
“Support and Maintenance Services”	means the support and maintenance services set out in this Contract (including, without limitation, Schedule 5 (Specification and Tender Response Document), Schedule 12 (Support and Maintenance Services for IT Products) and Schedule 13 (Performance Levels);
“System Downtime”	Determined in the context of Schedule 13 (Performance Levels) and any payment mechanism/performance monitoring requirements.
“System Response Time”	Determined in the context of Schedule 13 (Performance Levels) and any payment mechanism/performance monitoring requirements.
“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 KPI in the table in Schedule 13 (Performance Levels);
“Term”	means the term as set out in Schedule 1 (Key Provisions);
“Termination Notice”	means a written notice of termination given by one Party to the other notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;
“Test Certificate”	means the certificate materially in the form of the document contained in Appendix A to Part C of Schedule 8 (Implementation) issued by the Authority when deliverables connected to a Milestone have satisfied all relevant Test Success Criteria satisfactorily;
“Test Issue Management Log”	means a log for the recording of Test Issues as described further in Schedule 8 (Implementation);
“Test Issue”	means any variance or non-conformity of deliverables connected to a Milestone from its requirements as set out in the relevant Test Success Criteria;

“Test Plan”	means a plan for the Testing of deliverables under each Milestone and other agreed criteria related to the achievement of Milestones as described further in Schedule 8 (Implementation);
“Test Report”	means a report setting out the results of any Tests which shall include without limitation the information set out in Schedule 8 (Implementation);
“Test Specification”	means the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in Schedule 8 (Implementation);
“Test Strategy”	means a strategy for the conduct of Testing as described further in Schedule 8 (Implementation);
“Test Success Criteria”	means in relation to a Test, the test success criteria for that Test as referred to in Schedule 8 (Implementation);
“Test Witness”	means any person appointed by the Authority pursuant Schedule 8 (Implementation);
“Testing Services”	means the testing services set out in this Contract (including, without limitation, Schedule 5 (Specification and Tender Response Document);
“Testing” or “Tests”	means any tests to be conducted under this Contract and which are described in Part C of Schedule 8 (Implementation);
“Third Party Body”	has the meaning given under Clause 8.5 (Contract Management) of Schedule 2 (General Terms and Conditions);
“Third Party Employees”	means all those employees, if any, assigned by a Third Party to the provision of a service that is fundamentally the same as the Services immediately before the Transfer Date;
“Third Party IPRs”	means Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;
“Third Party Software”	means the software identified as such in Schedule 11 (IT Products and Software Licences);
“Third Party”	means any supplier of services fundamentally the same as the Services (either in whole or in part) immediately before the Transfer Date;

“Training Services”	means the services set out in this Contract (including, without limitation, Schedule 5 (Specification and Tender Response Document));
“Transfer Date”	means the Actual Operational Services Commencement Date;
“Transition Services”	means the services that the Supplier shall provide pursuant to Schedule 19 (Exit Management) and the Exit Plan;
“Transferred Staff”	means those employees (including Transferring Employees and any Third Party Employees) whose employment compulsorily transfers to the Supplier or to a Sub-contractor by operation of TUPE, the Cabinet Office Statement or for any other reasons, as a result of the award of this Contract;
“Transferring Employees”	means all those employees, if any, assigned by the Authority to the provision of a service that is fundamentally the same as the Services immediately before the Transfer Date;
“TUPE”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006/246) and/or any other regulations or other legislation enacted for the purpose of implementing or transposing the Acquired Rights Directive (77/187/EEC, as amended by Directive 98/50 EC and consolidated in 2001/23/EC) into English law;
“Unacceptable KPI Failure”	means the Supplier failing to achieve a KPI service threshold in respect of thresholds detailed in Schedule 13 of the Key Performance Indicators that are measured in that Service Period;
“Unplanned Downtime”	<p>means periods of Emergency Maintenance, or when the relevant IT Products and/or Services are not Available due to a Supplier default or act or omission but excluding downtime due to:</p> <ul style="list-style-type: none"> (a) a Force Majeure Event; (b) misuse of the IT Products by an Authorised User; or (c) consequential impacts of the failure of, or disruption to the Authority Software or Authority IT Infrastructure upon which delivery of the IT Products and/or Services is reliant (except any such failure or disruption caused by the Supplier, Staff, IT Products and/or other Services);

“Updates”	means in relation to any IT Products and/or Software Subscription Services (including the relevant Supplier Software) a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item except those constituting an Upgrade;
“Upgrades”	means in relation to any IT Products and/or Software Subscription Services a major new version of the such item (or any part of it) intended to have new or improved functionality;
“Use”	means in relation to any Software, the right to copy (for the purposes of loading, execution, storage, transmission or display) that Software (including to copy Software for archive and/or back-up purposes) (and Using shall be construed accordingly);
“VAT”	means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax; and
“Vulnerability”	means a weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly.

- 1.2 References to any Law shall be deemed to include a reference to that Law as amended, extended, consolidated, re-enacted, restated, implemented or transposed from time to time.
- 1.3 References to any legal entity shall include any body that takes over responsibility for the functions of such entity.
- 1.4 References in this Contract to a “Schedule”, “Appendix” or to a “Clause” are to schedules, appendices and clauses of this Contract.
- 1.5 References in this Contract to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.
- 1.6 Unless set out in Schedule 6 (Charges and Invoicing) as a chargeable item and subject to Clause 30.6 of Schedule 2 (General Terms and Conditions), the Supplier shall bear the cost of complying with its obligations under this Contract.
- 1.7 The headings are for convenience only and shall not affect the interpretation of this Contract.
- 1.8 Words denoting the singular shall include the plural and vice versa.
- 1.9 Where a term of this Contract provides for a list of one or more items following the word “including” or “includes” then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been

included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.

- 1.10 Where there is a conflict between the Supplier's responses to the Authority's requirements (the Supplier's responses being set out in Schedule 5 (Specification and Tender Response Document) and any other part of this Contract, such other part of this Contract shall prevail.
- 1.11 Where a document is required under this Contract, the Parties may agree in writing that this shall be in electronic format only.
- 1.12 Where there is an obligation on the Authority to procure any course of action from any third party, this shall mean that the Authority shall use its reasonable endeavours to procure such course of action from that third party.
- 1.13 Any guidance notes in grey text do not form part of this Contract.
- 1.14 Any Breach Notice issued by a Party in connection with this Contract shall not be invalid due to it containing insufficient information. A Party receiving a Breach Notice ("**Receiving Party**") may ask the Party that issued the Breach Notice ("**Issuing Party**") to provide any further information in relation to the subject matter of the Breach Notice that it may reasonably require to enable it to understand the Breach Notice and/or to remedy the breach. The Issuing Party shall not unreasonably withhold or delay the provision of such further information as referred to above as may be requested by the Receiving Party but no such withholding or delay shall invalidate the Breach Notice.
- 1.15 Any terms defined as part of a Schedule or other document forming part of this Contract shall have the meaning as defined in such Schedule or document.
- 1.16 Defined terms included in this Schedule 4 (Definitions and Interpretations) that are not used in this Contract shall be deemed to be excluded from interpretation of this Contract.

Schedule 5

Specification and Tender Response Document

1. Specification

The Supplier will provide the Customer with the required maintenance and support to support its Standard Hours or Enhanced Hours and meet the Performance levels in Schedule 13.

- 1.1 The provision of Standard Maintenance: Annual Technical Support and Maintenance for Operational Hours Monday-Friday 07:00-15:00 for 46 Opex Falcon Scanners.
- 1.2 Remote support coverage within specified operational hours. Six Preventative Maintenance calls and unlimited Demand calls per annum. All labour and replacement parts necessitated by normal wear and tear from operation of the Equipment in accordance with OPEX's Published Specifications, in order to maintain the Equipment in good operating condition.
- 1.3 To provide an efficient support service which results in first time fixes the Supplier will hold a stock of spares onsite as set out in Schedule 5 Appendix 1. The volume of spares listed is based on one Red Falcon Scanner and the Supplier expects to hold a stock for three units on site and the inventory would be managed by the dedicated site technician with next day delivery on parts from its UK based European store. The dedicated engineer will also carry a boot stock with an equivalency based on machines in their care.
- 1.4 The maintenance costs are the same for the transportable scanners. The cost for support and maintenance of the workstations is included in the maintenance cost for the scanner.
- 1.5 During the term of the maintenance contract there is an option to upgrade support and maintenance part way through. However, there is not an option to downgrade the maintenance and support service, as resources, labour and parts for the provision of the service will have been committed by us for the term of the agreement.
- 1.6 Supply of 16 Edit Transform Licenses

2. Existing Customer and System Hardware and Software to be supported

The supplier will maintain and support the customer's equipment as follows:-

Serial Number	Description	Location	Acceptance Confirmation Date
FA07241	Red Falcon Scanner	Unit 5, Greenfinch Way, Newburn Riverside, Newcastle, NE15 8NX	01/04/2022

FA07242	Red Falcon Scanner	Unit 5, Greenfinch Way, Newburn Riverside, Newcastle, NE15 8NX	01/04/2022
FA07327	Red Falcon Scanner	Unit 5, Greenfinch Way, Newburn Riverside, Newcastle, NE15 8NX	01/04/2022
FA07414	Red Falcon Scanner	Unit 5, Greenfinch Way, Newburn Riverside, Newcastle, NE15 8NX	01/04/2022
FA07326	Red Falcon Scanner	Unit 5, Greenfinch Way, Newburn Riverside, Newcastle, NE15 8NX	01/04/2022
FA07413	Red Falcon Scanner	Unit 5, Greenfinch Way, Newburn Riverside, Newcastle, NE15 8NX	01/04/2022
FA07415	Red Falcon Scanner	Unit 5, Greenfinch Way, Newburn Riverside, Newcastle, NE15 8NX	01/04/2022
FA07441	Red Falcon Scanner	Unit 5, Greenfinch Way, Newburn Riverside, Newcastle, NE15 8NX	01/04/2022
FA07440	Red Falcon Scanner	Unit 5, Greenfinch Way, Newburn Riverside, Newcastle, NE15 8NX	01/04/2022
FA07796	Red Falcon Scanner	Unit 5, Greenfinch Way, Newburn Riverside, Newcastle, NE15 8NX	01/04/2022
FA07801	Red Falcon Scanner	Unit 5, Greenfinch Way, Newburn Riverside, Newcastle, NE15 8NX	01/04/2022
FA07799	Red Falcon Scanner	Unit 5, Greenfinch Way, Newburn Riverside, Newcastle, NE15 8NX	01/04/2022
FA07794	Red Falcon Scanner	Unit 5, Greenfinch Way, Newburn Riverside, Newcastle, NE15 8NX	01/04/2022
FA07803	Red Falcon Scanner	Unit 5, Greenfinch Way, Newburn	01/04/2022

		Riverside, Newcastle, NE15 8NX	
FA07805	Red Falcon Scanner	Unit 5, Greenfinch Way, Newburn Riverside, Newcastle, NE15 8NX	01/04/2022
FA07800	Red Falcon Scanner	Unit 5, Greenfinch Way, Newburn Riverside, Newcastle, NE15 8NX	01/04/2022
FA07795	Red Falcon Scanner	Unit 5, Greenfinch Way, Newburn Riverside, Newcastle, NE15 8NX	01/04/2022
FA07802	Red Falcon Scanner	Unit 5, Greenfinch Way, Newburn Riverside, Newcastle, NE15 8NX	01/04/2022
FA07804	Red Falcon Scanner	Unit 5, Greenfinch Way, Newburn Riverside, Newcastle, NE15 8NX	01/04/2022
FA07798	Red Falcon Scanner	Unit 5, Greenfinch Way, Newburn Riverside, Newcastle, NE15 8NX	01/04/2022
FA07797	Red Falcon Scanner	Unit 5, Greenfinch Way, Newburn Riverside, Newcastle, NE15 8NX	01/04/2022
FA07989	Red Falcon Scanner	Unit 5, Greenfinch Way, Newburn Riverside, Newcastle, NE15 8NX	01/04/2022
FA07990	Red Falcon Scanner	Unit 5, Greenfinch Way, Newburn Riverside, Newcastle, NE15 8NX	01/04/2022
FA07991	Red Falcon Scanner	Unit 5, Greenfinch Way, Newburn Riverside, Newcastle, NE15 8NX	01/04/2022
FA07994	Red Falcon Scanner	Unit 5, Greenfinch Way, Newburn Riverside, Newcastle, NE15 8NX	01/04/2022
FA07993	Red Falcon Scanner	Unit 5, Greenfinch Way, Newburn Riverside, Newcastle, NE15 8NX	01/04/2022

FA07988	Red Falcon Scanner	Unit 5, Greenfinch Way, Newburn Riverside, Newcastle, NE15 8NX	01/04/2022
FA07992	Red Falcon Scanner	Unit 5, Greenfinch Way, Newburn Riverside, Newcastle, NE15 8NX	01/04/2022
FA07995	Red Falcon Scanner	Unit 5, Greenfinch Way, Newburn Riverside, Newcastle, NE15 8NX	01/04/2022
FA07844M	Red Falcon Scanner	Unit 5, Greenfinch Way, Newburn Riverside, Newcastle, NE15 8NX	01/04/2022
FA08050	Red Falcon Scanner	Unit 5, Greenfinch Way, Newburn Riverside, Newcastle, NE15 8NX	01/04/2022
FA08045	Red Falcon Scanner	Unit 5, Greenfinch Way, Newburn Riverside, Newcastle, NE15 8NX	01/04/2022
FA08049	Red Falcon Scanner	Unit 5, Greenfinch Way, Newburn Riverside, Newcastle, NE15 8NX	01/04/2022
FAG7371	Red Falcon Scanner	Ridgway House, Northgate Close, Horwich, BL6 6PQ	01/04/2022
FAG7376	Red Falcon Scanner	Ridgway House, Northgate Close, Horwich, BL6 6PQ	01/04/2022
FAG7372	Red Falcon Scanner	Ridgway House, Northgate Close, Horwich, BL6 6PQ	01/04/2022
FAG7373	Red Falcon Scanner	Ridgway House, Northgate Close, Horwich, BL6 6PQ	01/04/2022
FAG7374	Red Falcon Scanner	Ridgway House, Northgate Close, Horwich, BL6 6PQ	01/04/2022
FAG7375	Red Falcon Scanner	Ridgway House, Northgate Close, Horwich, BL6 6PQ	01/04/2022
FA08163	Red Falcon Scanner	Ridgway House, Northgate Close, Horwich, BL6 6PQ	01/04/2022

FAO8162	Red Falcon Scanner	Ridgway House, Northgate Close, Horwich, BL6 6PQ	01/04/2022
FAO8166	Red Falcon Scanner	Ridgway House, Northgate Close, Horwich, BL6 6PQ	01/04/2022
FAO8165	Red Falcon Scanner	Ridgway House, Northgate Close, Horwich, BL6 6PQ	01/04/2022
FAO8167	Red Falcon Scanner	Ridgway House, Northgate Close, Horwich, BL6 6PQ	01/04/2022
FAO8164	Red Falcon Scanner	Ridgway House, Northgate Close, Horwich, BL6 6PQ	01/04/2022

3. Supplier response documents

3.1 – Additional requirements response document

Ccube

21_11_13 Opex Scanner Maintenance and support

Additional requirements

Additional Requirements	Supplier response
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

3.2 Price response documents



Appendix 1 - Spares

Part Number	Part Description	Qty
1295236	SPACER .384" .500" .136" ROUND AL 6061	1
1507006	BEARING BALL .375" .875" .281" ABEC-3 SGL ROW DP GRV SEALS POLYREX EM	3
1613200	BEARING PLAIN FLANGED .375" .687" NYLINER	1
1620901	BEARING PLAIN FLANGED .312" .437" .500" NYLINER	1
1667001	O-RING WELDED 2.268" .139" URETHANE 70A CLEAR	1
2042010	LOWMFD	1
2049010	IMAGE CAPTURE	1
2049310	UPPER SKEW	1
2049810	LOWER SKEW	1
2051510	PCB ASM FINAL RX PATH SENSOR FL	1
2051511	PCB ASM FINAL TX PATH SENSOR FL	1
2052310	FEEDER IO	1
2052410	IO QUADSTEPPER	1
2052510	PCB ASM FINAL LOWER MFD TMD FL	1
2052610		1
2053510	RCVR MFD	1
2448802	BUSHING, OPEN/CLOSED .546" ID, .750" PANEL HOLE	1
2449801	SENSOR ASSY MAG INTERLOCK 4" FS	1
2449802	INTERLOCK	1
2553400	SENSOR, REFLECTIVE, 3-7MM	2
2799300	POWER SUPPLY DC 3.3v,5v,12v,-12v, Quad 125W AC to DC conv. MPB125 Chassis mount SA	1
2806150	ELECTRICAL ASSEMBLY FAN ASSY 12V DC EK	1
2806150	FAN	1
2847500	POWER SUPPLY UNIV AC INPUT 36VDC 316.8W 215*115*50MM (L*W*H) FL	1

2877000	30V PS	1
3348400	BEARING BALL 8mm 16mm 5mm ABEC-3 FLANGED SGL ROW DP GRV TEFLON SHIELDS POLYREX	10
3351750	ASSEMBLY GATE SOLENOID RB	2
3351900	BUSHING FLG GATE DRIVE	1
3379301	BELT TIMING SGL SIDED 2mm(GT) 6mm 152mm 76T NEOPRENE REBEL	1
3379303	BELT TIMING SGL SIDED 2mm(GT) 6mm 220mm 110T NEOPRENE REBEL	1
3379307	BELT TIMING SGL SIDED 2mm(GT) 6mm 172mm 86T NEOPRENE REBEL	1
3379309	BELT TIMING SGL SIDED 2mm(GT) 6mm 232mm 116T NEOPRENE COBRA	1
3379310	BELT TIMING SGL SIDED 2mm(GT) 6mm 242mm 121T NEOPRENE COBRA	1
3379315	BELT TIMING SGL SIDED 2mm(GT) 6mm 696mm 348T NEOPRENE COBRA	1
3379319	BELT TIMING SGL SIDED 2mm(GT) 6mm 186mm 93T NEOPRENE EK	1
3379329	BELT TIMING SGL SIDED 2mm(GT) 6mm 180mm 90T NEOPRENE	1
3379333	BELT TIMING SGL SIDED 2MM(GT) 6MM 182MM 91T NEOPRENE FL	1
3379334	BELT TIMING SGL SIDED 2MM(GT) 6MM 132MM 66T NEOPRENE FL	1
3379335	BELT TIMING SGL SIDED 2MM(GT) 6MM 206MM 103T NEOPRENE FL	1
3379336	BELT TIMING SGL SIDED 2MM(GT) 6MM 268MM 134T NEOPRENE FL	1
3379339	BELT TIMING TIMING 2GT 6mm 202 101 NEOPRENE FL	2
3379340	BELT TIMING SGL SIDED 2MM(GT) 6MM 250MM 125T NEOPRENE	1
3380500	SPACER 8mm 14mm 0.5mm ROUND STEEL	1
3380501	SPACER 8mm 14mm 1.0mm ROUND SS 304	1
3380502	SPACER 8mm 14mm 0.3mm ROUND STEEL	1
3390000	TIRE FEED	3
3732580	SENSOR ASSY IR EMMITER 5 VDC 17 IN FL	1
3732681	SENSOR ASSY IR RCVR 5 VDC 16.5 IN FL	1
7215300	INSERT 8 SQUARE PUSH IN METAL NYLON COBRA	1
7221100	CATCH PUSH TO OPEN COBRA	1
7262300	RETAINER LATCH PIN COBRA	1

7264113	BALL STUD GAS SPRING MTG FL	1
7274700	SPACER .629" 1.041" .020" ROUND SS 304 COBRA	1
7306202	PULLEY TIMING DRIVE 36T 2mm(GT) .316" .902" .403" HUBLESS SF PLS D-BORE EK	4
7392600	ORING DRIVE TMD EK	1
7420700	PULLEY TIMING DRIVE 36T 2mm(GT) .250" .902" .630" HUBLESS AL EK	1
7420710	PULLEY TIMING DRIVE 36T 2MM(GT) .250" .735" .16" HUBLESS AL FL	1
7431000	ASM ROLLER DRIVE CIS	1
7476500	PULLEY TIMING IDLER 36T 2mm(GT) .316" .902" .687" HUB DF AL EK	1
7641000	SHAFT CLUTCH FL	1
7646700	CRUSHED ROLLER END CAP FL	BO
7667700	ASM ROLLER DRIVE FL	1
7667810	ASM 14MM MICR/IMG IDLER ROLLER FL	1
7667860	ASM 14MM MICR/IMG IDLER ROLLER FL	1
7667900	ASM ROLLER DRIVE FL	1
7667950	ASM ROLLER DRIVE DOUBLE WIDE FL	1
7668100	ASM ROLLER DRIVE 14MM MICR FL	1
7668150	ASM ROLLER DRIVE 14MM MICR FL	1
7668200	ASM TRANSPORT IDLER ROLLER FL	1
7668250	ASM TRANSPORT IDLER ROLLER FL	1
7668400	ASM DRIVE ROLLER FL	1
7668450	ASM BIN ENTRY DRIVE ROLLER FL	1
7668500	ASM 14MM MICR/IMG IDLER ROLLER FL	1
7668550	ASM 14MM MICR/IMG IDLER ROLLER FL	1
7669100	KEY 3/16 SQ X 1/2 L 3M	1
7688102	CONVEYOR MOTOR	1
7693000	PULLEY TIMING 34T 2MM FL	1
7693800	TIRE, UPPER NIP FL	4
7699350	ASM, UPPER FINGER, STACKER, FL	1

7700900	CLUTCH	1
7705500	SPRING EXT FL	1
7708500	BIN SIDE JUSTIFIER, SINGLE BARREL, FL	1
7708501	BIN SIDE JUSTIFIER, DOUBLE BARREL, FL	1
7716901	ASM 30T 2MM GT PULLEY W/OWC FL	1
7729300	ASM, WIPER, MICR, FL	1
7730000	LONG ABYSS ARM BOTTOM FRONT FL	1
7730100	LONG ABYSS ARM BOT REAR FL	1
7730200	LONG ABYSS ARM TOP FRONT FL	1
7730300	LONG ABYSS ARM TOP REAR FL	1
7730400	SHORT ABYSS ARM BOTTOM FRONT FL	1
7730500	SHORT ABYSS ARM BOTTOM REAR FL	1
7730600	SHORT ABYSS ARM TOP FRONT FL	1
7730700	SHORT ABYSS ARM TOP REAR FL	1
7730900	ABYSS SPRING PIVOT BOTTOM REAR FL	1
7731100	ABYSS SPRING PIVOT TOP REAR FL	1
7732800	BEARING SPHERICAL FL	1
7740700	SCAN MOTOR	1
7758500	GUIDE TMD TO ABYSS FL	1
7765950	ASM, GAS SHIOCK LINKAGE, FL	1
7770100	ASM, RETARD PAD, FL	2
7770200	FEED MTOR	1
7770800	FEED BELT, FL	2
7777800	TIRE LOWER PREFEED FL	4
9150635	PAD MTOR	1
9150900	CIS TOP	1
9150950	CIS BOTTOM	1
b10882-01	SPACER .381" .563" .010" ROUND STL 1010 HRDN	1

b10882-03	SPACER .381" .560" .062" ROUND STL 1010 HRDN	1
b10883-01	SPACER .250" .375" .010" ROUND STL 1010 HRDN	1
b10883-02	SPACER .250" .375" .031" ROUND STL 1010 HRDN	1
b10883-03	SPACER .250" .375" .062" ROUND STL 1010 HRDN	1
b10883-12	SPACER .259" .375" .208" ROUND AL 6061 TUBE .058W	1
P05009-03	BEARING BALL .1875" .500" .196" ABEC-3 SGL ROW DP GRV SHIELDS POLYREX EM	2
p05009-04	BEARING BALL .250" .625" .196" ABEC-3 SGL ROW DP GRV SHIELDS POLYREX EM	10
p05203-01	BEARING FLANGED .252" .377" .250" .047" .500" BRONZE/OIL	1
p10588-03	SPRING EXTENSION .188" .240" .880" .026" 4.00 LB/IN MW	1
p10588-21	SPRING EXTENSION .136" .156" .560" .010" .17 LB/IN SS 17-7	1
p10588-26	SPRING EXTENSION .144" .188" .1.000" .022" 2.40 LB/IN STL BLK OX EK	1
p10645-06	SPRING COMPRESSION .192" .240" .500" .024" 11.90 LB/IN CG MW	1
p10645-10	SPRING COMPRESSION .335" .375" .630" .020" 1.50 LB/IN CG STN STL	1
p10645-11	SPRING COMPRESSION .258" .312" .630" .027" 9.60 LB/IN CG STN STL	1
p10645-14	SPRING COMPRESSION .350" .420" .630" .035" 15.00 LB/IN CG MW PLAIN	1
p10645-15	SPRING COMPRESSION .240" .300" .440" .030" 21.00 LB/IN CG MW	1
p10645-20	SPRING COMPRESSION .328" .390" .590" .031" 14.00 LB/IN CG MW ZINC ELK	1

Schedule 6

Charging and Invoicing

1. The Charges

1.1 The Charges shall consist of:

1.1.1 Maintenance Opex Maintenance Falcon Scanner at [REDACTED] per unit cost. Total for 46 scanners - [REDACTED] . and

1.1.2 Edit Transform licenses at [REDACTED] per unit. Total for 16 licenses [REDACTED] .

1.2 The Supplier shall invoice the Authority for the IT Products and Services in accordance with the invoice profile, as appended at Annex 1 of this Schedule 6 (Charging and Invoicing).

2. Additional Services

2.1 In the event that the Authority requests additional services to be provided by the Supplier in accordance with the agreed contract change process defined in Clause 21 (Change Management) of Schedule 2 (General Terms and Conditions) then the following day rates shall not be exceeded:

[REDACTED] per day excluding VAT (20%).

2.2 The day rates specified in Clause 2.1 of this Schedule 6 (Charging and Invoicing) shall remain fixed.

3. Service Credits

Within ten (10) Business Days of receipt of the previous month's Service Performance Report, which includes any Performance Failures which would result in sums due (Service Credits) to be paid by the Supplier to the Authority, the Authority shall issue an invoice to the Supplier confirming the sum due to the Authority from the Supplier as calculated in accordance with the Schedule 13 Clause 7 - Service Credits against KPIs within Schedule 13 Clause 9 Such invoice shall show any applicable VAT payable.

4. Optional products and services

4.1 The following optional Supplier products and/or services are available for the Authority to purchase at the prices specified below:

Optional Products & Services	Cost (£, excluding VAT)
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[REDACTED]	
------------	--

[REDACTED]	[REDACTED]
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Anytime in the second Contract Year	55%
Anytime in Contract Years 3 – [x]	0% after 3 months' notice

ANNEX 1

PAYMENT PROFILE

100% payable on delivery of goods.

The Authority shall make payment to the Supplier within 30 days of the date of a valid invoice received by the Customer to nhsbsa.accountspayable@nhs.net.

Service and maintenance is paid annually in advance.

SCHEDULE 7

STANDARDS

1. Health and Social care Information Standards

- 1.1 The Supplier shall comply with the standards approved by the Health and Social Care Information Centre relevant for the provision of the IT Products and Services. These standards are currently published via content.digital.nhs.uk/isce.
- 1.2 The Supplier shall implement any relevant new, or changes to existing, standards by the date specified within Information Standards Notices (“**ISN**”) and Data Dictionary Change Notices (“**DDCN**”) or within such timescales as the Authority may specify (acting reasonably).
- 1.3 Unless otherwise agreed by the Authority in writing, the Supplier shall comply with changes to relevant standards notified via ISN / DDCN without further charge to the Authority.
- 1.4 In the case of any conflict or inconsistency, the standards approved by the Health and Social Care Information Centre shall take precedence over other standards.
- 1.5 As part of the Supplier’s approach to change management, the Supplier will comply with any required statutory change. Without prejudice to this obligation, the Supplier shall discuss and agree such changes with the Authority before they are implemented. Similarly, the Supplier will discuss any relevant ISN with the Authority and, if approved, implement any necessary changes.

2. Interoperability

- 2.1 The Supplier shall ensure where appropriate, that the IT Products and Services conform to the requirements of the e-Government Interoperability Framework (“**e-GIF**”) including:
 - 2.1.1 e-GIF Technical Standards Catalogue;
 - 2.1.2 e-GIF Data Standards Catalogue; and
 - 2.1.3 e-Government Metadata Standard (e-GMS).
- 2.2 The Supplier shall ensure that where HL7 messages are required, they shall adhere to the v3 specification as a minimum, unless it is not possible to apply the v3 specification in a particular circumstance. In this case, v2 messages may be used where agreed with the Authority. The Supplier shall ensure that:
 - 2.2.1 all v3 (non-CDA) messages must conform to the HL7 Version 3 2006 Normative Edition; and
 - 2.2.2 all v2 messages must conform to HL7 Version 2.3.1.

- 2.3 The Supplier shall ensure that the IT Products and Services conform to IHE Integration Profiles where applicable.
- 2.4 The Supplier shall achieve, and shall require its Sub-contractors to achieve, the relevant accreditation to demonstrate technical conformance with the NHS Interoperability Toolkit requirements.

3. **Service Management**

- 3.1 The Supplier shall follow the guidelines contained in the Office of Government Commerce's IT Infrastructure Library ("**ITIL Guidelines**") for delivering the IT Products and Services or may propose alternatives that are broadly functionally consistent with the ITIL Guidelines.
- 3.2 The Supplier shall ensure that its service support processes include, in accordance with the ITIL Guidelines:
 - 3.2.1 Configuration Management;
 - 3.2.2 Service Desk;
 - 3.2.3 Incident Management;
 - 3.2.4 Problem Management;
 - 3.2.5 Change Management; and
 - 3.2.6 Release Management.
- 3.3 The Supplier shall ensure that its service delivery processes include, in accordance with the ITIL Guidelines:
 - 3.3.1 Service Level Management;
 - 3.3.2 ICT Financial Management;
 - 3.3.3 Capacity Management;
 - 3.3.4 Availability Management;
 - 3.3.5 ICT Service Continuity Management; and
 - 3.3.6 Security Management.
- 3.4 The Supplier shall on reasonable request provide the Authority with documents showing how ITIL Guidelines have been followed in the provision of the IT Products and Services.
- 3.5 The Supplier shall on request allow the Authority or its representatives to audit any or all of its service management functions to ensure that ITIL Guidelines are being followed in the delivery of the IT Products and Services.
- 3.6 Where appropriate, the Supplier shall comply with the standards of ISO 20000 (IT Service Management). This certification is to apply to the areas of the Supplier's organisation relevant to the delivery of the IT Products and Services specified in this Contract. Where the Supplier has not obtained ISO 20000

certification, the Supplier warrants that it has appropriate processes in place to ensure that it complies with the standards of ISO 20000 as applicable to the IT Products and Services.

- 3.7 Where requested by the Authority, the Supplier will prepare and deliver to the Authority for approval, full documentation of the processes listed at Clauses 3.2 and 3.3 of this Schedule 7 (Standards) and to a standard sufficient to achieve ISO 20000 certification. If the documentation is not approved by the Authority, the Supplier shall amend it within fifteen (15) Business Days of a notice of non-approval and re-submit to the Authority for approval. No approval to be given by the Authority pursuant to this Clause may be unreasonably withheld or delayed.
- 3.8 The Supplier shall on reasonable request allow the Authority to engage the services of a Registered Certification Body (RCB) to audit the Supplier's compliance with the ISO 20000 standard, provided that such audit shall be on reasonable notice to the Supplier, shall not take place more frequently than once in any twelve (12) month period and the cost of such audit is borne by the Authority.
- 3.9 The Supplier's service management functions shall interface with the Authority in accordance with the Authority's IT service management framework.

4. Quality

- 4.1 The Supplier shall provide, and shall require its Sub-contractors to provide, evidence of certification for compliance to ISO/IEC 9001. This certification is to apply to the areas of the Supplier's organisation relevant to the delivery of the IT Products and Services specified in this Contract. In the UK, this could take the form of certification under the TickIT scheme. Where the Supplier has not obtained ISO 9001 certification, the Supplier warrants that it has appropriate processes in place to ensure that it complies with the standards of ISO 9001.

5. Security

- 5.1 The Supplier shall ensure that security is maintained to the level required by the standards set out in Schedule 3 (Information and Data Provisions), and subject to the relevant audit rights at Clause 24 (Records retention and right of audit) of Schedule 2 (General Terms and Conditions).
- 5.2 The Supplier shall (and shall ensure that its Sub-contractors shall (where appropriate)) work in accordance with the principles of current NHS vetting requirements for Staff and shall undertake Disclosure and Barring Service ("DBS") checks for all new UK-based recruits. The Supplier will ensure that any legally mandated changes to the DBS and staff vetting processes are implemented in a timely manner.
- 5.3 The Supplier shall ensure that any data centres it uses for the provision of the IT Products and Services are located in the United Kingdom, and will ensure that such data centres are at all times certified in accordance with ISO27001.

6. Environment

- 6.1 The Supplier undertakes to follow a sound environmental management policy, suitable for the provision of the IT Products and Services, so that its activities comply with all applicable environmental legislation and regulations and that its

products or services are procured, produced, packaged, delivered and are capable of being used and ultimately disposed of, in ways that are appropriate from an environmental protection perspective.

- 6.2 The Supplier warrants that it has appropriate processes in place to ensure that it complies with the standards of ISO 14000/14001 to the extent that this is relevant for the IT Products and Services being provided.
- 6.3 The Supplier shall comply with relevant obligations under the Waste Electrical and Electronic Equipment Directive 2002/96/EC ("**WEEE Directive**") and the Waste Electrical and Electronic Equipment Regulations 2013 (and, where applicable, any other member state national legislation implementing the WEEE Directive), all as updated from time to time.

7. Project Management

- 7.1 The Supplier shall conform to, and shall require its Sub-contractors to conform to, PRINCE and Agile methodologies as appropriate and agreed in the delivery of the IT Products and Services, supplemented where appropriate by the tools and methods of the Supplier's own project management methodologies.

8. General

- 8.1 The Supplier shall observe and keep track of NHS and industry standards as such standards evolve and emerge and as they are issued. The Supplier will apply these standards and use these standards in the development of future releases of the IT Products and Services.
- 8.2 Should the Supplier reasonably believe that adoption of any standard conflicts with any other standard, or any other obligation under this Contract, then the Supplier shall request direction from the Authority, and the Authority shall set the priority.

9. Other

- 9.1 The Supplier shall (except where expressly specified otherwise in Schedule 5 (Specification and Tender Response Document)) also comply with the following standards as applicable to the IT Products and Services:
 - 9.1.1 the NHS Data Model and Dictionary;
 - 9.1.2 Organisational Data Service (ODS) will be used in local configuration;
 - 9.1.3 ISB 0021 for ICD-10 4th Edition;
 - 9.1.4 cross-mapping between SNOMED CT/Read Codes and ICD-10 that conforms to the latest version of the NHS cross-maps as supplied by the UK Terminology Centre;
 - 9.1.5 supports ICD-03;
 - 9.1.6 cross-mapping between SNOMED CT/Read Codes and ICD-03;
 - 9.1.7 ISB 0084 for OPCS-4;

- 9.1.8 cross-mapping between SNOMED CT/Read Codes and OPCS-4 that conforms to the latest version of the NHS cross-maps as supplied by the UK Terminology Centre;
- 9.1.9 ISB 0034 for the UK edition of SNOMED CT;
- 9.1.10 ISB 0052 Dictionary of Medicines and Devices (dm+d);
- 9.1.11 the techUK Interoperability Charter;
- 9.1.12 HL7 V3 (including CDA), included but not limited to:
 - 9.1.12.1 ADT (Admit, transfer and Discharge) and ADT Query;
 - 9.1.12.2 SIU (Scheduling) – bi-directional;
 - 9.1.12.3 ORU (Discharge Summary, Order and Results for Pathology and Radiology);
- 9.1.13 ISB 1556 Digital Imaging and Communications in Medicine (DICOM);
- 9.1.14 IG standards framework (ISB 1512) and ISB 0086 (IG Toolkit);
- 9.1.15 BS ISO/IEC 27001 for an information security management system;
- 9.1.16 ISB 1572 Sensitive Data;
- 9.1.17 ISB 0129 Patient Safety Risk Management System - Manufacture of Health Software and ISB0160;
- 9.1.18 ISB 0149, and ISB 0149-02 for use of the NHS Number;
- 9.1.19 OWASP Application Security Verifications Standards (ASVS) v3.01 or later at Level 2 at a minimum;
- 9.1.20 NHS Number to be available at the point of care;
- 9.1.21 utilisation of GS1 standards for barcoding;
- 9.1.22 implementation of FHIR based specifications i.e. CareConnect;
- 9.1.23 utilisation of Unified Codes for Units of Measure (UCUM) to represent all units of measures in clinical systems and across messaging products;
- 9.1.24 staff and citizen facing identity services adopt use of FIDO and related public key-based specifications; and
- 9.1.25 Open APIs for access to clinical services and patient records support OAuth2.

10. TECHNOLOGY ARCHITECTURE STANDARDS

The Supplier shall produce full and detailed technical architecture documentation for the Supplier Solution in accordance with Good Industry Practice. Documentation produced in compliance with TOGAF 9.1 or its equivalent, shall be deemed to have been produced in accordance with Good Industry Practice.

11. ACCESSIBLE DIGITAL STANDARDS

The Supplier shall comply with (or with equivalents to):

- (a) the World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI) Web Content Accessibility Guidelines (WCAG) 2.0 Conformance Level AA; and
- (b) ISO/IEC 13066-1: 2011 Information Technology – Interoperability with assistive technology (AT) – Part 1: Requirements and recommendations for interoperability.

12. CYBER STANDARDS

The Suppliers shall provide the Services, Deliverables and any IT Products in accordance with the following standards:

- (a) Cyber-Essentials+ across the stack as well as at network level;
- (b) The process, people and technology standards from the 10 Data and Cyber Security Standards; and
- (c) Design digital services using the NHS Digital service manual (<https://beta.nhs.uk/service-manual/>).

13. OPEN DATA STANDARDS & STANDARDS HUB

- 13.1 The Supplier shall comply to the extent within its control with UK Government's Open Standards Principles as documented at <https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles>, as they relate to the specification of standards for software interoperability, data and document formats in the IT Authority Infrastructure.
- 13.2 The Supplier shall ensure that all documentation published on behalf of the Authority pursuant to this Agreement is provided in a non-proprietary format (such as PDF or Open Document Format (ISO 26300 or equivalent)) as well as any native file format documentation in accordance with the obligation under Clause 13.1 of this Schedule 7 (Standards) to comply with the UK Government's Open Standards Principles, unless the Authority otherwise agrees in writing.
- 13.3 The Supplier shall ensure that all documentation describing the data sourced or utilised within the IT Environment, including but not limited to meta-data including data specifications, data quality rules, and processing rules are published and updated regularly to promote bottom-up standards creation process. The Supplier shall also ensure the consistent mapping to national or emergent standards during the standards development phase which will be published on the Standards Hub.

14. STANDARDS FOR DATA DRIVEN TECHNOLOGY, MACHINE LEARNING & ARTIFICIAL INTELLIGENCE

14.1 The Supplier shall, where applicable, comply with the principles of the Department of Health Social Care Code of Conduct for data-driven health and care technology dated February 2019, which may be accessed at <https://www.gov.uk/government/publications/code-of-conduct-for-data-driven-health-and-care-technology/initial-code-of-conduct-for-data-driven-health-and-care-technology>. The Supplier shall:

- (a) understand users, their needs and the context;
- (b) define the outcome and how the technology will contribute to it;
- (c) use data that is in line with appropriate guidelines for the purpose for which it is being used;
- (d) be fair, transparent and accountable about what data is being used;
- (e) make use of open standards;
- (f) be transparent about the limitations of the data used and algorithms deployed;
- (g) show what type of algorithm is being developed or deployed, the ethical examination of how the data is used, how its performance will be validated and how it will be integrated into health and care provision;
- (h) generate evidence of effectiveness for the intended use and value for money;
- (i) make security integral to the design (keep systems safe by safeguarding data and integrating appropriate levels of security); and
- (j) define the commercial strategy (including IP).

15. STANDARDS SPECIFIED BY THE MHRA

The Supplier shall, where applicable, comply with the standards and guidance set out in the Medicines and Healthcare products Regulatory Agency website which can be accessed at <https://www.gov.uk/government/organisations/medicines-and-healthcare-products-regulatory-agency>.

16. CLINICAL RISK MANAGEMENT STANDARDS

The Supplier shall, where applicable, comply with the following standards set out at <https://digital.nhs.uk/services/solution-assurance/the-clinical-safety-team/clinical-risk-management-standards>:

- (a) DCB0129: Clinical Risk Management: its Application in the Manufacture of Health IT Systems; and
- (b) DCB0160: Clinical Risk Management: its Application in the Deployment and Use of Health IT Systems.

17. PRSB COMMON CORE INFORMATION STANDARDS

- 17.1 The Supplier shall, within 6 months of its endorsed publication date, comply with all of the standards listed in the Professional Record Standard Body (PRSB) – Core Information Standards to be published online at <https://theprsb.org/standards/coreinformationstandard/> or such other address as is communicated to the Suppliers by the Authority from time to time.
- 17.2 Failure to comply with the Standards listed in this Clause 17 of this Schedule 7 (Standards) within the agreed timeframe shall be deemed to constitute a material Default which may result in the Authority terminating this Contract.

18. INFORMATION GOVERNANCE FRAMEWORK FOR INTEGRATED HEALTH CARE

The Supplier shall comply with all of the standards listed in the 'Local Health and Care Records – Information Governance Framework for Integrated Health and Care' from time to time, available upon request from NHS England at england.phmsupport@nhs.net.

19. INFORMATION STANDARDS NOTICES

The Supplier shall at all times, comply with any Information Standards Notices published, from time to time, by the Data Coordination Board online at <https://digital.nhs.uk/data-and-information/information-standards/information-standards-and-data-collections-including-extractions/publications-and-notifications/information-standards-notices>.

Schedule 9

Authority Obligations

Introduction

- 1 The responsibilities of the Authority set out in this Schedule 9 (Authority Obligations) shall constitute the "Authority Obligations" under this Contract. Any obligations of the Authority in Schedule 5 (Specification and Tender Response Document) shall not be deemed to be Authority Obligations and the Authority shall have no obligation to perform any such obligations.
- 2 The responsibilities specified within this Schedule 9 (Authority Obligations) shall be provided to the Supplier free of charge, unless otherwise agreed between the Parties.

General Obligations

- 3 The Authority shall:
 - (a) use its reasonable endeavours to provide the Supplier with access to appropriate members of the Authority's staff, as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Term;
 - (b) provide sufficient and suitably qualified staff to fulfil the Authority's roles and duties under this Contract;
 - (c) comply with its obligations expressly contained in the Implementation Plan;
 - (d) use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this Contract provided that such documentation, data and/or information is available to the Authority and is authorised for release by the Authority; and
 - (e) procure for the Supplier such agreed access and use of the Authority's premises, facilities, including relevant Authority Software and/or Authority IT Infrastructure as is reasonably required for the Supplier to comply with its obligations under this Contract, such access to be provided during the Authority's normal working hours on each Business Day or otherwise as agreed by the Authority (such agreement not to be unreasonably withheld or delayed).

SCHEDULE 10

CHANGE CONTROL PROCESS

1. General Principles of Change Control Process

- 1.1 This Schedule 10 (Change Control Process) sets out the procedure for dealing with Contract Changes.
- 1.2 Operational Changes shall be processed in accordance with Clause 7 of this Schedule 10 (Change Control Process). If either Party is in doubt about whether a change falls within the definition of an Operational Change then it will be processed as a Contract Change.
- 1.3 Under this Change Control Process:
 - 1.3.1 either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Clause 3 of this Schedule 10 (Change Control Process);
 - 1.3.2 the Supplier will assess and document the potential impact of a proposed Change Request in accordance with Clause 4 of this Schedule 10 (Change Control Process), and shall (where required in accordance with Schedule 15 (Governance)) participate in Change Advisory Board meetings, before this Contract Request can be either approved, implemented or rejected;
 - 1.3.3 the Authority shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in Clause 5 of this Schedule 10 (Change Control Process);
 - 1.3.4 the Supplier shall have the right to reject a Change Request solely in the manner set out in Clause 6 of this Schedule 10 (Change Control Process); and
 - 1.3.5 no proposed Contract Change shall be implemented by the Supplier until such time as a Change Authorisation Note has been signed and issued by the Authority in accordance with Clause 5.2 of this Schedule 10 (Change Control Process). For the avoidance of any doubt, this Contract Change is only agreed when the Change Authorisation Note is executed.
- 1.4 To the extent that any Contract Change requires testing and/or a programme for implementation, then the Parties will follow the procedures set out in Part C of Schedule 8 (Implementation), and, where appropriate, the Change Authorisation Note relating to such a Contract Change shall specify a Milestone and Milestone Date in respect of such Contract Changes for the purposes of such procedures.

1.5 Until such time as a Change Authorisation Note has been signed and issued by the Authority in accordance with Clause 5.2 of this Schedule 10 (Change Control Process), then:

1.5.1 unless the Authority expressly agrees otherwise in writing, the Supplier shall continue to supply the IT Products and/or Services in accordance with the existing terms of this Contract as if the proposed Contract Change did not apply; and

1.5.2 any discussions, negotiations or other communications which may take place between the Authority and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Contract.

2. Costs

2.1 Subject to Clause 2.2 of this Schedule 10 (Change Control Process), each Party shall bear its own costs in relation to the preparation and agreement of each proposed change to this Contract and Impact Assessment.

2.2 All proposed changes to this Contract shall be calculated and charged in accordance with the principles and day rates set out in Schedule 6 (Charges and Invoicing). The Supplier will only be entitled to increase the Charges if it can demonstrate in the Impact Assessment that the proposed change to this Contract requires additional resources, software, licences, or services and, in any event, any change to the Charges resulting from a Contract Change shall reflect the extent of these additional resources, software, licences, or services. Both Parties' costs incurred in respect of any use of this Change Control Process as a result of any error or default by the Supplier shall be paid for by the Supplier.

3. Change Request

3.1 Either Party may issue a Change Request to the other Party at any time during the Term. The Change Request shall be substantially in the form of Appendix 1 to this Schedule 10 (Change Control Process).

3.2 If the Supplier issued the Change Request, then it shall also provide an Impact Assessment to the Authority as soon as is reasonably practicable but in any event within ten (10) Business Days of the date of issuing the Change Request.

3.3 If the Authority issued the Change Request, then the Supplier shall provide an Impact Assessment to the Authority as soon as is reasonably practicable but in any event within ten (10) Business Days of the date of receiving the Change Request from the Authority provided that if the Supplier reasonably requires any clarifications in relation to the Change Request before it can deliver the Impact Assessment, then it will promptly notify the Authority and the time period shall be extended by the time taken by the Authority to provide those clarifications. The Authority shall respond to the request for clarifications as soon as is reasonably practicable and the Supplier shall provide the Authority with sufficient information to enable it to understand fully the nature of the request for clarification.

4. Impact Assessment

- 4.1 Each Impact Assessment shall be completed in good faith and shall include (without limitation):
 - 4.1.1 details of the proposed change to this Contract including the reason for the proposed change to this Contract; and
 - 4.1.2 details of the impact of the proposed Contract Change on the IT Products and/or Services and the Supplier's ability to meet its other obligations under this Contract and any variation to the terms of this Contract that will be required as a result of that impact and including (where applicable) changes to:
 - 4.1.2.1 Schedule 5 (Specification and Tender Response Document), any other agreed specification of the IT Products and/or Services and/or the KPIs;
 - 4.1.2.2 the format of Authority Data (as may be set out in the relevant information assets register);
 - 4.1.2.3 the Milestones, Implementation Plan and any other timetable previously agreed by the Parties;
 - 4.1.2.4 other services provided by third party contractors to the Authority, including any changes required by the proposed change to this Contract to the Authority's IT infrastructure;
 - 4.1.2.5 details of the cost of implementing the proposed change to this Contract;
 - 4.1.2.6 details of the ongoing costs required by the proposed change to this Contract when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
 - 4.1.2.7 a timetable for the implementation, together with any proposals for the testing of the proposed change to this Contract;
 - 4.1.2.8 details of how the proposed change to this Contract will ensure compliance with any applicable Change in Law; and
 - 4.1.2.9 such other information as the Authority may reasonably request in (or in response to) the Change Request.
- 4.2 If the proposed change to this Contract involves the processing or transfer of any Personal Data outside the United Kingdom, the preparation of the Impact Assessment shall also be subject to Schedule 3 (Information and Data Provisions).

- 4.3 Subject to the provisions of Clause 4.4 of this Schedule 10 (Change Control Process), the Authority shall review the Impact Assessment and, within fifteen (15) Business Days of receiving the Impact Assessment, it shall respond to the Supplier in accordance with Clause 5 of this Schedule 10 (Change Control Process).
- 4.4 If the Authority is the Receiving Party and the Authority reasonably considers that it requires further information regarding the proposed change to this Contract so that it may properly evaluate the Change Request and the Impact Assessment, then within five (5) Business Days of receiving the Impact Assessment, it shall notify the Supplier of this fact and detail the further information that it requires. The Supplier shall then re-issue the relevant Impact Assessment to the Authority within ten (10) Business Days of receiving such notification. At the Authority's discretion, the Parties may repeat the process described in this Clause 4.4 until the Authority is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.

5. Authority's Right of Approval

- 5.1 The Authority may at any time during the Change Control Process require the Supplier to participate in Change Advisory Board meetings (where required in accordance with Schedule 15 (Governance)) to discuss the Change Request and/or Impact Assessment. Subject to this, within fifteen (15) Business Days of receiving the Impact Assessment from the Supplier or within ten (10) Business Days of receiving the further information that it may request pursuant to Clause 4.4 of this Schedule 10 (Change Control Process), the Authority shall evaluate the Change Request and the Impact Assessment and shall do one of the following:
- 5.1.1 approve the proposed change to this Contract, in which case the Parties shall follow the procedure set out in Clause 5.2 of this Schedule 10 (Change Control Process);
- 5.1.2 in its absolute discretion reject the proposed change to this Contract, in which case it shall notify the Supplier of the rejection. The Authority shall not reject any proposed change to this Contract to the extent that the proposed change to this Contract is necessary for the Supplier or the IT Products and/or Services to comply with any Changes in Law. If the Authority does reject a proposed change to this Contract, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or
- 5.1.3 in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Supplier to modify the document accordingly, in which event the Supplier shall make such modifications within five (5) Business Days of such request. Subject to Clause 4.4 of this Schedule 10 (Change Control Process), on receiving the modified Change Request and/or Impact Assessment, the Authority shall approve or reject the proposed change to this Contract within ten (10) Business Days.
- 5.2 If the Authority approves the proposed change to this Contract pursuant to Clause 5.1 of this Schedule 10 (Change Control Process) and it has not been

rejected by the Supplier in accordance with Clause 6 of this Schedule 10 (Change Control Process), then it shall inform the Supplier and the Supplier shall prepare two copies of a Change Authorisation Note which it shall sign and deliver to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign both copies and return one copy to the Supplier. On the Authority's signature, the Change Authorisation Note shall constitute a binding variation to this Contract provided that the Change Authorisation Note is signed by:

- 5.2.1 the appropriate person(s) specified in Clause 8.1 of this Schedule 10 (Change Control Process); and
- 5.2.2 the Authority within ten (10) Business Days of receiving the Supplier's signed copy. If the Authority does not sign the Change Authorisation Note within this time period, then the Supplier shall have the right to notify the Authority and if the Authority does not sign the Change Authorisation Note within five (5) Business Days of the date of such notification, then the Supplier may refer the matter to the Dispute Resolution Procedure.

6. Supplier's Right of Approval

- 6.1 Following an Impact Assessment, if the Supplier reasonably believes that any proposed change to this Contract which is requested by the Authority:
 - 6.1.1 would materially and adversely affect the risks to the health and safety of any person;
 - 6.1.2 would require the IT Products and/or Services to be provided and/or performed in a way that infringes any Law or is inconsistent with Good Industry Practice;
 - 6.1.3 would materially and adversely affect the Supplier's ability to deliver the IT Products and/or Services;
 - 6.1.4 would require the Supplier to implement the change in the IT Products and/or Services in an unreasonable period of time;
 - 6.1.5 would (if implemented) materially and adversely change the nature of the IT Products and/or Services (including the risk profile); and/or
 - 6.1.6 would (to implement) require the Authority to possess legal powers or capacity that it does not have,

then the Supplier shall be entitled to reject the proposed change to this Contract and shall notify the Authority of its reasons for doing so within five (5) Business Days of the date on which it is obliged to deliver the Impact Assessment.

- 6.2 In the event that the Supplier rejects a proposed change to this Contract in accordance with Clause 6.1 of this Schedule 10 (Change Control Process), the Parties shall work together in good faith to revise the proposed change to this Contract in question in order to enable the amended proposed change to this Contract to be agreed between the Parties and brought into effect in

accordance with Clause 5.2 of this Schedule 10 (Change Control Process) as soon as reasonably practicable and in any event within ten (10) Business Days of the date of the Supplier's rejection.

7. Operational Change Procedure

7.1 Any changes identified by the Supplier to improve operational efficiency of the provision of the IT Products and/or Services may be implemented by the Supplier without following the Change Control Process for proposed Contract Changes provided they do not:

7.1.1 have an impact on the Authority;

7.1.2 require a change to this Contract;

7.1.3 have a negative impact on the provision of the IT Products and/or Services or use of the IT Products and/or Services; or

7.1.4 involve the Authority in paying any additional Charges or other consequential costs.

7.2 The Supplier shall notify the Authority of any Operational Changes prior to implementation providing a description of the proposed Operational Change and time-scale for completion of the Operational Change that will be agreed in writing between the Parties.

7.3 The Authority may require an Operational Change by submitting a written request for Operational Change to the Supplier's Contract Manager.

7.4 Operational Changes will be managed under normal operational procedures, such procedures will be agreed in writing between the Parties.

8. Change Authorisation

8.1 Any proposed change to this Contract processed in accordance with this Schedule 10 (Change Control Process) will not be authorised and the Supplier shall not implement any proposed Contract Change until the Change Authorisation Note is signed and executed in accordance with the Authority's Contract Change authorisation and sign off procedure(s), as notified to the Supplier in writing from time to time.

9. Communications

9.1 For any Change Communication to be valid under this Schedule 10 (Change Control Process), it must be sent to either the Authority's Change Manager or the Supplier's Change Manager or entered via a change tool (as agreed between the Parties) as applicable.

APPENDIX 1
CHANGE REQUEST FORM

CR NO.:	TITLE:	TYPE OF CHANGE:
PROJECT:		REQUIRED BY DATE:
ACTION:	NAME:	DATE:
RAISED BY:		
AREA(S) IMPACTED (OPTIONAL FIELD):		
ASSIGNED FOR IMPACT ASSESSMENT BY:		
ASSIGNED FOR IMPACT ASSESSMENT TO:		
SUPPLIER REFERENCE NO.:		
FULL DESCRIPTION OF REQUESTED CONTRACT CHANGE:		
DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS:		
REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED CONTRACT CHANGE:		
SIGNATURE OF REQUESTING CHANGE OWNER:		
DATE OF REQUEST:		

APPENDIX 2

IMPACT ASSESSMENT FORM

CR NO.:	TITLE:	DATE RAISED:
PROJECT:		REQUIRED BY DATE:
DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND DETAILS OF ANY RELATED CONTRACT CHANGES:		
PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE CONTRACT CHANGE:		
DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE OR COST-PLUS BASIS):		
DETAILS OF ANY PROPOSED CONTRACT AMENDMENTS:		
DETAILS OF ANY SERVICE LEVELS AFFECTED:		
DETAILS OF ANY OPERATIONAL SERVICE IMPACT:		
DETAILS OF ANY INTERFACES AFFECTED:		
DETAILED RISK ASSESSMENT:		
RECOMMENDATIONS:		

APPENDIX 3

CHANGE AUTHORISATION NOTE

CR NO.:	TITLE:	DATE RAISED:
PROJECT:	TYPE OF CHANGE:	REQUIRED BY DATE:
[MILESTONE DATE: <i>[if any]</i>]		
DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND DETAILS OF ANY RELATED CONTRACT CHANGES:		
PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE CONTRACT CHANGE:		
DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE OR COST-PLUS BASIS):		
SIGNED ON BEHALF OF THE AUTHORITY:		SIGNED ON BEHALF OF THE SUPPLIER:
Signature:_____		Signature:_____
Name:_____		Name:_____
Position:_____		Position:_____
Date:_____		Date:_____

SCHEDULE 11

IT PRODUCTS AND SOFTWARE LICENCES

1. Introduction

- 1.1 This Schedule 11 (IT Products and Software Licences):
 - 1.1.1 lists and details the various elements of the Software and categorises them into Supplier Software and Third Party Software; and
 - 1.1.2 contains the terms on which the Software is to be licensed to the Authority including details on the end users.
- 1.2 From the Actual Operational Services Commencement Date, the Supplier shall grant to the Authority licences to use the Software in accordance with the terms set out in Clauses 2 and 3 (as applicable) of this Schedule 11 (IT Products and Software Licences).
- 1.3 The Supplier shall update this Schedule 11 (IT Products and Software Licences) periodically to record any software subsequently acquired from third parties or developed for the delivery of the Services.

2. Grant of Licences

- 2.1 The Supplier shall grant a licence to the Authority to use the Supplier Software and procure a licence for the Authority to use the Third Party Software as specified in this Schedule 11 (IT Products and Software Licences) under the Software licence conditions set out in Clause 2.2 of this Schedule 11 (IT Products and Software Licences) and, as applicable, sub-Clause 2.3 of this Schedule 11 (IT Products and Software Licences).

2.2 Software licence conditions:

- 2.2.1 Software Licences shall be non-exclusive and non-transferable except as permitted under Clause 28 (Assignment, novation and Sub-contracting) of Schedule 2 (General Terms and Conditions).
- 2.2.2 Software Licences shall not permit the provision of any computer services to any third party unless expressly provided for in this Contract.
- 2.2.3 Software Licences shall be continuous or renewable at the option of the Authority and shall not be cancelled, withdrawn or rescinded unless:
 - (a) terminated in accordance with Clause 2.2.8 of this Schedule 11 (IT Products and Software Licences); or
 - (b) on the expiry of the term of a licence, which is stated in this Schedule 11 (IT Products and Software Licences) to be granted for a fixed term, the Authority has failed to exercise its right to renew such licence; or
 - (c) terminated by the Authority on the expiry of agreed notice in writing.

- 2.2.4 The Authority shall not, without the express approval of the Supplier, make copies of or make or permit access to Software other than permitted by Use.
- 2.2.5 The Authority shall not allow, without the express approval of the Supplier, any reverse engineering, reverse assembly or decompilation of Software other than that permitted under the Law.
- 2.2.6 The Supplier shall have the right to terminate any licence granted under Clause 2.1 of this Schedule 11 (IT Products and Software Licences) only in accordance with Clause 15.3 of Schedule 2 (General Terms and Conditions) on written notice and in the event that:
- (a) the Authority commits a material breach of Software licence conditions contained in this Clause 2.2 of this Schedule 11 (IT Products and Software Licences) or, subject to order of precedence in accordance with Clause 6 of Schedule 1 (Key Provisions), applicable Supplier's or third party's Software licence conditions set out in an appendix to this Schedule 11 (IT Products and Software Licences) which is not capable of remedy or, if capable of remedy, has not been remedied within a reasonable period of time (agreed between the parties at the time); or
 - (b) the Authority infringes any Intellectual Property Right in respect of Software and further infringement cannot or has not been avoided within a reasonable period of time (agreed between the parties at the time); or
 - (c) the Authority has not paid relevant periodic Charges in respect of Software within sixty (60) days of payment of such Charges becoming due in accordance with this Contract.
- 2.2.7 In the event of termination by the Supplier in accordance with sub-clauses 2.2.8(a) to (c) of this Schedule 11 (IT Products and Software Licences), the Authority shall discontinue Use of the relevant Software forthwith and shall confirm to the Supplier in writing within a reasonable time (agreed between the parties at the time) that it has done so and has returned or destroyed any copies of such Software and associated Documentation.
- 2.2.8 The Authority shall be permitted to use any generally available upgrades and new releases of Software, which are not separately licensed, on payment of generally applicable, additional fees. The Supplier shall grant to or procure for the Authority a licence to use any upgrades and new releases to Software which are separately licensed under comparable conditions to those contained in this Clause 2.2 of this Schedule 11 (IT Products and Software Licences), on payment of generally applicable, additional fees. If payable, additional fees shall be agreed prior to the commencement of Use of such upgrades or new releases but such additional fees shall not be greater than those generally payable by the Supplier's other customers for equivalent Use.
- 2.2.9 If so requested, the Supplier shall grant to or procure for the Authority additional licences to use the Software on other hardware owned or used by the Authority or for additional licensed users, where applicable, under conditions comparable to those contained in this Clause 2.2 of this

Schedule 11 (IT Products and Software Licences) and, where appropriate, in accordance with Clause 2.3 of this Schedule 11 (IT Products and Software Licences). Any additional licence fees payable shall be agreed prior to the grant of such additional licences but shall not be greater than those generally applicable to the Supplier's other customers for equivalent Use.

2.3 Application of Supplier's and third party's Software licensing conditions

- 2.3.1 Where applicable, the Supplier's and third party's Software licensing terms and conditions are set out in the Appendix to this Schedule 11 (IT Products and Software Licences). Such licensing conditions shall apply to the licensing of Software, but only insofar as they do not adversely affect the Authority's rights or the Supplier's obligations under this Contract or at Law, and the order of precedence set out in Clause 6 of Schedule 1 (Key Provisions) shall apply.
- 2.3.2 Nothing in this sub-clause Clause 2.3 of this Schedule 11 (IT Products and Software Licences) shall cause the Authority to become liable for, or in any way increase its commitment to, any payments in addition to or greater than those specified under this Contract or which may be reasonably anticipated or contemplated hereunder.

2.4 Licence for internal code

The Supplier shall grant to the Authority a continuous, non-exclusive licence, at no additional cost to the Authority, to use applicable internal code on the Hardware so designated in this Schedule 11 (IT Products and Software Licences) under the Supplier's or third party's standard terms and conditions for such code contained in an appendix to this Schedule 11 (IT Products and Software Licences).

3. SaaS licence terms for use where applicable [Software as a Service] -N/A

- 3.1 During the Term, the Supplier grants to the Authority and the Authorised Users a non-exclusive, non-transferable, non-assignable, (save as expressly permitted under this Contract) right:
 - 3.1.1 to access and use the Software Subscription Services (including access and use of the Supplier Software) in the manner contemplated by this Contract through internet access, up to the extent of the Subscription Access Rights as specified in this Schedule 11 (IT Products and Software Licences);
 - 3.1.2 in respect of any documentation (describing the specifications and use of the Software Subscription Services), to access and use the documentation solely in conjunction with the Software Subscription Services up to the extent of the Subscription Access Rights; and
 - 3.1.3 with respect to the documentation (describing the specifications and use of the Software Subscription Services) the Authority may make a reasonable number of copies of the documentation applicable to the Software Subscription Services as reasonably required by the Authority in accordance with the express use rights specified herein.

- 3.2 The Authority may grant third party contractors (engaged by the Authority to assist and provide services to the Authority provided such third party contractors enter into confidentiality undertakings at least as protective as those within this Contract the right to exercise the rights granted to the Authority pursuant to Clause 3.1 of this Schedule 11 (IT Products and Software Licences) but only to the extent required to permit such third party contractors to provide services to the Authority and/or on behalf of the Authority and subject always to the extent of the Subscription Access Rights.
- 3.3 All access codes and passwords are personal to the individual Authorised User to which it is issued. The Authority, Authorised Users and other authorised individuals are responsible for maintaining the confidentiality and security of all access codes and passwords issued, and ensuring that each access code and password is only used by the individual authorised.
- 3.4 The Supplier shall be responsible for the administration of access codes and passwords and inviting Authorised Users to register and create an account as named Authorised Users of the Software Subscription Services.

4. **Supplier Software items:**

4.1 The Supplier Software comprises the following items:

Software	Supplier (if Affiliate of the Supplier)	Purpose and Duration	Number of Licences/End Users	Restrictions	Number of copies (hosted by the Supplier)	To be deposited in Escrow (Deposited Software)?
As detailed in specification						

5. Third Party Software items:

- 5.1 While the Supplier, in its role as prime contractor, is required to procure the grant of a licence for the Authority's use of Third Party Software, the licence agreement or conditions of use may need to be signed by the Authority and the third party owner. In such a case, provision must be made for the signature of such licences by the Authority and the third party.
- 5.2 It is important that any third party licence terms and conditions do not conflict with or detract from the conditions set out in this Schedule 11 (IT Products and Software Licences), or are otherwise unacceptable to the Authority. Acceptability of these terms and conditions must be checked before they are included in this Contract.
- 5.3 The Third Party Software shall include the following items:

Third Party Software	Supplier	Purpose and Duration	Number of Licences/End Users	Restrictions	Number of copies (hosted by the Supplier)	To be deposited in Escrow (Deposited Software)?

6. Hardware items:

Hardware	Supplier					

Hardware	Supplier					

7. Excluded Software items:

7.1 For the avoidance of doubt the following software items are not included in this Contract:

Software product	supplier

Appendix

Supplier's and third party's Software licensing conditions

SCHEDULE 12

SUPPORT AND MAINTENANCE SERVICES FOR IT PRODUCTS

1 Support and Maintenance Services

1.1 From the point set out in Schedule 5 (Specification and Tender Response Document) or specified elsewhere in this Contract at which Support and Maintenance Services are triggered or as otherwise agreed by the Parties in writing taking into account any warranty period applicable to the IT Products, all IT Products forming part of the Support and Maintenance Inventory shall be maintained throughout the Term by the Supplier so as to comply with:

1.1.1 any applicable specification set out in this Contract (to include, without limitation, the provisions of the Authority's requirements set out in Schedule 5 (Specification and Tender Response Document) and the Supplier's response to such requirements set out as part of Schedule 5 (Specification and Tender Response Document); and

1.1.2 any applicable manufacturers' specifications.

1.2 The Supplier shall provide the Support and Maintenance Services:

1.2.1 promptly and in any event within any time limits as may be set out in this Contract;

1.2.2 in accordance with all other provisions of this Contract;

1.2.3 using reasonable skill and care;

1.2.4 in accordance with any quality assurance standards as set out in this Contract;

1.2.5 in accordance with the Law and with Guidance;

1.2.6 in accordance with Good Industry Practice;

1.2.7 in accordance with the original manufacture's guidelines and recommendations relating to the IT Products being maintained;

1.2.8 in accordance with the Policies;

1.2.9 in a professional and courteous manner; and

1.2.10 using appropriately skilled, trained and experienced Staff.

2 General Support and Maintenance Services requirements

2.1 The Supplier, in accordance with Good Industry Practice and the original equipment manufacture's guidelines and recommendations, shall:

2.1.1 provide effective planned preventive Support and Maintenance Services for all IT Products to the extent this requirement is set out in Schedule 5

(Specification and Tender Response Document) and/or as otherwise agreed between the Parties in writing; and

- 2.1.2 provide appropriate remedial Support and Maintenance Services for all IT Products to the extent this requirement is set out in Schedule 5 (Specification and Tender Response Document) and/or as otherwise agreed between the Parties in writing.

3 **Service visits**

- 3.1 The Supplier shall ensure that the Authority is notified in writing in advance of all service visits to any Premises and Locations and that Staff comply with any relevant Policies and/or reasonable instructions and/or security procedures notified to the Supplier by the Authority from time to time in connection with such site visits.

4 **Provision of information**

- 4.1 Without prejudice to any specific records keeping requirements set out in this Contract, including as part of Schedule 5 (Specification and Tender Response Document), the Supplier shall:
 - 4.1.1 maintain a record of all IT Products that are covered by the Support and Maintenance Services (“**Support and Maintenance Inventory**”). For the avoidance of doubt, such Support and Maintenance Inventory shall be deemed to form part of Schedule 5 (Specification and Tender Response Document) and may be in a single document or separate documents, as amended and/or updated in accordance with this Contract from time to time;
 - 4.1.2 maintain records of all Support and Maintenance Services carried out on any IT Products in connection with this Contract; and
 - 4.1.3 provide all required management information to the Authority promptly upon Authority’s written request to demonstrate, to the Authority’s reasonable satisfaction, compliance with requirements to provide planned preventative Support and Maintenance Services and, where applicable, remedial Support and Maintenance Services in connection with all IT Products listed in the Support and Maintenance Inventory.
- 4.2 Without prejudice to any other audit or information requirements set out as part of this Contract, any records kept by the Supplier in connection with the Support and Maintenance Services, the Support and Maintenance Inventory and any service visits shall be made available by the Supplier for inspection by the Authority and/or its authorised representatives on request.
- 4.3 Subject always to the provisions of Clause 8 of this Schedule 12 (Support and Maintenance Services for IT Products), the Supplier shall inform the Authority in writing as soon as it becomes aware that either of the following circumstances will, or are likely to, arise in connection with any IT Products forming part of the Support and Maintenance Inventory:
 - 4.3.1 the Supplier will no longer be able to maintain the item of IT Products as any required third party support will no longer be available (including, without limitation, support from the original equipment manufacturer); or

- 4.3.2 the Supplier will no longer not be able to obtain from any third party (including, without limitation, the original equipment manufacturer) any required spare parts and/or consumable items required to provide the Support and Maintenance Services in relation to those IT Products.
- 4.4 Where the Supplier provides information to the Authority under Clause 4.3 of this Schedule 12 (Support and Maintenance Services for IT Products) it will inform the Authority in writing promptly upon becoming aware that this information has changed or may change.

5 Loan IT Products and replacement IT Products

- 5.1 Where the Supplier is unable to fix any IT Products forming part of the Support and Maintenance Inventory as part of the Support and Maintenance Services during a site visit, and Schedule 5 (Specification and Tender Response Document) provides for substitute IT Products to be provided to the Authority in these circumstances on a loan and/or replacement basis, the Supplier shall:
- 5.1.1 provide the Authority with such substitute IT Products in accordance with the relevant provisions and timescales, as set out in Schedule 5 (Specification and Tender Response Document);
- 5.1.2 comply with any installation, commissioning, inspection and testing processes as may be set out in this Contract or otherwise agreed by the Parties in writing; and
- 5.1.3 update the Support and Maintenance Inventory accordingly to include any substitute IT Products.
- 5.2 Where the Supplier loans IT Products to the Authority and subsequently replaces the loaned IT Products, the Supplier shall comply with the provisions of Clauses 4.1.2 and 4.1.3 of this Schedule 12 (Support and Maintenance Services for IT Products) in relation to such replacement of the loaned IT Products.
- 5.3 Subject to Clauses 7 and 8 of this Schedule 12 (Support and Maintenance Services for IT Products), any IT Products added to the Support and Maintenance Inventory in accordance with Clause 5.1.3 of this Schedule 12 (Support and Maintenance Services for IT Products) will be covered by the Support and Maintenance Services for the remainder of the Term from the point set out in Schedule 5 (Specification and Tender Response Document) at which Support and Maintenance Services are triggered for such substitute IT Products or as otherwise agreed by the Parties in writing taking into account any warranty period applicable to such substitute IT Products. For the avoidance of doubt, this Contract shall apply in full to the supply, installation, and commissioning (as applicable) of such substitute IT Products.

6 Additional warranties

- 6.1 The Supplier warrants and undertakes that:
- 6.1.1 when providing the Support and Maintenance Services (including, without limitation, providing any loan or replacement IT Products), it shall comply with all timescales and KPIs set out in Schedule 13 (Performance Levels) and any other requirements set out in Schedule 5 (Specification and Tender Response Document) associated with such requirements;

- 6.1.2 any replacement parts, consumable items, replacement IT Products and/or loan IT Products shall be of satisfactory quality, fit for their intended purpose, installed (where applicable) in accordance with Good Industry Practice and shall comply with the standards and requirements set out in this Contract;
 - 6.1.3 it will ensure sufficient stock levels of any replacement parts, consumable items, replacement IT Products and/or loan IT Products to comply with its obligations to provide the Support and Maintenance Services in accordance with the provisions of this Contract;
 - 6.1.4 it has and shall maintain a properly documented system of quality controls in respect of the Support and Maintenance Services including, without limitation, covering the supply of any replacement parts, consumable items, replacement IT Products and/or loan IT Products and shall at all times comply with such quality controls;
 - 6.1.5 any equipment it uses in the installation of any replacement parts, consumable items, replacement IT Products and/or loan IT Products shall comply with all relevant Law and Guidance, be fit for its intended purpose and shall be maintained fully in accordance with the manufacturer's specification;
 - 6.1.6 receipt of any replacement parts, consumable items, replacement IT Products and/or loan IT Products by or on behalf of the Authority and use of such items or of any other related item or information supplied, or made available, to the Authority will not infringe any third party rights, to include without limitation, any Intellectual Property Rights;
 - 6.1.7 it will comply with all Law and Guidance in so far as it is relevant to the supply of any replacement parts, consumable items, replacement IT Products and/or loan IT Products to the Authority; and
 - 6.1.8 it will promptly notify the Authority of any health and safety hazard which arises, or the Supplier is aware may arise, in connection with the Support and Maintenance Services including, without limitation, in connection with the supply of any replacement parts, consumable items, replacement IT Products and/or loan IT Products and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards.
- 6.2 Where the supply of any replacement parts, consumable items, replacement IT Products and/or loan IT Products relates to medical devices (as defined under any relevant Law and Guidance), the Supplier warrants and undertakes that it will comply with any such Law and Guidance relating to such activities in relation to such medical devices. In particular, but without limitation, the Supplier warrants that at the point such replacement parts, consumable items, replacement IT Products and/or loan IT Products are supplied to the Authority, all such items which are medical devices shall have valid CE marking as required by Law and Guidance and that all relevant marking, authorisation, registration, approval and documentation requirements as required under Law and Guidance relating to the supply, manufacture, assembly, importation, storage, distribution, delivery, or installation of such items shall have been complied with. Without limitation to the foregoing provisions of this Clause 6.2 of this Schedule 12 (Support and Maintenance Services for IT Products), the Supplier shall, upon written request from the Authority, make available to the Authority

evidence of such valid CE marking, and evidence of any other authorisations, registrations, approvals or documentation required.

- 6.3 If the Supplier is in breach of Clause 6.2 of this Schedule 12 (Support and Maintenance Services for IT Products), in relation to any items supplied to the Authority, then, without prejudice to any other right or remedy of the Authority, the Authority shall be entitled to reject and/or return such items and the Supplier shall, subject to Clause 13.2 of Schedule 2 (General Terms and Conditions), indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the Authority as a result of such breach.
- 6.4 The Supplier agrees to use reasonable endeavours to assign to the Authority upon request the benefit of any warranty, guarantee or similar right which it has against any third party manufacturer or supplier of any replacement parts, consumable items and/or replacement IT Products in full or part.
- 6.5 The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that any of the warranties set out in this Clause 6 of this Schedule 12 (Support and Maintenance Services for IT Products) have been breached or there is a risk that any warranties may be breached.

7 The Authority's rights to remove IT Products from the Support and Maintenance Inventory

- 7.1 By giving a minimum of thirty (30) days written notice to the Supplier, the Authority may remove any IT Products from the Support and Maintenance Inventory and discontinue the Support and Maintenance Services on such IT Products in the event that:
- 7.1.1 it decommissions or replaces the IT Products for health and safety reasons and/or for reliability reasons;
 - 7.1.2 it sells, transfers or otherwise disposes of the IT Products;
 - 7.1.3 the IT Products are lost or stolen; or
 - 7.1.4 the IT Products are replaced by the Authority and the replacement IT Products are still under warranty.

8 The Supplier's rights to remove IT Products from the Support and Maintenance Inventory

- 8.1 By giving a minimum of twelve (12) months written notice to the Authority, the Supplier may remove IT Products from the Support and Maintenance Inventory and discontinue the Support and Maintenance Services on such IT Products in the following circumstances:
- 8.1.1 the Supplier will no longer be able to maintain the IT Products as any required third party support is no longer available (including, without limitation, support from the original equipment manufacturer); and/or
 - 8.1.2 the Supplier will permanently not be able to obtain from any third party (including, without limitation, the original equipment manufacturer) any

required spare parts and/or consumable items required to provide the Support and Maintenance Services in relation to those IT Products.

8.2 The Parties acknowledge that:

8.2.1 at all times the Supplier shall be required to provide the Authority with information in accordance with Clauses 4.3 and 4.4 of this Schedule 12 (Support and Maintenance Services for IT Products) notwithstanding the length of the Term of this Contract or the period of the Term still remaining; and

8.2.2 Clause 8.1 of this Schedule 12 (Support and Maintenance Services for IT Products) shall only apply where the Term of this Contract exceeds twelve (12) months.

9 **Adjustment to the Charges where IT Products are removed from the Support and Maintenance Inventory**

9.1 Following the removal of any IT Products from the Support and Maintenance Inventory in accordance with Clauses 7.1 or 8.1 of this Schedule 12 (Support and Maintenance Services for IT Products):

9.1.1 there shall be a pro-rata adjustment to the Charges to account for such removal; and

9.1.2 where applicable, the Supplier shall make a full refund to the Authority in respect of the balance of the Charges paid in advance for any period following the removal of such IT Products. Such refund shall be paid automatically by the Supplier to the Authority within thirty (30) days following the effective date of the removal of the relevant IT Products from the Support and Maintenance Inventory and may be by credit note where the Supplier continues to provide ongoing Support and Maintenance Services to the Authority.

9.2 If the Parties are unable to agree the pro-rata adjustment to the Charges in accordance with Clause 9.1.1 of this Schedule 12 (Support and Maintenance Services for IT Products) within thirty (30) days of the effective date of the removal of such IT Products from the Support and Maintenance Inventory, this failure to agree shall be referred to (and resolved in accordance with) the Dispute Resolution Procedure.

10 **Additional termination provisions**

10.1 If the Authority removes any IT Products from the Support and Maintenance Inventory in accordance with Clause 7.1 of this Schedule 12 (Support and Maintenance Services for IT Products) and no IT Products will remain part the Support and Maintenance Inventory following such removal, the Authority may terminate the Support and Maintenance Services by giving a minimum of thirty (30) days written notice to the Supplier. Such notice may be given by the Authority at the same time as it gives the notice of removal of the last remaining IT Products in accordance with the Clause 7.1 of this Schedule 12 (Support and Maintenance Services for IT Products) or at any time afterwards.

10.2 If the Supplier removes IT Products from the Support and Maintenance Inventory in accordance with Clause 8.1 of this Schedule 12 (Support and Maintenance Services for IT Products) and no IT Products will remain part of the Support and Maintenance

Inventory following such removal, the Authority may terminate the Support and Maintenance Services by giving a minimum of thirty (30) days written notice to the Supplier. Such notice may be given by the Authority at any point after it receives the notice of removal of the last remaining IT Products in accordance with Clause 8.1 of this Schedule 12 (Support and Maintenance Services for IT Products) or at any time afterwards, but shall not take effect before the effective date of the removal of such IT Products from the Support and Maintenance Inventory.

- 10.3 Following any termination of the Support and Maintenance Services by the Authority in accordance with Clause 10.1 or Clause 10.2 of this Schedule 12 (Support and Maintenance Services for IT Products), the Supplier shall make a full refund to the Authority in respect of the balance of the Charges paid in advance for the Support and Maintenance Services for any period following such termination to the extent such balance has not already been paid to the Authority in accordance with Clause 9.1.2 of this Schedule 12 (Support and Maintenance Services for IT Products). Such refund shall be paid automatically by the Supplier to the Authority within thirty (30) days following the effective termination date of this Contract.

11 **Non-performance**

- 11.1 The Supplier acknowledges the critical importance that the Authority places on ensuring that all IT Products used by the Authority are properly maintained in a timely manner so as to ensure the safety of its staff, patients and other service users. Therefore, without prejudice to any other provisions of this Contract, where the Supplier does not provide the Support and Maintenance Services in accordance with any time periods and/or other requirements set out in this Contract ("**Non-performed Services**"), without prejudice to its other right and remedies under this Contract, the Authority may elect to: (i) follow the remedial process set out in Clause 15.3 of Schedule 2 (General Terms and Conditions); or (ii) the Authority may procure alternative Support and Maintenance services from a third party.
- 11.2 The Authority confirms that it will act reasonably at all times when electing to exercise its rights to procure alternative services from a third party under Clause 11.1 of this Schedule 12 (Support and Maintenance Services for IT Products). In particular, the Authority will only elect to procure alternative services from a third party where the following circumstances apply:
- 11.2.1 the alternative services are required urgently due to health and safety reasons and/or to keep the relevant IT Products operative;
 - 11.2.2 the Supplier has been notified of the urgency of the requirement and its failure to provide the Support and Maintenance Services in accordance with the requirements of this Contract; and
 - 11.2.3 the Supplier has been given a reasonable period of time (taking into account the urgency of the requirement) to perform the Non-performed Services itself. What is a "reasonable period of time" in the particular circumstances shall be determined at the Authority's sole discretion taking into account its obligation under this Clause 11.2 of this Schedule 12 (Support and Maintenance Services for IT Products) to act reasonably.
- 11.3 In the event that the Authority elects to procure alternative services from a third party in accordance with Clause 11.1 of this Schedule 12 (Support and Maintenance Services for IT Products), the following provisions shall apply:

- 11.3.1 where the Supplier has been paid any Charges in advance for such Non-performed Services, the Supplier shall (i) refund the Authority the full Charges paid; and (ii) pay to the Authority upon demand any additional charges that the Authority has incurred in connection with any alternative services additional to the Charges paid to the Supplier; and
- 11.3.2 where the Supplier has not yet been paid the Charges for such Non-performed Services, the Supplier shall: (i) forfeit the Charges for such Support and Maintenance Services; and (ii) pay to the Authority upon demand any additional charges that the Authority has incurred in connection with any alternative services additional to the Charges that would have been paid to the Supplier had the Supplier performed the Non-performed Services in accordance with any time periods and/or other requirements set out in this Contract.

12 **Supplier's obligation to make good any damage**

- 12.1 The Supplier shall make good at the Supplier's expense any damage to any property or equipment caused by the Supplier when providing the Support and Maintenance Services.

13 **Updates and Upgrades**

- 13.1 The Authority shall be entitled to receive any Updates that the Supplier issues in relation to the Supplier Software and/or Software Subscription Services from time to time and at no additional charge.
- 13.2 The Supplier shall make notify the Authority of available Upgrades to the Supplier Software and/or Software Subscription Services which the Supplier makes available to its customers from time to time for an additional fee. If the Authority wishes to purchase an Upgrade it shall do so using the Change Control Process. For the avoidance of doubt, the Authority nor any Authorised User is obliged to take such Upgrades as part of the Software Subscription Services (if applicable) or otherwise under this Contract.
- 13.3 The Supplier shall promptly identify and resolve any technical issues with the Supplier Software and/or Software Subscription Services giving such time and attention to such resolution as can reasonably be expected of a leading software developer, based on the impact of such technical issue on the Supplier Software and/or Software Subscription Services functionality and in particular its fitness for the purposes set out in this Contract. Following such resolution, the Supplier shall as soon as reasonably practicable make any resulting Update available to the Authority and Authorised Users at no additional cost.
- 13.4 Without limitation to the generality of Clause 13.3 of this Schedule 12 (Support and Maintenance Services for IT Products), the Supplier shall, at no additional cost, update the Supplier Software and/or Software Subscription Services as soon as reasonably practicable whenever there is a Known Vulnerability or Latent Vulnerability affecting the Supplier Software and/or Software Subscription Services. Any resulting Update shall be made available to the Authority and Authorised Users as soon as reasonably practicable.
- 13.5 Any Updates provided to the Authority and Authorised Users shall:
 - 13.5.1 result in the Supplier Software and/or Software Subscription Services and any other IT Products and/or Services provided under this Contract having

at least the same features, functionality, characteristics, performance and compatibility with equipment and systems as those supplied items had immediately prior to the relevant Update; and

- 13.5.2 not have any adverse effect on the functionality, performance or compatibility of the Supplier Software and/or Software Subscription Services and any other IT Products and/or Services provided under this Contract.

SCHEDULE 13

PERFORMANCE LEVELS AND MONITORING

PART A

PERFORMANCE LEVELS

1. Service Availability

- 1.1 The Supplier is responsible for delivering Support and Maintenance Services during Service Hours.
- 1.2 The IT Products shall be hosted on a secure and resilient environment that is designed to provide uninterrupted access to the IT Products. The Supplier uses remote monitoring and alert facilities to notify trained technical staff of any service outages and, in such an event, without prejudice to any of the Authority's other rights and remedies, the Supplier will use its best endeavours to ensure that the service is restored as soon as possible at any time of day.
- 1.3 The Supplier will notify the Authority of any Planned Downtime giving at least twenty (20) Business Days' notice for routine upgrades, updates and maintenance and as much notice as possible for emergency upgrades, updates and maintenance. No work will be carried out without the Authority's agreement unless there is serious risk of a data or security breach or a clinical risk incident in which case the Supplier may temporarily remove or restrict access to the IT Products without recourse to the Authority (provided that such removal or restriction shall be treated as Unplanned Downtime) ("**Emergency Maintenance**").
- 1.4 The Supplier shall create and maintain a rolling maintenance schedule with regard to the IT Products ("**Maintenance Schedule**") to be agreed with the Authority. The Maintenance Schedule shall be discussed and updated by the Governance Board in accordance with the procedures set out in Schedule 15 (Governance).
- 1.5 When the Supplier wishes to carry out any maintenance to the IT Products (other than Emergency Maintenance), it shall ensure that:
 - 1.5.1 the timing of the Planned Downtime is in accordance with the requirements of the Maintenance Schedule or is as otherwise agreed in writing with the Authority's Contract Manager at least twenty (20) Business Days in advance;
 - 1.5.2 it is carried out during On Call Hours unless otherwise agreed between the Parties;
 - 1.5.3 once agreed with the Authority's Contract Manager, the Planned Downtime is forthwith entered onto the Maintenance Schedule; and
 - 1.5.4 the Planned Downtime is subsequently carried out in accordance with the Maintenance Schedule.

- 1.6 The Supplier will be allowed to book a maximum of 4 hours for Planned Downtime in any one Service Period which shall take place between the hours and on the day specified in the Maintenance Schedule unless otherwise agreed in writing with the Authority.
- 1.7 Planned Downtime that is carried out by the Supplier in accordance with Clause 1.7 of this Part A of this Schedule 13 (Performance Levels) will be subtracted from the total number of hours in the relevant Service Period when calculating Service Availability.
- 1.8 The Supplier shall carry out any necessary maintenance where it reasonably suspects that the IT Products or the Services or any part thereof has or may have developed a Defect. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the IT Products and the Services, and at all times in accordance with this Contract and without prejudice to Supplier's Service Availability KPI (as set out in Clause 9.1 of this Part A of this Schedule 13 (Performance Levels)).
- 1.9 The Supplier shall give as much notice as is reasonably practicable to the Authority prior to carrying out any Emergency Maintenance.
- 1.10 The Supplier shall ensure that it has an HSCN connection (or equivalent network connection approved by the Authority in writing) and an appropriate service level agreement with the supplier of such network connection for continuity of service in the event of a fault or failure of such network connection, and which contains at least equivalent obligations as set out in this Part A of this Schedule 13 (Performance Levels) in relation to the KPIs and or which shall enable the Supplier to meet its obligations in respect of the KPIs pursuant to the terms of this Contract.

2. Performance Measures

- 2.1 The Supplier and the Authority recognise that System Response Time is dependent upon the correct operation of the IT Products, the Authority IT Infrastructure and, potentially, other system, network or infrastructure components provided and/or controlled by third parties who are not Sub-contractors.
- 2.2 The Supplier will design and provide the IT Products and Services, so as to support the use of the IT Products by all Authority personnel, across all Premises and Locations, to support the full scope of the Authority's requirements (or subset thereof as is appropriate to the scope of the IT Products deployed at that stage) as set out in Schedule 5 (Specification and Tender Response Document).
- 2.3 Both Parties will work together to establish baseline performance measures of the System Response Times for the production environment prior to the Operational Services Commencement Date. The Supplier shall measure and report to the Authority, the System Response Times for the production environment during live service. The Parties may agree any changes to the terms of this Part A of this Schedule 13 (Performance Levels) pursuant to the Change Control Process reflecting performance during live service.

2.4 Without prejudice to the Authority's other rights and remedies pursuant to this Contract:

2.4.1 in the event that the System Response Times are not achieved, the Supplier will work with the Authority to identify the root cause of such performance issues;

2.4.2 the Supplier shall take all reasonable steps to address such performance issues that fall within the scope of the IT Products and/or Services, including the IT Products; and

2.4.3 the Authority shall take all reasonable steps to address such performance issues that fall within the scope of the Authority IT Infrastructure.

2.5 Where multiple root causes are identified as a result of Clause 2.4 of this Part A of this Schedule 13 (Performance Levels), each Party shall take all reasonable steps so as to address the issues relating to their respective systems so as to address their respective component of the performance shortfall (in proportion to its overall contribution to such performance shortfall).

3. **Software KPI**

3.1 Support is provided in accordance with the KPIs detailed in Clause 5 of this Part A of this Schedule 13 (Performance Levels) for the IT Products, including the following equipment/software:

3.1.1 hosting security, including firewall protection, virus protection and nightly backups (including secure off-site storage of backup media) unless specified otherwise in the Specification and Tender Response Document;

3.1.2 the software identified in Schedule 11 (IT Products and Software Licences); and

3.1.3 interfaces between the Supplier Software and the Authority's software and medical diagnostic devices subject to Clause 4 of this Part A of this Schedule 13 (Performance Levels).

4. **Interfaces**

4.1 The Supplier will provide connectivity to support interfaces with the Authority's software and medical diagnostic devices using a variety of different methods and protocols which conform to Good Industry Practice.

4.2 Interfaces will be provided by HL7 messaging (or such other industry standard messaging interfaces as developed and updated from time to time) between the Supplier's systems (including the IT Products) and the Authority's chosen system, via the Authority's chosen integration engine.

4.3 Support will only be provided for the interfaces from the point at which the data

enters the Supplier's network and the Supplier's interface engine. The Supplier cannot support the Authority's side of the interface that exports data from third party systems/devices, which is the responsibility of the Authority to implement, maintain and support.

5. **Support and Maintenance Services and IT Products KPIs**

5.1 The Supplier agrees to provide the following Support and Maintenance Services for the IT Products during the Term:

- 5.1.1 technical support to the nominated representatives of the Authority;
- 5.1.2 operational support to trained and nominated representatives of the Authority;
- 5.1.3 Defect rectification; and
- 5.1.4 IT Products maintenance.

5.2 The Supplier shall make available a suitable telephone and email support helpdesk for the Authority to report incidents (including KPI Failures) to the Supplier as detailed below:

Telephone: 0800 0778117

Email: support@ccubesolutions.zendesk.com

On-line: <https://ccubesolutions.zendesk.com>

The person placing the call or logging the incident shall notify the Supplier of the type, severity and the urgency of the incident. The Authority may provide further information in respect of the clinical and/or business impact of the incident and/or the number of End Users affected by the incident. The Authority shall in its discretion determine the Priority Level which relates to any incident in accordance with the definitions provided in Clause 5.4 of this Part A of this Schedule 13 (Performance Levels).

5.3 Upon receipt of a support call, online notification and/or email (and/or if it otherwise becomes aware of an incident), the Supplier will:

- 5.3.1 record details of the incident raised by the Authority, and ensure that the Authority receives a unique report number, and details of the date and time the report was logged with the Supplier. Where the Supplier receives more than one report of the same incident then all such reports shall be logged (but for the avoidance of doubt, the first report shall be deemed to be the relevant report of the incident);
- 5.3.2 triage the call and review the information provided by the Authority;
- 5.3.3 document the action intended to be taken or which has been taken to rectify the incident;

- 5.3.4 record details of any communication with the Authority's Contract Manager in connection with the incident;
- 5.3.5 add notes/comments regarding any mitigating circumstances with regard to the incident;
- 5.3.6 document when a resolution has been proposed; and
- 5.3.7 document the Supplier's plans for remedying the incident and/or for preventing the incident from re-occurring, including details where applicable of the estimated time within which such incident will be resolved.

5.4 Incidents will be classified by the Authority and managed as follows:

Priority Level	Description	Support Response Time	Resolution Time
Priority 1 (P1): CRITICAL	<ul style="list-style-type: none"> System is unavailable to all users rendering access to the system impossible Total failure of the system supported interface via hardware where no immediate workaround is available or where there is an agreed risk to database integrity 	30 minutes	4 hours
Priority 2 (P2): URGENT	<ul style="list-style-type: none"> A service critical module or hardware of the system is unavailable rendering a degradation of service provision by the department An example of this would be a failure in bedside checking, ward enquiry. In these instances, severe service degradation would be indicated by no alternative means of providing the same functions within the tracking application Database server hardware errors with workaround, but resilience is impacted Essential workstation / kiosk failure with no workaround available Printing functions inoperable due to the failure of software. 	1 hour	12 hours

Priority Level	Description	Support Response Time	Resolution Time
	<ul style="list-style-type: none"> Software or hardware faults resulting in major disruptions in service provision Severe degradation in system performance affecting all users due to the failure of the software 		
Priority 3 (P3): ROUTINE	<ul style="list-style-type: none"> A service critical option (module or hardware) is inoperable but a safe workaround is available Operating system presenting with errors, but not causing operational issues Complete failure of a supported workstation/kiosk or peripheral hardware 	4 hours	24 hours
Priority 4 (P4): NOT URGENT	<ul style="list-style-type: none"> Software issues that have a minor impact on service provision by the department Intermittent failure of a peripheral hardware device Minor or transient localised performance issues across the system due to the failure of software 	4 hours	72 hours
Priority 5 (P5): SERVICE REQUEST	<ul style="list-style-type: none"> Requests for additional training Requests for additional consultancy Requests for advice on local configuration issues Incidents/problems caused by items/reasons not supported by the Supplier under the terms of this Contract, including (but not limited to) third party software, network, infrastructure, Authority supplied hardware, etc. 	4 hours	144 hours

5.5 Incidents will be dealt with in priority order (as defined above). [The Authority will provide internal first-line support to the End Users]

The Authority will raise an incident with a Minimum data set (MDS). This is attached below. This will notify the suppliers service desk of the following prior to escalating to the Authority

1. Contact information
2. Incident type
3. Priority
4. Supplemental information I.E what internal checks have the Authority done prior to raising a ticket
5. Screen shot(s) of issue
6. Exact steps to reproduce the issue
7. Does the Test environment display the issue reported?



CCubeSolutions-M
DS.xlsx

- 5.6 During the course of investigating and managing an incident, the Supplier may agree with the Authority in writing to re-prioritise an incident (either up or down) and, in such circumstance, the date/time the Priority Level is changed will be used for the purpose of calculating Service Credits.
- 5.7 As further described in Clause 5.11 of this Part A of this Schedule 13 (Performance Levels), the Supplier shall permanently resolve, or find a suitable workaround for, incidents within the Resolution Times specified in Clause 5.4 of this Part A of this Schedule 13 (Performance Levels). In all cases, where development work is required to address an incident, the development work will be prioritised in respect of the nature of the problem reported and Emergency Maintenance will be initiated where appropriate to ensure minimum service disruption (without prejudice to the Supplier's obligations to meet the KPIs). For the avoidance of doubt, nothing in this Clause shall relieve the Supplier of any Service Credits that may apply.
- 5.8 The Supplier guarantees to have a minimum of two (2) fully trained technical support staff available at all times during Service Hours to handle support calls.
- 5.9 The Supplier will provide the Authority with an emergency contact schedule identifying at least two (2) emergency contact numbers for appropriate technical staff, who the Supplier shall make available during On Call Hours. The Authority may call the emergency contact numbers for P1 incidents only, with the Supplier routing the call to an appropriate team member as required in line with the P1 KPIs.
- 5.10 Without prejudice to the Supplier's obligation to meet the KPIs, in the event of a Defect, one of the following corrective measures will be used:

- 5.10.1 a change to the IT Products will be made to correct the Defect: For P1 or P2 incidents, an emergency “patch” may be made to the production environment. For other incidents, the release will be made in accordance with agreed “Release Procedures”;
 - 5.10.2 Authority intervention: The nature of the Defect will be communicated to the Authority with explicit instructions as to the corrective action necessary;
 - 5.10.3 no action required: This will be agreed with the Authority;
 - 5.10.4 where the problem is not related to the IT Products: Liaison with another party (either the Authority or otherwise) until the problem has been communicated and resolved.
- 5.11 An incident shall be deemed to be resolved on the first date/time the following occurs:
- 5.11.1 P1 or P2 incidents: The Defect has been rectified on the production environment or a suitable workaround has been implemented;
 - 5.11.2 P3 or P4 incidents: The Defect has been rectified on the Supplier’s development environment or a suitable workaround has been implemented or the Authority agrees to the Defect being rectified in a future release; and
 - 5.11.3 P5 incidents: When the person logging the call has been provided with appropriate information in relation to their call or, for change requests, when the call has been transferred to the development log.
- 5.12 Where an incident has been resolved by the implementation of a workaround, the Supplier will:
- 5.12.1 if the impact of the workaround is such that the operation of the IT Products and Services are still disrupted, log another incident of appropriate Priority Level to reflect the post-workaround state;
 - 5.12.2 in any case, provide the Authority with a plan for the delivery of a fix for the incident, such that the workaround can then be removed;
 - 5.12.3 commit to the delivery of the plan identified in Clause 5.12.2 of this Part A of this Schedule 13 (Performance Levels); and
 - 5.12.4 report progress against the delivery of the plan identified in Clause 5.12.2 of this Part A of this Schedule 13 (Performance Levels) as part of regular Services reporting.
- 5.13 Telephone, email and on-line support is only available to the Authority during Service Hours. An on-call service is available for critical (P1) incidents during On Call Hours.

6. **Rights of the Authority**

- 6.1 The Authority may, at any time, request a full history in hard copy of all support calls related to the IT Products. Without prejudice to the Supplier's obligations to provide Performance Monitoring Reports, the Authority shall pay the Supplier's reasonable costs of complying with such requests made pursuant to this Clause 6.1 of this Part A of this Schedule 13 (Performance Levels), provided that such costs are notified in advance to the Authority.
- 6.2 The Authority may inspect the Supplier's quality system documentation at a mutually agreeable time at the Supplier locations. No documentation shall be copied or removed from the Supplier locations without the Supplier's written permission.

7. **Service Credit Regime**

- 7.1 The Supplier agrees to a Service Credit regime that is designed to keep the service performant.
- 7.2 The performance measures available to the Customer in the event that the Supplier fails to meet any or all of the Service Levels shall be as follows:

Service Failure Points will be allocated in accordance with this clause 7.2. The Authority shall be entitled to Service Credits as set out this clause 7.2. The Customer shall notify the Supplier's Account Manager of any Service Credits to which it is entitled.

For each Service Failure Point allocated against the Supplier, the Customer will be entitled to a deduction of an amount which is equal to £5 for KPIs 1-6 and £50.00 for KPI_7 payable by the Customer to the Supplier (the "Service Credit").

The following formula will apply in the calculation of Service Credits and the worked example is for clarity only:

Worked Example

Percentage Based Service Credits have been

calculated and modelled as: $((A - B) \times C) \times D \times E$

Where:

A is KPI Target performance percentage level

B is Actual performance percentage level

C is Operating Service Level value

D is KPI Weighting

E is financial value of an individual Service Credit

Example of % based Service Credit

KPI No	KPI Target performance % level	Operating Service Level		KPI Weighting
KPI – X	100%	Actual Performance percentage level	Operating Service Level value	4
		Minor failure - Equal or more than 98% and less than 100%	1	
		Serious failure - Equal or more than 96% and less than 97.99%	2	
		Severe failure - Equal or more than 94% and less than 95.99%	3	
		KPI Service Threshold - Equal or less than 94%	4	

If Actual performance levels equal 97% - (Serious Failure) for any month(s) within the quarter and the individual Service Credit financial value is £5

$$100 - 97 = 3$$

$$3 \times 2 = 6$$

$$6 \times 4 = 24$$

$$24 \times £5 = \text{£120}$$

Calculation of financial value of 'by exception' based Service Credits:

$$(((A - B) \times C) \times D) \times E$$

Where:

A is Actual performance failure level

B is KPI Target performance level

C is Operating Service Level value

D is KPI Weighting

E is financial value of an individual Service Credit

Example of 'by exception' based Service Credit

KPI No	KPI Target performance level	Operating Service Level		KPI Weighting
KPI_Y	0 exceptions	Actual Performance failure level	Operating Service Level value	1
		Minor failure	N/A	
		Serious failure	N/A	
		Severe failure	N/A	
		KPI Service Threshold - 1 or more exceptions	4	

If Actual performance levels equal 2 – KPI Service Threshold for a month and the individual Service Credit financial value is £50

$$2 - 0 = 2$$

$$2 \times 4 = 8$$

$$8 \times 1 = 8$$

$$8 \times £50 = \text{£400}$$

End of Worked Example

The Service Credits will be capped at 40% of the Quarterly Support Charge for each quarterly measurement period.

7.2 KPI Service Threshold

For each KPI there will be a service threshold, and in the event that the service performance falls below those thresholds contractual remedies will be triggered. For each KPI that threshold is Operating Service Level (OSL) 4 this is separately set out against each performance target.

KPI No	Target Performance Level	KPI Service Threshold (OSL 4)
1	100%	Below 93.99%
2	100%	Below 93.99%
3	80%	Below 73.99%
4	100%	Below 93.99%
5	100%	Below 84.99%
6	100%	Below 84.99%
7	_0 exceptions	1 or more instances

7.3 Persistent Failure to Meet Service Levels

Persistent failure of a Service Level shall be defined as follows:

- a) The Supplier accrues more than 100 Service Failure Points in a monthly measurement period; or
- b) The Supplier accrues more than 400 Service Failure Points in three consecutive monthly measurement periods.

7.4 The value of Service Credits accrued in any one Service Period shall be deducted from the Supplier's invoice at the end of the following month. The Supplier shall ensure that it includes a complete and accurate record of all Service Credits in its Performance Monitoring Report.

8. **Escalation Procedure**

8.1 If a Dispute occurs in connection with the Priority Level of an incident, having

first referred to the definitions set out in Clause 5.4 of this Part A of this Schedule 13 (Performance Levels), then:

- 8.1.1 the incident will be treated as the highest of the two Priority Levels and managed in accordance with the KPI for that Priority Level;
 - 8.1.2 the Authority should follow the escalation procedure defined in Clause 8.2 of this Part A of this Schedule 13 (Performance Levels); and
 - 8.1.3 any Service Credit related to the incident shall not be applied until the Authority and the Supplier have agreed on the Priority Level following escalation.
- 8.2 Should the Authority be dissatisfied with the levels of support, the escalation procedures set out in Clause 7 of Schedule 15 (Governance) will apply.

9. **Key Performance Indicators (KPIs)**

- 9.1 Performance under this Contract shall be measured against the performance levels provided in this Part A of this Schedule 13 (Performance Levels) with failure measured as follows:

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KPIs and Service Levels

KPI Reference	Definition / Description	Method of Measurement	Frequency of Measurement	Target Performance Level	KPI Weighting	Severity Levels (Performance Level and Service Failure Point (SP))	Operation Service Levels (OSL)
KPI_1	<p>Calls to Service Desk to be passed to engineer within 30 minutes of call receipt.</p> <p><i>Purpose: To ensure that all calls are logged and actioned appropriately.</i></p>	<i>= number of calls passed on to engineer within 30 minutes / total number of calls received in month</i>	Monthly	100%	2	<p>Minor Failure = 99.99% - 98.00% (-1 SP)</p> <p>Serious Failure = - 97.99% - 96.00% (-2 SP)</p> <p>Severe Failure = 95.99% - 94.00% (-3 SP)</p> <p>KPI Service Threshold = Below 93.99 (-4 SP)</p>	<p>Minor Failure = OSL 1</p> <p>Serious Failure = OSL 2</p> <p>Severe Failure = OSL 3</p> <p>KPI Service Threshold = OSL 4</p>
KPI_2	<p>Fix response time</p> <p><i>Purpose: To ensure that all incidents logged are fixed within 6 hours.</i></p> <p><i>Standard Operating hours for fixes are: 07:00 - 15:00 Monday to Friday</i></p> <p><i>Extended Operating hours for fixes are: 07:00-20:00 Monday to Friday</i></p>	<i>% fix = (No of calls fixed within 6 operating hours / Number of calls logged within the month) x 100</i>	Monthly	100%	4	<p>Minor Failure = 99.99% - 98.00% (-1 SP)</p> <p>Serious Failure = - 97.99% - 96.00% (-2 SP)</p> <p>Severe Failure = 95.99% - 94.00% (-3 SP)</p> <p>KPI Service Threshold = Below 93.99 (-4 SP)</p>	<p>Minor Failure = OSL 1</p> <p>Serious Failure = OSL 2</p> <p>Severe Failure = OSL 3</p> <p>KPI Service Threshold = OSL 4</p>

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KPI_3	80% of calls to result in first time fix <i>Purpose: To monitor that the required proportion of calls can be first time fixed upon arrival of the engineer with no need to order additional parts / further visit to site to remedy.</i>	$\% \text{ calls fixed first time} = (\text{No of calls fixed first time} / \text{number of calls logged within the month}) \times 100$	Monthly	80%	2	Minor Failure = 79.99% - 78.00% (-1 SP) Serious Failure = 77.99% - 76.00% (-2 SP) Severe Failure = 75.99% - 74.00% (-3 SP) KPI Service Threshold = Below 73.99% (-4 SP)	Minor Failure = OSL 1 Serious Failure = OSL 2 Severe Failure = OSL 3 KPI Service Threshold = OSL 4
KPI_4	Complete planned servicing of all scanning devices in accordance with Planned Maintenance (PM) schedule <i>Purpose : To ensure that all scanning devices are serviced in accordance with PM schedule</i>	$\% \text{ planned servicing completed} = (\text{No of scanning devices for servicing within month} / \text{no of scanning devices where servicing completed in month}) \times 100$	Monthly	100%	2	Minor Failure = 99.99% - 98.00% (-1 SP) Serious Failure = 97.99% - 96.00% (-2 SP) Severe Failure = 95.99% - 94.00% (-3 SP) KPI Service Threshold = Below 93.99% (-4 SP)	Minor Failure = OSL 1 Serious Failure = OSL 2 Severe Failure = OSL 3 KPI Service Threshold = OSL 4
KPI_5	Provision of scanning hardware and software within 12 weeks of request. <i>Purpose: to ensure that initial procurement and any subsequent call off purchases are delivered in the required timeframes.</i>	$\% \text{ provision} = (\text{No of scanning devices actually delivered within 12 weeks} / \text{no of scanning devices due for delivery in month}) \times 100$	Monthly	100%	2	Minor Failure = 99.99% - 95.00% (-1 SP) Serious Failure = 94.99% - 90.00% (-2 SP) Severe Failure = 89.99% - 85.00% (-3 SP) KPI Service Threshold = Below 84.99% (-4 SP)	Minor Failure = OSL 1 Serious Failure = OSL 2 Severe Failure = OSL 3 KPI Service Threshold = OSL 4
KPI_6	Set up and configuration of each scanning device within 5 working days of delivery to site. <i>Purpose: to ensure that the scanning devices are configured and available</i>	$\% \text{ implementation} = (\text{no of scanning devices requiring implementation within 5 working days} / \text{no of scanning devices due to be implemented}) \times 100$	Monthly	100%	2	Minor Failure = 99.99% - 95.00% (-1 SP) Serious Failure = 94.99% - 90.00% (-2 SP) Severe Failure = 89.99% - 85.00% (-3 SP) KPI Service Threshold = Below 84.99% (-4 SP)	Minor Failure = OSL 1 Serious Failure = OSL 2 Severe Failure = OSL 3 KPI Service Threshold = OSL 4

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	<i>for use</i>						
KPI_7	<p>Replacement of any hardware which remains under warranty where there have been 2 faults reported within a 1 month period.</p> <p><i>Purpose: to ensure that warranted scanning device(s) are replaced in a timely manner and are fit for use.</i></p>	All scanning devices supplied are covered under a 30 day warranty. Maintenance and Support for each scanning device is supplied throughout the lifetime of the contract, with a Service Agreement in place.	Monthly	0 Exceptions	1	<p>Minor Failure = N/A Serious Failure = N/A Severe Failure = N/A KPI Service Threshold = 1 or more instances</p>	<p>Minor Failure = OSL 1 N/A Serious Failure = OSL 2 N/A Severe Failure = OSL 3 N/A KPI Service Threshold = OSL 4</p>

10. **Definitions re KPI table in Clause 9 of this Schedule 13**

10.1 **“AVAILABLE”**

10.1.1 The IT Products and/or the relevant Services shall be Available when:

10.1.1.1 Authorised Users are able to access and utilise all the functions of the IT Products and/or the relevant Services; and

10.1.1.2 the IT Products and/or the relevant Services are able to process the Authority Data and to provide any required reports within the timescales set out in the Specification and Tender Response Document (Schedule 5), Schedule 13 (Performance Levels) and/or as otherwise stated elsewhere in this Contract (as measured on a 24 x 7 basis); and

10.1.1.3 all KPIs other than Service Availability are above the KPI Service Threshold.

10.2 **“SERVICE AVAILABILITY”**

10.2.1 Service Availability shall be measured as a percentage of the total time in a Service Period, in accordance with the following formula:

$$\text{Service Availability \%} = \frac{(MP - SD) \times 100}{MP}$$

where:

MP = total number of minutes, excluding Permitted Maintenance, within the relevant Service Period; and

SD = total number of minutes of Service Downtime, excluding Permitted Maintenance, in the relevant Service Period.

10.2.2 When calculating Service Availability in accordance with this Clause 10.2 Service Downtime arising due to Permitted Maintenance that is carried out by the Supplier in accordance with Schedule 12 (Support and Maintenance Services for IT Products) shall be subtracted from the total number of hours in the relevant Service Period; and

10.3 **“SYSTEM RESPONSE TIMES”**

10.3.1 The **“System Response Time”** is the round trip time taken to process a message or request of the relevant IT Product and/or the Services (as applicable), and shall be measured from the moment the last packet of data which relates to a particular message is received at the external interface of the relevant IT Product and/or the Services (as applicable) until a response is generated and the first block of data leaves the external interface (including, for the avoidance of doubt, the time taken for any necessary processing).

- 10.3.2 The Supplier System Response Time shall be the average System Response Time measured over the course of a Service Period.

10.4 **“HELP DESK RESPONSE TIMES”**

- 10.4.1 Measurement of Help Desk Response Times will be based on the time taken for a Help Desk operative to answer a call. Calls receiving an automated response or placed into a queuing system shall be deemed not to have been answered.
- 10.4.2 The Supplier shall monitor the Help Desk Response Times and shall provide the results of such monitoring to the Authority in accordance with the provisions of Part B of this Schedule 13 (Performance Levels).

10.5 **“FIX TIMES”**

- 10.5.1 The **“Fix Time”** of a Service Incident is the period from the time that the Service Incident has been reported to the Supplier to the point of its Resolution and **“Resolution”** means in relation to a Service Incident either:
- 10.5.1.1 the root cause of the Service Incident has been removed and the Services are being provided in accordance with the Specification and Tender Response Document (Schedule 5) and KPIs; or
 - 10.5.1.2 the Authority has been provided with a workaround in relation to the Service Incident deemed acceptable by the Authority.
- 10.5.2 Fix Times for Priority 3 Service Incidents, Priority 4 Service Incidents and Priority 5 Service Incidents shall be measured in Service Hours.
- Worked example:** if the Service Hours for a fault are 0800-1800, then the clock stops measuring Fix Time at 1800 in the evening and restarts at 0800 the following day).
- 10.5.3 Fix times for Priority 1 Service Incidents and Priority 2 Service Incidents shall be measured 24x7.
- 10.5.4 The Supplier shall measure Fix Times as part of its service management responsibilities and report periodically to the Authority on Fix Times as part of the Performance Monitoring Report.

PART B

PERFORMANCE MONITORING SYSTEM

1. **Performance Monitoring**

- 1.1 At least 60 (sixty) days prior to the Operational Services Commencement Date, the Supplier shall provide the Authority with a Performance Monitoring System which shall comply with relevant provisions of the ICT Infrastructure Library (ITIL) guidelines developed by the Office of Government Commerce and as a minimum, include details of the Supplier's proposals in respect of the following:

- 1.1.1 notifications to the Supplier of incidents, including KPI Failures, Defects and any other faults in the Supplier's performance and/or delivery of the IT Products and/or Services;
 - 1.1.2 Supplier self-monitoring in accordance with the Performance Monitoring System;
 - 1.1.3 performance review;
 - 1.1.4 the processes and systems the Supplier will put in place to monitor effectively its performance of the IT Products and/or Services as against the KPIs;
 - 1.1.5 the format and content of the Performance Monitoring Report; and
 - 1.1.6 how the Supplier will comply with the obligations set out in this Part B of this Schedule 13 (Performance Levels).
- 1.2 The Authority shall notify the Supplier within ten (10) Business Days of its receipt of the draft Performance Monitoring System and of its response (approval or rejection) to it. The draft Performance Monitoring System shall not be deemed to have been approved if no notice of approval is given during such period. If the draft Performance Monitoring System is approved by the Authority, it shall be adopted immediately.
- 1.3 If the Authority gives notice of its rejection of the draft Performance Monitoring System, it shall in such notice identify the changes it requires to be made to it. The Supplier shall amend the draft Performance Monitoring System so as to incorporate the changes required by the Authority and re-submit the amended draft Performance Monitoring System to the Authority for approval within ten (10) Business Days of receipt of the Authority's rejection notice. If the Authority does not approve the draft Performance Monitoring System following its resubmission to the Authority pursuant to the provisions of this Clause 1.3 of this Part B of this Schedule 13 (Performance Levels), the matter shall be resolved in accordance with the Dispute Resolution Procedure.
- 1.4 The Supplier shall ensure that the Performance Monitoring System shall be maintained and updated on an annual basis (every twelve (12) month anniversary of the Operational Services Commencement Date), or earlier if a significant change occurs. Any updated Performance Monitoring System shall be forwarded to the Authority for approval within ten (10) Business Days of receipt by the Supplier of the request from the Authority for the update. The Authority shall be entitled to require reasonable amendments to the updated Performance Monitoring System and the Supplier shall make such amendments and re-submit a further updated Performance Monitoring System to the Authority for approval. Until such time as the updated Performance Monitoring System is approved by the Authority, the Performance Monitoring System then existing (that is to say prior to the update) shall continue to apply.
- 1.5 The Parties shall consider and review the Performance Monitoring System at the Governance Board meetings pursuant to Schedule 15 (Governance).
- 1.6 The Authority shall be entitled to reasonably require, and the Supplier must comply with reasonable requests for, routine changes to the Performance Monitoring System.

2. **Performance Monitoring and Performance Review**

- 2.1 Within fifteen (15) Business Days of the end of each Service Period, the Supplier shall provide a Performance Monitoring Report to the Authority's Contract Manager.
- 2.2 The Performance Monitoring Report shall be in the format set out in the Performance Monitoring System and shall contain, as a minimum, the following information in respect of the Service Period just ended:
 - 2.2.1 the monitoring which has been performed in accordance with the Performance Monitoring System with a summary of any issues identified by such monitoring;
 - 2.2.2 Service Availability during the Service Period and the previous five (5) Service Periods;
 - 2.2.3 for each KPI, the actual performance achieved over the Service Period, and that achieved over the previous five (5) Service Periods;
 - 2.2.4 which Service Incidents and/or KPI Failures remain outstanding and a summary of the progress in resolving them;
 - 2.2.5 for any Priority 1 or Priority 2 incident occurring in the Service Period, the cause of the incident and any action being taken to reduce the likelihood of recurrence;
 - 2.2.6 for any repeat failures or persistent failures, actions taken to resolve the underlying cause and prevent recurrence;
 - 2.2.7 a rolling total of the number of Service Failures that have occurred over the past six (6) months;
 - 2.2.8 relevant particulars of any aspects of the performance by the Supplier which fail to meet the requirements of this Contract; and
 - 2.2.9 such other details as the Authority may reasonably require from time to time.
- 2.3 The draft Performance Monitoring Report shall be reviewed and its contents agreed by the Parties at the performance review meeting ("**Performance Review Meeting**") which immediately follows the issue of such Performance Monitoring Report in accordance with Clause 2.4 of this Part B of this Schedule 13 (Performance Levels).
- 2.4 The Parties shall attend Performance Review Meetings on a monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Supplier and the Authority of the Performance Monitoring Reports.
- 2.5 The Authority shall be entitled to raise any additional questions and/or request any further information regarding any Service Failure or any other aspect of the Supplier's performance.
- 2.6 The Supplier shall provide to the Authority such supporting documentation as

the Authority may reasonably require in order to verify the level of the performance by the Supplier.

3. **Records**

- 3.1 The Supplier shall keep appropriate documents and records (e.g. system records, service level log, goods received documentation, supplier accreditation records, complaints received etc.) in relation to the Operational Services being delivered and the other requirements to be satisfied. Without prejudice to the generality of the foregoing, the Supplier shall maintain accurate records of support call histories for a minimum of twelve (12) months and provide prompt access to such records to the Authority upon the Authority's request. The records and documents of the Supplier shall be available for inspection by the Authority and/or its nominee at any time and the Authority and/or its nominee may make copies of any such records and documents.
- 3.2 In addition to the requirement in Clause 3.1 of this Part B of this Schedule 13 (Performance Levels) to maintain appropriate documents and records, the Supplier shall provide to the Authority such supporting documentation as the Authority may reasonably require in order to verify the level of the performance of the Supplier both before and after the Operational Services Commencement Date and the calculations of the amount of Service Credits for any specified period.
- 3.3 The Supplier shall ensure that the Performance Monitoring System and any variations or amendments thereto, the service level log, any reports and summaries produced in accordance with this Schedule 13 (Performance Levels) and any other document or record reasonably required by the Authority shall be supplied to the Authority on request by the Supplier within ten (10) Business Days.

SCHEDULE 14

SECURITY MANAGEMENT AND POLICIES

1. Introduction

- 1.1 The Parties acknowledge that the purpose of the Security Management Plan is to ensure a good organisational approach to security under which the specific requirements of this Contract will be met.
- 1.2 The Parties further acknowledged that in accordance with Clause 4.2 of Schedule 3 (Information and Data Provisions), the Supplier may be required to maintain an information security management plan ("**ISMP**"). In the event that the Supplier is required to maintain an ISMP, this will be included as part of the Security Management Plan and amended and/or tested in accordance with the provisions set out below.
- 1.3 The Parties shall each appoint a representative to be responsible for security.
- 1.4 The Authority shall clearly articulate its high level security requirements so that the Supplier can ensure that the security related activities and any mitigations are driven by these fundamental needs.
- 1.5 Both Parties shall provide a reasonable level of access to any members of their personnel for the purposes of designing, implementing and managing security.
- 1.6 The Supplier shall ensure the up-to-date maintenance of a security policy relating to the operation of its own organisation and systems and on request shall supply this document as soon as practicable to the Authority.
- 1.7 In performing this Contract including providing the Services, Supplier shall comply with the Policies including those set out in the Appendix 3 to this Schedule 14 (Security Management and Policies).

1. Security Management Plan

- 1.1 Within twenty (20) Business Days after the Commencement Date, the Supplier shall prepare and submit to the Authority for approval in accordance with Clause 2.3 of this Schedule 14 (Security Management and Policies) a fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of Clause 2.2 of this Schedule 14 (Security Management and Policies).
- 1.2 The Security Management Plan shall:
 - 1.2.1 be based on the initial Security Management Plan set out in Appendix 2 to this Schedule 14 (Security Management and Policies);
 - 1.2.2 comply with the Baseline Security Requirements (set out in Appendix 1 to this Schedule 14 (Security Management and Policies));
 - 1.2.3 identify the necessary delegated organisational roles defined for those responsible for ensuring this Schedule 14 (Security Management and Policies) is complied with by the Supplier;
 - 1.2.4 detail the process for managing any security risks from Sub-contractors and third parties authorised by the Authority with access to the IT

Products and Services, processes associated with the delivery of the IT Products and Services, the Premises and Locations, the Authority IT Infrastructure (to extent that it is under the control of the Supplier) and any information and data (including the Authority Confidential Information and the Authority Data) and any system that could directly or indirectly have an impact on that information, data and/or the IT Products and Services;

- 1.2.5 unless otherwise specified by the Authority in writing, be developed to protect all aspects of the IT Products and Services and all processes associated with the delivery of the IT Products and Services, including the Premises and Locations, the Authority IT Infrastructure (to the extent that it is under the control of the Supplier) and any information and data (including the Authority Confidential Information and the Authority Data) to the extent used by the Authority or the Supplier in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that information, data and/or the IT Products and Services;
- 1.2.6 set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the IT Products and Services and all processes associated with the delivery of the IT Products and Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the IT Products and Services comply with the provisions of this Schedule 14 (Security Management and Policies);
- 1.2.7 set out the scope of the Authority IT Infrastructure that is under the control of the Supplier;
- 1.2.8 be structured in accordance with ISO/IEC 27001 and ISO/IEC 27002, cross-referencing, if necessary, to other Schedules which cover specific areas included within those standards; and
- 1.2.9 be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Authority engaged in the provision or receipt of the IT Products and Services (respectively) and shall reference only documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule 14 (Security Management and Policies).

- 1.3 If the Security Management Plan submitted to the Authority pursuant to Clause 2.1 of this Schedule 14 (Security Management and Policies) is approved by the Authority, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule 14 (Security Management and Policies). If the Security Management Plan is not approved by the Authority, the Supplier shall amend it within ten (10) Business Days of a notice of non-approval from the Authority and re-submit it to the Authority for approval. The Parties shall use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Business Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the Authority pursuant to this Clause 2.3 of this Schedule 14 (Security Management and Policies) may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the

requirements set out in Clause 2.2 of this Schedule 14 (Security Management and Policies) shall be deemed to be reasonable.

- 1.4 Approval by the Authority of the Security Management Plan pursuant to Clause 2.3 of this Schedule 14 (Security Management and Policies) or of any change or amendment to the Security Management Plan shall not relieve the Supplier of its obligations under this Schedule 14 (Security Management and Policies).

2. Amendment And Revision Of The Security Management Plan

- 2.1 The Security Management Plan shall be fully reviewed and updated by the Supplier at least annually to reflect:

- 2.1.1 emerging changes in Good Industry Practice;
- 2.1.2 any change or proposed change to the Authority IT Infrastructure, the IT Products and Services and/or associated processes;
- 2.1.3 any new perceived or changed security threats; and
- 2.1.4 any reasonable change in requirement requested by the Authority.

- 2.2 The Supplier shall provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Management Plan at no additional cost to the Authority. The results of the review shall include, without limitation:

- 2.2.1 suggested improvements to the effectiveness of the Security Management Plan;
- 2.2.2 updates to the risk assessments;
- 2.2.3 proposed modifications to respond to events that may impact on the Security Management Plan including the security incident management process, incident response plans and general procedures and controls that affect information security; and
- 2.2.4 suggested improvements in measuring the effectiveness of controls.

- 2.3 Subject to Clause 3.4 of this Schedule 14 (Security Management and Policies), any change which the Supplier proposes to make to the Security Management Plan (as a result of a review carried out pursuant to Clause 3.1 of this Schedule 14 (Security Management and Policies), an Authority request, a change to the Services or otherwise) shall be subject to the Change Control Procedure and shall not be implemented until approved in writing by the Authority.

- 2.4 The Authority may, where it is reasonable to do so, approve and require changes or amendments to the Security Management Plan to be implemented on timescales faster than set out in the Change Control Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Contract.

3. Security Testing

- 3.1 The Supplier shall conduct relevant Security Tests from time to time and additionally after significant architectural changes to the Authority IT Infrastructure or after any change or amendment to the Security Management Plan. Security Tests shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Authority. Subject to compliance by the Supplier with the foregoing requirements, if any Security Tests adversely affect the Supplier's ability to deliver the IT Products and Services so as to meet the performance levels required under Schedule 13 (Performance Levels), the Supplier shall be granted relief against any resultant under-performance for the period of the Security Tests.
- 3.2 The Authority shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Authority with the results of such tests (in a form approved by the Authority in advance) as soon as practicable after completion of each Security Test.
- 3.3 Without prejudice to any other right of audit or access granted to the Authority pursuant to this Contract, the Authority and/or its authorised representatives shall be entitled, at any time upon giving reasonable notice to the Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the Supplier's compliance with the Security Management Plan. The Authority may notify the Supplier of the results of such tests after completion of each such test. If any such Authority test adversely affects the Supplier's ability to deliver the Services so as to meet the performance levels set out in Schedule 13 (Performance Levels), the Supplier shall be granted relief against any resultant under-performance for the period of the Authority test.
- 3.4 Where any Security Test carried out pursuant to Clauses 4.2 or 4.3 of this Schedule 14 (Security Management and Policies) reveals any actual or potential Breach of Security or weaknesses (including un-patched vulnerabilities, poor configuration and/or incorrect system management), the Supplier shall promptly notify the Authority of any changes to the Security Management Plan (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. Subject to the Authority's prior written approval, the Supplier shall implement such changes to the Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the Security Management Plan is to address a non-compliance with the Baseline Security Requirements or security requirements detailed in this Contract or the requirements of this Schedule 14 (Security Management and Policies), the change to the Security Management Plan shall be at no cost to the Authority.
- 3.5 If any repeat Security Test carried out pursuant to Clause 4.4 of this Schedule 14 (Security Management and Policies) reveals an actual or potential Breach of Security exploiting the same root cause failure, such circumstance shall constitute a material Default.

4. ISMP Compliance

- 4.1 The Authority shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the ISMP maintains compliance with the principles and practices of ISO 27001, the specific security requirements set out in this Contract and the baseline security requirements.

- 4.2 If, on the basis of evidence provided by such audits, it is the Authority's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001, the specific security requirements set out in this Contract and/or the Baseline Security Requirements is not being achieved by the Supplier, then the Authority shall notify the Supplier of the same and give the Supplier a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to implement any necessary remedy. If the Supplier does not become compliant within the required time then the Authority shall have the right to obtain an independent audit against these standards in whole or in part.
- 4.3 If, as a result of any such independent audit as described in Clause 5.1 of this Schedule 14 (Security Management and Policies) the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001, the specific security requirements set out in this Contract and/or the Baseline Security Requirements then the Supplier shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Authority in obtaining such audit.

5. Breach Of Security

- 5.1 Either Party shall notify the other in accordance with the agreed security incident management process as defined by the Security Management Plan upon becoming aware of any Breach of Security or attempted Breach of Security.
- 5.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in Clause 6.1 of this Schedule 14 (Security Management and Policies), the Supplier shall:

5.2.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by the Authority) necessary to:

- 5.2.1.1 minimise the extent of actual or potential harm caused by any Breach of Security;
- 5.2.1.2 remedy such Breach of Security to the extent possible and protect the integrity of the Authority IT Infrastructure to the extent within its control against any such Breach of Security or attempted Breach of Security;
- 5.2.1.3 apply a tested mitigation against any such Breach of Security or attempted Breach of Security and, provided that reasonable testing has been undertaken by the Supplier, if the mitigation adversely affects the Supplier's ability to deliver the IT Products and Services so as to meet the performance levels set out in Schedule 13 (Performance Levels), the Supplier shall be granted relief against any resultant under-performance for such period as the Authority, acting reasonably, may specify by written notice to the Supplier;
- 5.2.1.4 prevent a further Breach of Security or attempted Breach of Security in the future exploiting the same root cause failure; and
- 5.2.1.5 supply any requested data to the Authority or the Computer Emergency Response Team for UK Government ("GovCertUK") (or any other regulatory body nominated by the Authority) on the Authority's request within 2 Business Days and without charge

(where such requests are reasonably related to a possible incident or compromise); and

5.2.2 as soon as reasonably practicable provide to the Authority full details of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Authority.

5.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance with the Baseline Security Requirements or any security requirements set out in this Contract, then any required change to the Security Management Plan shall be at no cost to the Authority.

6. Vulnerabilities and Corrective Action

6.1 The Authority and the Supplier acknowledge that from time to time vulnerabilities in the IT Products and Services will be discovered which unless mitigated will present an unacceptable risk to the Authority's information.

6.2 The severity of threat vulnerabilities for Supplier Software and Third Party Software shall be categorised by the Supplier as 'Critical', 'Important' and 'Other' by aligning these categories to the vulnerability scoring using the appropriate vulnerability scoring systems including:

6.2.1 the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS scores as set out by NIST <http://nvd.nist.gov/cvss.cfm>); and

6.2.2 Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.

6.3 Unless agreed otherwise, the Supplier shall procure the application of security patches to vulnerabilities within a maximum period from the public release of such patches with those vulnerabilities categorised as 'Critical' within fourteen (14) days of release, 'Important' within thirty (30) days of release and all 'Other' within sixty (60) Business Days of release, except where:

6.3.1 the Supplier can demonstrate that a vulnerability is not exploitable within the context of any IT Products or Services (e.g. because it resides in a software component which is not running in the service) provided vulnerabilities which the Supplier asserts cannot be exploited within the context of the IT Products and Services must be remedied by the Supplier within the above timescales if the vulnerability becomes exploitable within the context of the IT Products and Services;

6.3.2 the application of a 'Critical' or 'Important' security patch adversely affects the Supplier's ability to deliver the Services in which case the Supplier shall be granted an extension to such timescales of five (5) days, provided the Supplier had followed and continues to follow the security patch test plan agreed with the Authority; or

6.3.3 the Authority agrees a different maximum period after a case-by-case consultation with the Supplier.

6.4 The Supplier shall include provisions for major version upgrades of all Supplier Software and Third Party Software to be upgraded within six (6) months of the release

of the latest version, such that it is no more than one major version level below the latest release (normally codified as running software no older than the 'n-1 version') throughout the Term unless:

6.4.1 where upgrading such Supplier Software and Third Party Software reduces the level of mitigations for known threats, vulnerabilities or exploitation techniques, provided always that such upgrade is made within twelve (12) months of release of the latest version ; or

6.4.2 is agreed with the Authority via the Change Control Process.

6.5 The Supplier shall:

6.5.1 implement a mechanism for receiving, analysing and acting upon threat information supplied by GovCertUK, or any other competent Government Body;

6.5.2 ensure that the IT Products and Services and the Authority IT Infrastructure (to the extent that it is within the control of the Supplier) is monitored to facilitate the detection of anomalous behaviour that would be indicative of system compromise;

6.5.3 ensure it is knowledgeable about the latest trends in threat, vulnerability and exploitation that are relevant to the IT Products and Services and Authority IT Infrastructure by actively monitoring the threat landscape during the Term;

6.5.4 pro-actively scan the IT Products and Services and the Authority IT Infrastructure (to the extent that the it is within the control of the Supplier) for vulnerable components and address discovered vulnerabilities;

6.5.5 from the date specified in the Security Management Plan (and before the first Operational Service Commencement Date) provide a report to the Authority within five (5) Business Days of the end of each month detailing both patched and outstanding vulnerabilities in the IT Products and Services and the Authority IT Infrastructure (to the extent that the Authority IT Infrastructure is within the control of the Supplier) and any elapsed time between the public release date of patches and either time of application or for outstanding vulnerabilities the time of issue of such report;

6.5.6 propose interim mitigation measures to vulnerabilities in the Authority IT Infrastructure known to be exploitable where a security patch is not immediately available;

6.5.7 remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the IT Products and Services (in order to reduce the attack surface of the IT Products and Services and the Authority IT Infrastructure); and

6.5.8 inform the Authority when it becomes aware of any new threat, vulnerability or exploitation technique that has the potential to affect the security of the IT Products and Services and/or the Authority IT Infrastructure and provide initial indications of possible mitigations.

- 6.6 If the Supplier is unlikely to be able to mitigate the vulnerability within the timescales under this Clause 7 of this Schedule 14 (Security Management and Policies), the Supplier shall immediately notify the Authority.
- 6.7 In the event of a failure to comply with Clause 7.3 of this Schedule 14 (Security Management and Policies) the Supplier shall comply with the Rectification Plan Process.

Appendix 1

Baseline Security Requirements

Higher Classifications

1. The Supplier shall not handle Authority (including patient/visitor) information classified SECRET or TOP SECRET except if there is a specific requirement and in this case prior to receipt of such information the Supplier shall seek additional specific guidance from the Authority.

End User Devices

2. When Authority data resides on a mobile, removable or physically uncontrolled device it must be stored encrypted using a product or system component which has been formally assured through a recognised certification process of the UK Government Communications Electronics Security Group ("**CESG**") to at least Foundation Grade, for example, under the CESG Commercial Product Assurance scheme ("**CPA**").
3. Devices used to access or manage Authority data and services must be under the management authority of Authority or Supplier and have a minimum set of security policy configuration enforced. These devices must be placed into a 'known good' state prior to being provisioned into the management authority of the Authority. Unless otherwise agreed with the Authority in writing, all Supplier devices are expected to meet the set of security requirements set out in the CESG End User Devices Platform Security Guidance (<https://www.gov.uk/government/collections/end-user-devices-security-guidance--2>). Where the guidance highlights shortcomings in a particular platform the Supplier may wish to use, then these should be discussed with the Authority and a joint decision shall be taken on whether the residual risks are acceptable. Where the Supplier wishes to deviate from the CESG guidance, then this should be agreed in writing on a case by case basis with the Authority.

Data Processing, Storage, Management and Destruction

4. The Supplier and Authority will, at all times, comply with the provisions of Schedule 3 (Information and Data Provisions).

Networking

5. The Authority requires that any Authority Data transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device must be encrypted using a product or system component which has been formally assured through a certification process recognised by CESG, to at least Foundation Grade, for example, N3.
6. The Authority requires that the configuration and use of all networking equipment to provide the Services, including those that are located in secure physical locations, are at least compliant with Good Industry Practice.

Security Architectures

7. The Supplier shall apply the 'principle of least privilege' (the practice of limiting systems, processes and user access to the minimum possible level) to the design and configuration of the IT Products and Services which will process or store Authority Data.
8. When designing and configuring the IT Products and Services and/or the Authority IT

Infrastructure (to the extent that the Authority IT Infrastructure is within the control of the Supplier) the Supplier shall follow Good Industry Practice and seek guidance from recognised security professionals with the appropriate skills and/or a CESG Certified Professional certification (<http://www.cesg.gov.uk/awarenesstraining/IA-certification/Pages/index.aspx>) for all bespoke or complex components of the IT Products and Services.

Personnel Security

9. Supplier Staff shall be subject to pre-employment checks that include, as a minimum: identity, unspent criminal convictions and right to work.
10. The Supplier shall agree on a case by case basis Supplier Staff roles which require specific government clearances (such as 'SC') including system administrators with privileged access to the IT Products and Services which store or process Authority Data.
11. The Supplier shall prevent Supplier Staff who are unable to obtain the required security clearances from accessing systems which store, process, or are used to manage Authority Data except where agreed with the Authority in writing.
12. All Staff that have the ability to access Authority Data or systems holding Authority Data shall undergo regular training on secure information management principles. Unless otherwise agreed with the Authority in writing, this training must be undertaken annually.
13. Where the Supplier or Sub-Contractors grants increased IT privileges or access rights to Staff, those Staff shall be granted only those permissions necessary for them to carry out their duties. When staff no longer need elevated privileges or leave the organisation, their access rights shall be revoked within one (1) Business Day.

Identity, Authentication and Access Control

14. The Supplier shall operate an access control regime to ensure all users and administrators of the Supplier are uniquely identified and authenticated when accessing or administering the Services. Applying the 'principle of least privilege', users and administrators shall be allowed access only to those parts of the IT Products and Services they require. The Supplier shall retain an audit record of accesses.

Audit and Monitoring

15. The Supplier shall collect audit records which relate to security events in the systems or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Supplier audit records should (as a minimum) include:
 - (a) Logs to facilitate the identification of the specific asset which makes every outbound request external to the Authority IT Infrastructure (to the extent that the Authority IT Infrastructure is within the control of the Supplier). To the extent the design of the IT Products and Services allows such logs shall include those from DHCP servers, HTTP/HTTPS proxy servers, firewalls and routers.
 - (b) Security events generated in the Authority IT Infrastructure (to the extent that the Authority IT Infrastructure is within the control of the Supplier) and shall include: privileged account logon and logoff events, the start and termination of remote access sessions, security alerts from desktops and server operating

systems and security alerts from third party security software.

16. The Supplier and the Authority shall work together to establish any additional audit and monitoring requirements for the IT Products and Services and the Authority IT Infrastructure.
17. The Supplier shall retain audit records collected in compliance with Clause 15 of this Appendix 1 for a period of at least six (6) months.

Appendix 2

Security Management Plan

**DRAFT SECURITY MANAGEMENT PLAN TO BE DRAFTED BY THE SUPPLIER AND
APPROVED BY THE AUTHORITY**

The supplier holds certificates for:

- OITUK DPA registration number is: Z8089193 - also for ICO
- IG Toolkit: ODS code 8HT87
- Cyber Essentials Plus: IASME-CEP-004114
- ISO 9001 FS 743482
- ISO 14001 EMS 749500
- ISO 27001 IS 743480
- ISO 27701 PM 743481

Appendix 3

Policies

[Note: insert any Policies here]

SCHEDULE 15

GOVERNANCE

1. Introduction

This Schedule 15 (Governance) describes the procedures that will be used to manage the relationship between the Authority and the Supplier under this Contract.

2. Governance Principles

2.1 The Parties shall work together to ensure that:

- 2.1.1 the IT Products and Services are provided professionally, and in accordance with this Contract;
- 2.1.2 the provision of the IT Products and Services is regularly monitored to ensure compliance with the KPIs, and that appropriate timely action is taken to deal with any problems or issues;
- 2.1.3 the IT Products are provided and the Services are carried out in accordance with the Authority's regulatory, compliance, audit and risk management requirements to the extent provided for in this Contract;
- 2.1.4 variations are recorded and this Contract is kept up to date and modified as appropriate and by way of the Change Control Process;
- 2.1.5 potential problems and issues are identified early and resolved promptly in a co-operative manner and any Disputes are resolved quickly, effectively and in a co-operative and business-like manner;
- 2.1.6 the IT Products are provided and the Services are carried out in accordance with the standards and the Policies as required by this Contract;
- 2.1.7 any services set out in Schedule 19 (Exit Management) are planned and implemented effectively; and
- 2.1.8 a forum for co-operative and pro-active management of this Contract is established so that the objectives set out in this Contract are consistently achieved.

3. Establishment of the Governance Board

- 3.1 This Contract will be managed at the day to day level through the Contract Managers.
- 3.2 A governance board ("**Governance Board**") shall be established under this Contract on which both the Supplier and the Authority shall be represented by such senior representatives as agreed between the Parties. Where no representatives are specified, the representatives shall be the Parties' respective Contract Managers.

- 3.3 The Governance Board will:
- 3.3.1 be responsible for the executive management of this Contract;
 - 3.3.2 provide senior level guidance, leadership and strategy in respect of the provision of the Services;
 - 3.3.3 be the point of escalation from the Contract Managers (where appropriate);
 - 3.3.4 discuss the Supplier's Performance Monitoring Report;
 - 3.3.5 monitor the Supplier's performance against the Implementation Plan;
 - 3.3.6 review and update the Maintenance Schedule (as defined in Part A of Schedule 13 (Performance Levels));
 - 3.3.7 consider and review the Performance Monitoring System in accordance with Part B of Schedule 13 (Performance Levels); and
 - 3.3.8 carry out the specific obligations attributed to it in this Contract.
- 3.4 Both Parties will 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.

4. Governance Board Meetings

- 4.1 Meetings of the Governance Board will take place at least monthly to provide guidance and direction, reduce operational risks, review financial and service performance (including, for the avoidance of doubt, performance by the Supplier in accordance with its obligations under this Contract), manage any changes and resolve issues and Disputes and the Governance Board will also meet as necessary to ensure performance of such purposes.
- 4.2 Each Party shall ensure that its representative shall make all reasonable efforts to attend meetings of the Governance Board. If any representative is not able to attend a Governance Board meeting, that person shall use all reasonable endeavours to ensure that:
- 4.2.1 a delegate attends the relevant Governance Board meeting in his/her place who is (wherever possible) properly briefed and prepared; and
 - 4.2.2 that he/she is debriefed by such delegate after the Governance Board meeting.
- 4.3 Meetings shall be quorate as long as at least one representative from each of the respective Parties is present, including for the avoidance of doubt any delegates for the representatives appointed in accordance with Clause 4.2 of this Schedule 15 (Governance).
- 4.4 Minutes from each meeting of the Governance Board shall be recorded by an appointed representative.

- 4.5 Each Party shall ensure that members of the Governance Board are empowered to make decisions or have access to empowered individuals for decisions to be made.
- 4.6 The Parties shall ensure, as far as reasonably practicable, that the Governance Board shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before it.

5. Performance Review Meeting

- 5.1 From the [Actual Operational Services Commencement Date] until the end of the Term, the IT Products and Services shall be in operational use. Schedule 13 (Performance Levels) sets out the governance process relating to the reporting and escalation of incidents, Defects and KPI Failures and the role of the Performance Monitoring System in monitoring and reviewing adherence to the operational KPIs within this Contract.
- 5.2 In line with the role of the Governance Board set out in Clause 3.3 of this Schedule 15 (Governance), the performance review meeting, a component of the Performance Monitoring System, is expected to identify and report to the Governance Board on significant issues requiring decision and resolution by the Governance Board.

6. Contract Management Mechanisms

- 6.1 Both Parties will pro-actively manage risks attributed to them under the terms of this Contract.
- 6.2 The Supplier will develop, operate, maintain and amend, as agreed with the Authority, processes for the identification and management of risks, and a risk register and an issues log will be completed by the Supplier and submitted for review by both Parties at the Governance Board meetings.
- 6.3 The Supplier will report to the Governance Board on performance against the Implementation Plan. This report will contain detail current status, progress against the plan, exceptions, risks and issues.
- 6.4 The Supplier will report to the Governance Board on performance against this Contract. This report will contain details of project deliverables and their progress towards completion, numbers of incidents raised, identify trends and raise potential changes as a result of user experience.

7. Escalation Processes

- 7.1 The escalation processes shall be in accordance with Clause 22.3 (Dispute Resolution) of Schedule 2 (General Terms and Conditions) to enable the Authority and the Supplier resources to seek timely and effective resolution of issues associated with the Services.
- 7.2 The Authority and the Supplier will make reasonable endeavours to address all issues as soon as possible, at the lowest level in the project structure in which they can best be managed without recourse to the Dispute Resolution Procedure.
- 7.3 The Governance Board will have joint Authority and Supplier responsibilities to resolve issues raised either within the relevant meeting or outside such formal meetings.

- 7.4 Notwithstanding the provisions of Clauses 7.1 to 7.3 of this Schedule 15 (Governance), both Parties shall have the right to invoke the Dispute Resolution Procedure at any time.

8. Document Management

- 8.1 Both Parties acknowledge that all project documents need to be transferred in a controlled manner between the Authority and the Supplier.
- 8.2 Within fifteen (15) days of the Commencement Date, the Parties will confirm the controlled manner of exchanging documents.
- 8.3 All new Supplier owned documents will be assigned a controlled document reference number to enable traceability.
- 8.4 All Authority owned documents will be assigned a reference number by the Authority.
- 8.5 The Supplier will perform a series of quality checks on all documentation received, and return documents for rectification if significant defects are found. All versions of documentation passing through the document management function will be stored "read only" in a central repository managed by the Supplier.

9. Annual Review

- 9.1 If required by the Authority, an annual review meeting ("**Annual Review**") shall be held, on a date to be agreed between the Parties (acting reasonably), throughout the Term.
- 9.2 The Annual Review will be attended by the Contract Managers and any other persons considered by the Authority necessary for the Annual Review.

SCHEDULE 17
FINANCIAL DISTRESS

1. Background

This Schedule 17 (Financial Distress) provides for the assessment of the financial standing of the Supplier and any Key Sub-contractors and the establishment of trigger events relating to changes in such financial standing which, if breached, will have specified consequences.

2. Duty to Notify

2.1 The Supplier warrants and represents to the Authority for the benefit of the Authority that, as at the Commencement Date, the Supplier has sufficient financial reserves and borrowing provisions to support the Supplier's normal business for a period of three (3) months.

2.2 The Supplier shall (and shall procure that any Key Sub-contractors shall) maintain equivalent financial reserves and borrowing provisions.

2.3 The Supplier shall:

2.3.1 regularly monitor the Supplier's and any Key Sub-contractors' financial ratios;

2.3.2 promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event, a Key Sub-contractor Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event or a Key Sub-contractor Financial Distress Event (and in any event, ensure that such notification is made within ten (10) Business Days of the date on which the Supplier first becomes aware of the Financial Distress Event, the Key Sub-contractor Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event or a Key Sub-contractor Financial Distress Event); and

2.3.3 confirm to the Authority in writing every one hundred and eighty (180) days during the Term that the Supplier has sufficient financial reserves and borrowing provisions to support the Supplier's normal business for a period of three (3) months.

3. Financial Distress Event

3.1 In the event of:

3.1.1 the Supplier having insufficient financial reserves and/or borrowing provisions to support the Supplier's normal business for a period of three (3) months;

3.1.2 the Authority, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Supplier;

- 3.1.3 the Supplier issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;
- 3.1.4 there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Supplier;
- 3.1.5 the Supplier committing a material breach of covenants to its lenders;
- 3.1.6 a Key Sub-contractor notifying the Authority that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute; or
- 3.1.7 any of the following:
 - 3.1.7.1 commencement of any litigation against the Supplier with respect to financial indebtedness or adverse judgement resulting from litigation against the Supplier with respect to financial indebtedness or obligation under a service contract;
 - 3.1.7.2 non-payment by the Supplier of any financial indebtedness;
 - 3.1.7.3 any financial indebtedness of the Supplier becoming due as a result of an event of default; or
 - 3.1.7.4 the cancellation or suspension of any financial indebtedness in respect of the Supplier,

which the Authority reasonably believes could impact on the continued performance and delivery of the IT Products and/or Services in accordance with this Contract,

then, immediately upon notification of the Financial Distress Event (or if the Authority becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Authority shall have the rights and remedies as set out in Clauses 3.3 to 3.7 of this Schedule 17 (Financial Distress).

- 3.2 In the event of a late or non-payment of a Key Sub-contractor pursuant to Clause 3.1.6 of this Schedule 17 (Financial Distress), the Authority shall not exercise any of its rights or remedies under Clause 3.3 of this Schedule 17 (Financial Distress) without first giving the Supplier ten (10) Business Days to:
 - 3.2.1 rectify such late or non-payment; or
 - 3.2.2 demonstrate to the Authority's reasonable satisfaction that there is a valid reason for late or non-payment.
- 3.3 The Supplier shall:
 - 3.3.1 at the request of the Authority meet with the Authority as soon as reasonably practicable (and in any event within three (3) Business Days of the initial notification (or awareness) of the Financial Distress

Event or such other period as the Authority may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the IT Products and/or Services in accordance with this Contract; and

3.3.2 where the Authority reasonably believes (taking into account the discussions and any representations made under Clause 3.3.1 of this Schedule 17 (Financial Distress)) that the Financial Distress Event could impact on the continued performance and delivery of the IT Products and/or Services in accordance with this Contract:

3.3.2.1 submit to the Authority for its approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Business Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing); and

3.3.2.2 provide such financial information relating to the Supplier as the Authority may reasonably require.

3.4 The Authority shall not withhold its approval of a draft Financial Distress Service Continuity Plan unreasonably. If the Authority does not approve the draft Financial Distress Service Continuity Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Authority within five (5) Business Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Service Continuity Plan is approved by the Authority or referred to the escalation process under Clause 3.5 of this Schedule 17 (Financial Distress).

3.5 If the Authority considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.

3.6 Following approval of the Financial Distress Service Continuity Plan by the Authority or a determination under the Dispute Resolution Procedure (in accordance with Clause 3.5 of this Schedule 17 (Financial Distress)), the Supplier shall:

3.6.1 on a regular basis (which shall not be less than monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance and delivery of the IT Products and/or Services in accordance with this Contract;

3.6.2 where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Clause 3.6.1 of this Schedule 17 (Financial Distress), submit an updated Financial Distress Service

Continuity Plan to the Authority for its approval, and the provisions of Clauses 3.4 and 3.5 of this Schedule 17 (Financial Distress) shall apply to the review and approval process for the updated Financial Distress Service Continuity Plan; and

- 3.6.3 comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).
- 3.7 Without prejudice to its other rights and remedies, in the event of a Financial Distress Event, the Authority may (but shall not be obliged to) give notice to the Supplier requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Contract on such reasonable and proportionate terms as the Authority may require within a reasonable time period as specified in such notice.
- 3.8 Where the Supplier reasonably believes that the relevant Financial Distress Event under Clause 3.1 of this Schedule 17 (Financial Distress) (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and the Parties may agree that the Supplier shall be relieved of its obligations under Clause 3.6 and/or 3.7 of this Schedule 17 (Financial Distress).

4. Termination Rights

- 4.1 The Authority shall be entitled to terminate this Contract if:
 - 4.1.1 the Supplier fails to notify the Authority of a Financial Distress Event in accordance with Clause 2.3 of this Schedule 17 (Financial Distress); and/or
 - 4.1.2 the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Clauses 3.6.3 and/or 6.2.4 of this Schedule 17 (Financial Distress); and/or
 - 4.1.3 the Supplier fails or refuses to provide the financial or other security and/or assurances requested in accordance with Clause 3.7 of this Schedule 17 (Financial Distress).

5. Supplier Obligations

- 5.1 Without prejudice to the Supplier's obligations and the Authority's rights and remedies under Clauses 3 or 6 of this Schedule 17 (Financial Distress), if, following the occurrence of a Financial Distress Event (or a Key Sub-contractor Financial Distress Event), the Supplier (or any Key Sub-contractor, where applicable) remedies the cause of the Financial Distress Event to the extent that it no longer exists then:
 - 5.1.1 the Supplier shall be relieved automatically of its obligations under Clauses 3.3 to 3.7 (inclusive) and/or 6.2 of this Schedule 17 (Financial Distress); and

- 5.1.2 the Authority shall not be entitled to require the Supplier to provide financial information in accordance with Clauses 3.3.2.2 or 6.2.5 of this Schedule 17 (Financial Distress).

6. Key Sub-contractor Financial Distress Event

6.1 In the event of:

- 6.1.1 any Key Sub-contractor having insufficient financial reserves and/or borrowing provisions to support the Supplier's normal business for a period of three (3) months;
- 6.1.2 the Authority, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of any Key Sub-contractor;
- 6.1.3 any Key Sub-contractor issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;
- 6.1.4 there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of any Key Sub-contractor;
- 6.1.5 any Key Sub-contractor committing a material breach of covenants to its lenders; or
- 6.1.6 any of the following:
 - 6.1.6.1 commencement of any litigation against any Key Sub-contractor with respect to financial indebtedness or adverse judgement resulting from litigation against such Key Sub-contractor with respect to financial indebtedness or obligation under a service contract;
 - 6.1.6.2 non-payment by any Key Sub-contractor of any financial indebtedness;
 - 6.1.6.3 any financial indebtedness of any Key Sub-contractor becoming due as a result of an event of default; or
 - 6.1.6.4 the cancellation or suspension of any financial indebtedness in respect of any Key Sub-contractor,

which the Authority reasonably believes could impact on the continued performance and delivery of the IT Products and/or Services in accordance with this Contract,

then, immediately upon notification of the Key Sub-contractor Financial Distress Event (or if the Authority becomes aware of the Key Sub-contractor Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Authority shall have the rights and remedies as set out in Clause 6.2 of this Schedule 17 (Financial Distress).

- 6.2 The Supplier shall (and shall procure that the relevant Key Sub-contractor shall):
- 6.2.1 at the request of the Authority, meet with the Authority as soon as reasonably practicable (and in any event, within three (3) Business Days of the initial notification (or awareness) of the Key Sub-contractor Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing) to review the effect of the Key Sub-contractor Financial Distress Event on the continued performance and delivery of the IT Products and/or Services in accordance with this Contract;
 - 6.2.2 where the Authority reasonably believes (taking into account the discussions and any Supplier and Key Sub-contractor representations made under Clause 6.2.1 of this Schedule 17 (Financial Distress)) that the Key Sub-contractor Financial Distress Event could impact on the continued performance and delivery of the IT Products and/or Services in accordance with this Contract, submit to the Authority for its approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Business Days of the initial notification (or awareness) of the Key Sub-contractor Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing), which shall be reviewed and approved in accordance with the provisions of Clauses 3.4 and 3.5 of this Schedule 17 (Financial Distress);
 - 6.2.3 review and update with the Financial Distress Service Continuity Plan in accordance with Clauses 3.6.1 and 3.6.2 of this Schedule 17 (Financial Distress);
 - 6.2.4 comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan); and
 - 6.2.5 provide such financial information relating to the Key Sub-contractor as the Authority may reasonably require.
- 6.3 Where the Supplier reasonably believes that the relevant Key Sub-contractor Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and the Parties may agree that the Supplier shall be relieved of its obligations under Clauses 6.2.3 and 6.2.4 of this Schedule 17 (Financial Distress).

SCHEDULE 19

EXIT MANAGEMENT

1. Overview

- 1.1 The Supplier is required to support and provide reasonable co-operation to ensure the orderly transition and exit of the IT Products and/or Services from the Supplier to the Authority and/or any Replacement Supplier in the event of expiry or termination (including partial termination) of this Contract. This Schedule 19 (Exit Management) sets out the principles of the exit and service transfer arrangements that are intended to achieve such orderly transition and which shall form the basis of the Exit Plan.
- 1.2 The scope of the Transition Services during the Exit Period shall include:
 - 1.2.1 the appointment of Exit Managers under Clause 2.1 of this Schedule 19 (Exit Management);
 - 1.2.2 data transfer and migration of any Authority Data (if applicable); and
 - 1.2.3 general co-operation with the Authority to ensure an orderly exit of the IT Products and/or Services and any transition to a new system and services in-house or to a third party.

2. Exit Managers

- 2.1 For the purpose of this contract the Exit Managers will be the contract managers detailed in Schedule 1 key provisions.
- 2.2 The Supplier's Exit Manager will be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with Clauses 15.9(Term and termination) and 16 (Consequences of expiry or early termination of this Contract) of Schedule 2 (General Terms and Conditions) and this Schedule 19 (Exit Management).
- 2.3 The Supplier will ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in Clauses 15.9 (Term and termination), 16 (Consequences of expiry or early termination of this Contract) of Schedule 2 (General Terms and Conditions) and this Schedule 19 (Exit Management).
- 2.4 The Parties' Exit Managers and Managers will liaise with one another in relation to all issues relevant to the termination or expiry of this Contract and all matters connected with this Schedule 19 (Exit Management) and each party's compliance with it.

3. Exit Plan

- 3.1 Both Parties shall fulfil their obligations under Clause 15.9 (Term and termination) of Schedule 2 (General Terms and Conditions) with respect to the Exit Plan.
- 3.2 The Exit Plan will contain, as a minimum:

- 3.2.1 separate mechanisms for dealing with ordinary exit and emergency exit;
- 3.2.2 emergency exit provisions shall be prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to ordinary exit, and in the case of emergency exit, include provisions for the Supplier to provide all such reasonable assistance as the Authority shall require to enable the Authority or any Authority appointed third party to provide the Transition Services itself;
- 3.2.3 the management structure to be employed during the Exit Period in an ordinary exit and an emergency exit;
- 3.2.4 a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an ordinary exit and an emergency exit;
- 3.2.5 proposals for the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Supplier or its Sub-contractors (where applicable);
- 3.2.6 compatibility with such other hardware providers that the Authority may request; and
- 3.2.7 warranty transfers to the Authority.

4. Transition Services

- 4.1 The costs of providing Transition Services shall be borne by the Party incurring such costs, unless otherwise agreed between the Parties (acting reasonably and in good faith).
- 4.2 In circumstance of expiry, the Services shall continue to be provided in accordance with this Contract until the date of expiry. Any Transition Services provided in advance of expiry shall be provided at no detriment to the Supplier's obligations to comply with this Contract until the date of expiry.
- 4.3 At the Authority's request and on reasonable notice, the Supplier will deliver an up-to-date asset register of the IT Products and/or Software to the Authority.
- 4.4 The Parties acknowledge that the Transition Services may be phased.
- 4.5 At the relevant time of termination or expiry, the Parties will meet and use their respective reasonable endeavours to agree the contents of the final form Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within thirty (30) days following its delivery to the Authority then such dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form Exit Plan, the Supplier will provide the Transition Services in accordance with the principles set out in this Schedule 19 (Exit Management) and the last approved version of the Exit Plan (insofar as this still applies).

5. Notification of Requirements for Transition Services

- 5.1 Except in the case of an emergency exit (in which case the Authority shall give as much notice as is reasonably possible in the circumstances at the time), the

Authority shall be entitled to require the provision of Transition Services by notifying the Supplier in writing ("**Transition Service Notice**") at least four (4) months prior to the date of termination or expiry of this Contract or as soon as reasonably practicable (but in any event, not later than one (1) month) following the confirmation by either Party of any notice to terminate. The Transition Service Notice shall specify:

- 5.1.1 the date from which Transition Services are required; and
- 5.1.2 the nature of the Transition Services required.

6. **Termination Obligations**

- 6.1 At the end of the Exit Period (or earlier as agreed by the Parties), except where Schedule 2 (General Terms and Conditions) provides otherwise:
 - 6.1.1 the Supplier will erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Exit Period any and all Authority Data unless and to the extent directed otherwise in writing by the Authority in accordance with Data Protection Legislation;
 - 6.1.2 the Supplier will immediately return to the Authority such of the following as is in the Supplier's possession or control, except where the Supplier is obliged to retain such information by Law:
 - 6.1.2.1 all copies of any Software licensed by the Authority to the Supplier under this Contract;
 - 6.1.2.2 all materials created by the Supplier under this Contract, the Intellectual Property Rights in which are owned by the Authority; and
 - 6.1.2.3 any equipment which belongs to the Authority;
 - 6.1.3 the Supplier shall vacate the Premises and Locations;
 - 6.1.4 each Party will return to the other Party all Confidential Information of the other Party and will certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the party in question for the purposes of providing or receiving any Transition Services; and
 - 6.1.5 all licences, leases and authorisations granted by the Authority to the Supplier in relation to the Services shall be terminated with effect from the end of the Exit Period.