

Call-Off Contract under the NHS SBS Framework

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Order Form

Framework agreement reference: SBS/19/AB/WAB/9411

Date of order	18 January 2024	Order Number	Supplier Ref: OPP-3052198 Customer Ref: SR1482203135 To be quoted on all correspondence relating to this Order
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FROM

Customer	HMRC – HM Revenue & Customs "Customer or Authority"
Customer's Address	100 Parliament Street, London, SW1A 2BQ
Invoice Address	ACCOUNTS PAYABLE, PO BOX 2092, B SPUR, SOUTH BLOCK, WORTHING, 01903 509224, BN12 4XH
Contact Ref:	Name: [REDACTED] Address: [REDACTED] Phone: [REDACTED] e-mail: [REDACTED]

TO

Supplier	Specialist Computer Centres PLC "Supplier"
Supplier's Address	SCC, James House, Warwick Road, Birmingham, B11 2LE
Account Manager	Name: [REDACTED] Address: [REDACTED] Phone: [REDACTED] e mail: [REDACTED]

GUARANTEE

Guarantee to be provided	No
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Customer-Specific Terminology

Customs Declaration Processing (CDP): refers to the original 2016 CDP contract for the procurement and implementation of a new core customs workflow system at the heart of the Customs

Declaration System (CDS). The outcome of that programme was the procurement and ongoing integration of the DMS (Declaration Management Service) software into CDS.

The CDP programme is closed and has been superseded by the Single Customs Platform (SCP) programme. The SCP will eventually close and CDS will eventually move into business as usual (BAU) operation.

In this 2024 agreement, any references to CDP will mean the customs workflow within CDS.

1. TERM

(1.1) Commencement Date

The Commencement Date is 18th January 2024

(1.2) Expiry Date

The contract shall expire on the 29th September 2028. Upon agreement of the parties and an executed CCN, an optional 12-month extension may take the expiration to 29th September 2029.

2. GOODS AND SERVICES REQUIREMENTS

(2.1) Goods and/or Services

Subject to inclusion in Schedule 6 Specification and Tender Response Document or as varied as per the CCN process, the following types of Goods and Services can be provided under this Order Form.

Goods

- IBM Software Licences (under separate IBM Passport Advantage terms & conditions)
- Declaration Management Service (DMS) Licences (note existing DMS licence was procured under Technology Products contract in 2016)
- Updated Licences for next generation requirements / additional modules

Services

- Declaration Management Service (DMS) Support for already delivered modules and additional modules.
- IBM Software License Support (under separate IBM Passport Advantage terms & conditions)
- Professional Services in support of the development of CDS
- Development & additional technical requirements related to development of CDS.
- Scaling & NFR project deliverables
- Academy / knowledge transfer initiatives

Goods and Services included under this contract are detailed in Schedule 6 Specification and Tender Response Document.

The Customer agrees to purchase all of its requirements for the Goods and Services or equivalent goods and Services from the Supplier.

(2.2) Premises

Subcontractors to work remotely or as required by the Customer, at the Customer's premises in Southend or London. Such arrangements should not incur additional charges by the Supplier.

(2.3) Lease/ Licenses

Not Applicable

(2.4) Standards**1 GENERAL**

- 1.1 Throughout the term of this Agreement, the Parties shall monitor and notify each other of any new or emergent standards which could affect the Supplier's provision, or the Customer's receipt, of the Services. Any changes to the Standards, including the adoption of any such new or emergent standard, shall be agreed in accordance with the Change Control Procedure.
- 1.2 Where a new or emergent standard is to be developed or introduced by the Customer, the Supplier shall be responsible for ensuring that the potential impact on the Supplier's provision, or the Customer's receipt, of the Services is explained to the Customer (within a reasonable timeframe), prior to the implementation of the new or emergent standard.

2 TECHNOLOGY AND DIGITAL SERVICES PRACTICE

- 2.1 The Supplier shall (when designing, implementing and delivering the Services) adopt the applicable elements of HM Government's Technology Code of Practice as documented at: <https://www.gov.uk/service-manual/technology/code-of-practice.html>

3 OPEN DATA STANDARDS & STANDARDS HUB

- 3.1 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 Environment.
- 3.2 Without prejudice to the generality of Paragraph 1.2, the Supplier shall, when implementing or updating a technical component or part of the Software or Supplier Solution where there is a requirement under this Agreement or opportunity to use a new or emergent standard, submit a Suggested Challenge compliant with the UK Government's Open Standards Principles (using the process detailed on Standards Hub and documented at <http://standards.data.gov.uk/>). Each Suggested Challenge submitted by the Supplier shall detail, subject to the security and confidentiality provisions in this Agreement, an illustration of such requirement or opportunity within the IT Environment, Supplier Solution and Government's IT infrastructure and the suggested open standard.
- 3.3 The Supplier shall ensure that all documentation published on behalf of the Customer 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 Paragraph 4.1 to comply with the UK Government's Open Standards Principles, unless the Customer otherwise agrees in writing.

4 TECHNOLOGY ARCHITECTURE STANDARDS

- 4.1 The Supplier shall produce full and detailed technical architecture documentation for the Supplier Solution in accordance with Good Industry Practice. If documentation exists that complies with the Open Group Architecture Framework 9.2 or its equivalent, then this shall be deemed acceptable.

5 ACCESSIBLE DIGITAL STANDARDS

- 5.1 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) 2.1 Conformance Level AA; and
- (b) ISO/IEC 13066-1: 2011 Information Technology – Interoperability with assistive technology (AT) – Part 1: Requirements and recommendations for interoperability.

6 SERVICE MANAGEMENT SOFTWARE & STANDARDS

- 6.1 Subject to Paragraphs 1 to 3 (inclusive), the Supplier shall reference relevant industry and HM Government standards and best practice guidelines in the management of the Services, including the following and/or their equivalents:
- (a) ITIL v4;
 - (b) ISO/IEC 20000-1 2018 “Information technology — Service management – Part 1”;
 - (c) ISO/IEC 20000-2 2019 “Information technology — Service management – Part 2”;
 - (d) ISO 10007: 2017 “Quality management systems – Guidelines for configuration management”;
 - (e) ISO 22313:2020 “Security and resilience. Business continuity management systems. Guidance on the use of ISO 22301” and, ISO/IEC 27031:2011 and ISO 22301;
- 6.2 For the purposes of management of the Services and delivery performance the Supplier shall make use of Software that complies with Good Industry Practice including availability, change, incident, knowledge, problem, release & deployment, request fulfilment, service asset and configuration, service catalogue, service level and service portfolio management. If such Software has been assessed under the ITIL Software Scheme as being compliant to “Bronze Level”, then this shall be deemed acceptable.
- 6.3 The Supplier shall comply with and feed into the Customer’s incident and problem management processes and procedures.

7 ENVIRONMENTAL STANDARDS

- 7.1 The Supplier shall comply with the environmental requirements set out Paragraph 9 below

8 SECURITY STANDARDS

- 8.1 The Supplier shall comply with the security requirements stipulated by the Customer in this Order Form at 3.4 (Security Management) which shall, as a minimum, be ISO27001 and the government sponsored cyber essentials, (or their equivalent).

9 ENVIRONMENTAL REQUIREMENTS

- 9.1 The Supplier shall comply in all material respects with all applicable environmental laws and regulations in force in relation to the Agreement.
- 9.2 The Supplier warrants that it has obtained ISO 14001 certification from an accredited body and shall comply with and maintain certification requirements throughout the Term.
- 9.3 In performing its obligations under the Agreement the Supplier shall to the reasonable satisfaction of the Customer:
- (a) demonstrate low carbon resource efficiency, including minimising the use of resources and responding promptly to the Customer’s reasonable questions;
 - (b) prioritise waste management in accordance with the Waste Hierarchy;
 - (c) be responsible for ensuring that any waste generated by the Supplier and sent for recycling, disposal or other recovery as a consequence of this Agreement is taken to an authorised site for treatment or disposal and that the disposal or treatment of waste complies with the law;
 - (d) ensure that it and any third parties used to undertake recycling disposal or other recovery as a consequence of this Agreement do so in a legally compliant way, undertake reasonable checks on a regular basis to ensure this;
 - (e) inform the Environmental Agency within one Working Day in the event that a permit or exemption to carry or send waste generated under this Agreement is revoked and in circumstances where a permit or exemption to carry or send waste generated under this Agreement is revoked the Supplier shall cease to carry or send waste or allow waste to be

- carried by any Sub-contractor until authorisation is obtained from the Environmental Agency;
- (f) minimise the release of greenhouse gases (including carbon dioxide emissions), air pollutants, volatile organic compounds and other substances damaging to health and the environment; and
- (g) reduce and minimise carbon emissions by taking into account factors including, but not limited to, the locations from which materials are sourced, the transport of materials, the locations from which the work force are recruited and emissions from offices and on-site equipment.

9.4 The Supplier shall use reasonable endeavours to avoid the use of paper and card in carrying out its obligations under this Agreement. Where unavoidable under reasonable endeavours, the Supplier shall ensure that any paper or card deployed in the performance of the Services consists of one hundred percent (100%) recycled content and used on both sides where feasible to do so.

9.5 The Supplier shall not provide to the Customer Goods or Deliverables which comprise wholly or partly of Prohibited Items unless such item is a Permitted Item.

9.6 The Supplier shall not use anything which comprises wholly or partly of the Prohibited Items to provide the Services under this Agreement unless:

- (a) it is a Permitted Item; or
- (b) the use is primarily related to the management of the Supplier's own facilities or internal operations as opposed to the provision of Services.

9.7 The Supplier shall complete the Sustainability Report in relation its provision of the Services under this Agreement and provide the Sustainability Report to the Customer on the date and frequency outlined in Table C of this Annex.

9.8 The Supplier shall comply with reasonable requests by the Customer for information evidencing compliance with the provisions of this Annex within fourteen (14) days of such request, provided that such requests are limited to two per Contract Year.

10 COMPLIANCE

10.1 Supplier confirms that it has in place, and complies with its standards and/or policies relating to:

- (a) Health and Safety;
- (b) Equal Opportunities;
- (c) The Environment;
- (d) Business Conduct;
- (e) Modern Slavery; and
- (f) Prevention of Fraud and Bribery.

11 CORPORATE AND SOCIAL RESPONSIBILITY PLAN

11.1 Under the 2021 DMS agreement (Customer Ref SR611388694/SR656276010), the Supplier developed and shared their Corporate and Social Responsibility plan with this the Customer. The Suppliers CSR plan will continue to be reviewed annually, and may include but is not limited to:

- (a) Tackling economic inequality through employment and training
- (b) Deliver sustainable Value for Money (VfM) outcomes and continuous improvement to customers.
- (c) Environmental policy making specific reference to how environmental considerations are integrated into your organisations activities.
- (d) Supplier's approach to support health and wellbeing, including physical and mental health, in the contract workforce.
- (e) Supplier's approach to improvements to workplace conditions that support the COVID-19 recovery effort including effective social distancing, remote working, and sustainable travel solutions.

(2.5) Security Requirements

1 SECURITY POLICY

1. All software supporting core Customs Declaration Processing functions, including the Goods and Software used in connection with this Call Off Contract and any modifications or other work connected must be developed or undertaken within the EU.
2. Where access to the installed Solution (the Goods, Software and or Services) is required for support and maintenance reasons during the lifetime of the contract, such access must be undertaken from a Customer premises as notified by the Customer or where prior specific approval had been granted in writing a designated Supplier's premises in the UK only which may be subject to should conditions as the Customer considers to be reasonably required.
3. All Supplier Personnel involved in development and/or delivery of the Solution must be vetted in line with appropriate National Standards (in the UK or EU) subject to commitments made in the ITT response. Where there are instances when the Customer requests additional security vetting, the requirement will be carried out at the Customer's cost.
4. The Supplier shall provide access to source code as reasonably requested by the Customer for its own security purposes, including the undertaking of any necessary code review by an independent third-party security expert.

2 PROCESSING PERSONAL DATA UNDER OR IN CONNECTION WITH THIS CONTRACT

In performing its obligations under this Contract, the Supplier and the subcontractors do not expect to process personal data of the Customer or any other person that is subject to UK General Data Protection Regulations (GDPR) requirements, other than business contact information, and will only process personal data on behalf of the Customer or any other person hereunder upon receiving a separate formal written instruction from the Customer to the Supplier requesting the Supplier to do so. In the event that the Customer separately instructs the service provider or third party contractors or suppliers (including any sub-contractors of the Supplier) whether verbally or in writing to process personal data or makes personal data available to them without instructing the Supplier to process that data then it engages those entities directly for those separate processing purposes and the Supplier shall not be a data processor for those separate processing arrangements and the IBM Data Processing Addendum at <http://ibm.com/dpa> will apply.

Supplier and subcontractors, may, wherever they do business, store and otherwise process business contact information of Customer, its personnel, and authorised users, for example, name, business telephone, address, email, and user ID for business dealings with them. Where notice to or consent by the individuals is required for such processing, Customer will notify and obtain such consent.

3 MALICIOUS SOFTWARE

1. The Supplier shall, as an enduring obligation throughout the Term and at no cost to the Customer, 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 IT Environment (or as otherwise agreed by the Parties). The Supplier may be required to provide details of the version of anti-virus software being used in certain circumstances, e.g. in response to a specific threat.
2. Notwithstanding Paragraph 1 above, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.
3. Any cost arising out of the actions of the Parties taken in compliance with the provisions of Paragraph 2 above shall be borne by the Parties as follows:
 - (a) (by the Supplier where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier (except where the Customer has waived the obligation set out in Paragraph 1 above) or the Customer Data (whilst the Customer Data

<p>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 Customer when provided to the Supplier; and</p> <p>(b) otherwise by the Customer.</p>
<p>(2.6) Exit Plan</p> <p>As covered at Schedule 2, Clause 15.9</p>
<p>(2.7) Environmental Plan</p> <p>See Environmental Standards at 2.4 of the Order Form, above.</p>

<p>3. SUPPLIER SOLUTION</p>
<p>(3.1) Supplier Solution</p> <p>Schedule 6 Specification and Tender Response Document sets out Customer's requirements and the Supplier solution.</p>
<p>(3.2) Account structure including Key Personnel</p> <p>[REDACTED]</p>
<p>(3.3) Sub-contractors to be involved in the provision of the Services and/or Goods</p> <p>At the time of signature IBM UK LTD, Netcompany-Intrasoft and others as agreed</p>
<p>(3.4) Outline Security Management Plan</p> <p>1 SECURITY MANAGEMENT PLAN</p> <p>1.1 Under the 2021 DMS agreement (Customer Ref SR611388694/SR656276010), the Customer has approved the Suppliers Security Management Plan in accordance with Paragraph 1.3. The Security Management Plan complies with the requirements of Paragraph 1.2.</p> <p>1.2 The Security Management Plan shall:</p> <ul style="list-style-type: none"> (a) be based on the Supplier's final response to the Customer's Security Questionnaire; (b) comply with the Baseline Security Requirements set out in Annex 1 to Schedule 6; (c) identify the necessary delegated organisational roles defined for those responsible for ensuring this Schedule is complied with by the Supplier; (d) detail the process for vetting staff at the appropriate security level with reference to the level of access staff will have to Customer Data, managing any security risks from Sub contractors and third parties authorised by the Customer with access to the Services, processes associated with the delivery of the Services, the Customer Premises, the Sites, the Supplier System, Customer System (to extent that it is under the control of the Supplier) and any IT, Information and data (including the Customer Confidential Information and the Customer Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Services; (e) unless otherwise specified by the Customer in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Customer Premises, the Sites, the Supplier System, the Customer System (to the extent that it is under the control of the Supplier) and any IT, Information and data (including the Customer Confidential Information and the Customer Data) to the extent used by the Customer or the Supplier in connection with this Agreement or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Services;

- (f) set out the security measures to be implemented and maintained by the Customer in relation to all aspects of the Services and all processes associated with the delivery of the Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Section 3.4
- (g) demonstrate that the Supplier Solution has minimised the Customer and Supplier effort required to comply with this Schedule through consideration of available, appropriate, and practicable pan-government accredited services (for example, 'platform as a service' offerings from the G-Cloud catalogue);
- (h) set out the scope of the Customer System that is under the control of the Supplier;
- (i) 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;
- (j) be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Customer engaged in the Services and shall reference only documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule; and
- (k) be in accordance with the Security Policy Framework.

1.3 If the Security Management Plan submitted to the Customer Representative pursuant to Paragraph 1.1 is approved by the Customer Representative, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not approved by the Customer Representative, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Customer and re-submit it to the Customer Representative 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) Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Customer Representative. If the Customer Representative 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 Customer Representative pursuant to this Paragraph 1.3 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 Paragraph 1.2 shall be deemed to be reasonable.

1.4 Approval by the Customer of the Security Management Plan pursuant to Paragraph 1.3 or of any change or amendment to the Security Management Plan shall not relieve the Supplier of its obligations under this Schedule.

(3.5) Relevant Convictions

Not Applicable

(3.6) Implementation Plan

Not Applicable

4. PERFORMANCE QUALITY**(4.1) Key Performance Indicators****1 PERFORMANCE REPORTS**

1.1 Performance reports that are required but are not limited to:

1. Service Management Report including key performance monitoring data
2. Supplier's delivery and progress report for all services
3. Change Request Log

2 TRANSPARENCY REPORTS

2.1 The Parties acknowledge that:

- (a) the Transparency Reports; and
- (b) the content of this Agreement, including any Changes to this Agreement agreed from time to time except for:
- (c) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Customer; and
- (d) Commercially Sensitive Information;
- (e) The Publishable Performance Information (together the "Transparency Information") are not Confidential Information.

2.2 Notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for the Customer to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Customer shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

2.3 The Supplier shall assist and co-operate with the Customer to enable the Customer to publish the Transparency Information

2.4 If the Customer believes that publication of any element of the Transparency Information would be contrary to the public interest, the Customer shall be entitled to exclude such information from publication. The Customer acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Customer acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.

2.5 The Customer shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.

2.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Customer on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Customer may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information and Confidential Information and Open Book Data) publish such Information. The Supplier shall provide to the Customer within 5 working days (or such other period as the Customer may reasonably specify) any such Information requested by the Customer.

(4.2) Service Levels and Service Credits

DMS Service Levels and Service Credits are stated in Schedule 6 Specification and Tender Response Document.

CRITICAL SERVICE LEVEL FAILURE

The Customer shall have the right to consider invoking a Critical Service Failure event when a Critical Service Failure occurs.

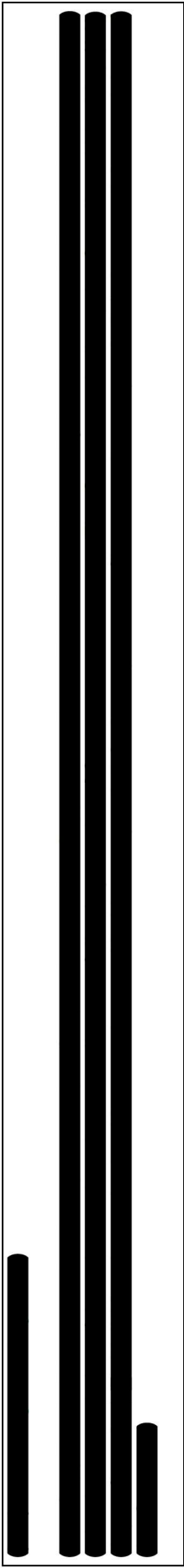
2 DELIVERY DELAY PROCESS

1. The Customer will categorise milestones that are within fixed price Contract Changes as critical or non-critical based on impact to CDS delivery plans. Each milestone will be categorised on a case-by-case basis, taking into account impact on wider CDS delivery/performance and value (e.g. less than £200K excluding VAT).
2. In the event of failure to deliver a non-critical fixed price Contract Change milestone, that is due to the fault of the Supplier, the Supplier will be required to complete the work at its own cost and the relevant payment for that milestone will be withheld until completion and acceptance. The following other measures will immediately be put in place:
 - 2.1 The Supplier will issue a delay notice in advance or exceptionally on the milestone date, setting out the reasons for delay. A single Supplier owner for resolution will be appointed.
 - 2.2 The Supplier will share a mitigation plan with the Customer within 3 working days of a missed milestone.
 - 2.3 Regular reporting will be put in place with the Customer point of contact until the milestone has been met.
 - 2.4 In the event that the milestone has still not been met within two months of the original milestone date, a delay penalty of 5% of the milestone value will apply.
 - 2.5 In the event that the milestone has still not been met six months after the original milestone date, the Customer will have the right to invoke a Critical Service Failure event and issue a Termination Notice to the Supplier.
3. In the event of failure to deliver a critical fixed price Contract Change milestone, that is due to the fault of the Supplier, the Supplier will be required to complete the work at its own cost and the relevant payment for that milestone will be withheld until completion and acceptance. The following other measures will immediately be put in place:
 - 3.1 The Supplier will issue a delay notice in advance or exceptionally on the milestone date setting out the reasons for delay. A single Supplier owner for resolution will be appointed.
 - 3.2 The Supplier will share a mitigation plan with the Customer within 5 working days of a missed milestone.
 - 3.3 Regular reporting will be put in place with the Customer point of contact until the milestone has been met.
 - 3.4 The Supplier's will make its UK Services CEO available to discuss the issue and understand the plan to fix.
 - 3.5 In the event that the milestone has still not been met within one month of the original milestone date, a delay penalty of 5% of the milestone value will apply.
 - 3.6 In the event that the milestone has still not been met within two months of the original milestone date, a second delay penalty of 5% of the milestone value will apply. This is in addition to the delay penalty in 3.5 above.
 - 3.7 In the event that the milestone has still not been met three months after the original milestone date, the Customer will have the right to invoke a Critical Service Failure event and issue a Termination Notice to the Supplier.
4. In the event that that a delay occurs that is not the fault of the Supplier (e.g., because the Customer has missed a key dependency), the Supplier should issue a delay notice as soon as it becomes aware of the issue, citing the reason, indicating the period of delay and

requesting joint agreement to a revised schedule and if necessary additional charges. The Customer cannot reasonably withhold agreement.

5. For the avoidance of doubt, milestones that are within fixed price Contract Changes are considered to be KPIs solely to the extent they will be measured and reported on in accordance with the applicable terms of this Contract.

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OFFICIAL



6. SUPPLEMENTAL AND/OR ADDITIONAL CLAUSES

(6.1) Supplemental requirements

1 SOFTWARE LICENCE TERMS

The Customer will comply with the IBM End User Licence Agreement available at:

[http://public.dhe.ibm.com/software/passportadvantage/PA_Agreements/PA_Agreement International_English.pdf](http://public.dhe.ibm.com/software/passportadvantage/PA_Agreements/PA_Agreement_International_English.pdf)

The IBM Licences provided under this Contract are provided by the Supplier as a reseller of the Goods and Services concerned and the Customer's use and receipt of those Licences is also governed by the Passport Advantage Agreement between IBM and the Customer referred to via a URL included above for reference and the IBM International Passport Advantage Agreement Special Terms Addendum (Business Partner) Addendum Number: 02122020JI01 separately agreed between IBM and the Customer .. The Customer acknowledges and agrees that whilst the Passport Advantage Agreement terms are expressed to apply between the Customer and IBM, that the Supplier shall also be entitled to rely upon and enforce the terms of the Passport Advantage Agreement against the Customer as if the Supplier were IBM if required for any reason and notwithstanding anything to the contrary contained in the Passport Advantage Agreement.

2 AMENDED TERMS

The Parties agree that the following terms are not used as they are not applicable for the Goods and Services provided under this Contract and all applicable warranties are provided under IBM Passport Advantage terms and conditions:

Schedule 2 (General Terms and Conditions):

- 2. Delivery of the Goods and passing of risk and ownership in the Goods
- 3. Inspection, rejection, return and recall of the Goods
- 10. Warranties
- 18. Packaging, identification, end of use and coding requirements
- 20. Electronic product and services information

Schedule 3 (Information and Data Provisions):

- 2. Data protection

3 HMRC ADDITIONAL MANDATORY TERMS

- A. For the avoidance of doubt, references to 'the Agreement' mean the attached Call-Off Contract between the Supplier and the Customer.

B. The Agreement incorporates the Customer's mandatory terms set out in this Section titled 'HMRC Additional Clauses'.

C. In case of any ambiguity or conflict, the Customer's mandatory terms in this Schedule titled 'HMRC Additional Clauses' will supersede any other terms in the Agreement.

1. Definitions

"Affiliate"	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;
"Customer Data"	<p>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <p>(i) supplied to the Supplier by or on behalf of the Customer; and/or</p> <p>(ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or</p> <p>(b) any Personal Data for which the Customer is the Controller, or any data derived from such Personal Data which has had any designatory data identifiers removed so that an individual cannot be identified;</p>
"Charges"	the charges for the Services as specified in Section C, Core Goods and / or Services;
"Connected Company"	means, in relation to a company, entity or other person, the Affiliates of that company, entity or other person or any other person associated with such company, entity or other person;
"Control"	the possession by a 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", "Processor", "Data Subject",	take the meaning given in the GDPR;
"Data Protection Legislation"	<p>(a) the GDPR, the LED and any applicable national implementing Laws as amended from time to time;</p> <p>(b) the DPA 2018 to the extent that it relates to processing of personal data and privacy;</p> <p>(c) all applicable Law about the processing of personal data and privacy;</p>
"GDPR"	the General Data Protection Regulation (Regulation (EU) 2016/679);
"Key Subcontractor"	<p>any Subcontractor:</p> <p>(a) which, in the opinion of the Customer, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or</p>

		(b) with a Subcontract with a contract value which at the time of appointment exceeds (or would exceed if appointed) ten per cent (10%) of the aggregate Charges forecast to be payable under this Call-Off Contract;
“Law”		any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
“Personal Data”		has the meaning given in the GDPR;
“Purchase Order Number”		the Customer’s unique number relating to the supply of the Services;
“Services”		the services to be supplied by the Supplier to the Customer under the Agreement, including the provision of any Goods;
“Subcontract”		any contract or agreement (or proposed contract or agreement) between the Supplier (or a Subcontractor) and any third party whereby that third party agrees to provide to the Supplier (or the Subcontractor) all or any part of the Services, or facilities or services which are material for the provision of the Services, or any part thereof or necessary for the management, direction or control of the Services or any part thereof;
“Subcontractor”		any third party with whom: (a) the Supplier enters into a Subcontract; or (b) a third party under (a) above enters into a Subcontract, or the servants or agents of that third party;
“Supplier Personnel”		all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;
“Supporting Documentation”		sufficient information in writing to enable the Customer to reasonably verify the accuracy of any invoice;
“Tax”		(a) all forms of tax whether direct or indirect; (b) national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction; (c) all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions. Levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and withholdings; and (d) any penalty, fine, surcharge, interest, charges or costs relating to any of the above, in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction;

“Tax Non-Compliance”

where an entity or person under consideration meets all 3 conditions contained in the relevant excerpt from HMRC’s “Test for Tax Non-Compliance”, as set out in Annex 1, where:

- (a) the “Economic Operator” means the Supplier, or any agent, supplier or Subcontractor of the Supplier requested to be replaced pursuant to Clause 4.3; and
- (b) any “Essential Subcontractor” means any Key Subcontractor;

“VAT”

value added tax as provided for in the Value Added Tax Act 1994.

2. Payment and Recovery of Sums Due

- 2.1 The Supplier shall invoice the Customer as specified in Section C, Core Goods and / or Services of the Agreement. Without prejudice to the generality of the invoicing procedure specified in the Agreement, the Supplier shall procure a Purchase Order Number from the Customer prior to the commencement of any Services and the Supplier acknowledges and agrees that should it commence Services without a Purchase Order Number:
- 2.1.1 the Supplier does so at its own risk; and
 - 2.1.2 the Customer shall not be obliged to pay any invoice without a valid Purchase Order Number having been provided to the Supplier.
- 2.2 Each invoice and any Supporting Documentation required to be submitted in accordance with the invoicing procedure specified in the Agreement shall be submitted by the Supplier, as directed by the Customer from time to time, either:
- 2.2.1 via the Customer’s electronic transaction system; or
 - 2.2.2 to Section A, General Information, Key Contact for Goods Receipting and Purchase Orders (or such other person notified to the Supplier in writing by the Customer) by email in pdf format or, if agreed with the Customer, in hard copy by post.
- 2.3 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Customer. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

3. Warranties

- 3.1 The Supplier represents and warrants that:
- 3.1.1 in the three years prior to the Call-Off Contract Award Date as detailed in Section E, Call-off Contract Award, it has been in full compliance with all applicable securities and Laws related to Tax in the United Kingdom and in the jurisdiction in which it is established;
 - 3.1.2 it has notified the Customer in writing of any Tax Non-Compliance it is involved in; and
 - 3.1.3 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier’s assets or revenue and the Supplier has notified the Customer of any profit warnings issued in respect of the Supplier in the three years prior to the Call-Off Contract Award Date as detailed in Section E, Call-off Contract Award.
- 3.2 If at any time the Supplier becomes aware that a representation or warranty given by it under Clause 3.1.1, 3.1.2 and/or 3.1.3 has been breached, is untrue, or is misleading, it shall immediately notify the Customer of the relevant occurrence in sufficient detail to enable the Customer to make an accurate assessment of the situation.
- 3.3 In the event that the warranty given by the Supplier pursuant to Clause 3.1.2 is materially untrue, the Customer shall be entitled to terminate the Agreement pursuant to the Call-Off clause which

provides the Customer the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

4. Promoting Tax Compliance

- 4.1 All amounts stated are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Customer following delivery of a valid VAT invoice.
- 4.2 To the extent applicable to the Supplier, the Supplier shall at all times comply with all Laws relating to Tax and with the equivalent legal provisions of the country in which the Supplier is established.
- 4.3 The Supplier shall provide to the Customer the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or self-assessment reference of any agent, supplier or Subcontractor of the Supplier prior to the provision of any material Services under the Agreement by that agent, supplier or Subcontractor. Upon a request by the Customer, the Supplier shall not contract, or will cease to contract, with any agent, supplier or Subcontractor supplying Services under the Agreement.
- 4.4 If, at any point during Section B, Call-Off Initial Period (Term), there is Tax Non-Compliance, the Supplier shall:
 - 4.4.1 notify the Customer in writing of such fact within five (5) Working Days of its occurrence; and
 - 4.4.2 promptly provide to the Customer:
 - (a) details of the steps which the Supplier is taking to resolve the Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (b) such other information in relation to the Tax Non-Compliance as the Customer may reasonably require.
- 4.5 The Supplier shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Customer at any time in respect of the Supplier's failure to account for or to pay any Tax relating to payments made to the Supplier under this Agreement. Any amounts due under this Clause 4.5 shall be paid in cleared funds by the Supplier to the Customer not less than five (5) Working Days before the date upon which the Tax or other liability is payable by the Customer.
- 4.6 Upon the Customer's request, the Supplier shall provide (promptly or within such other period notified by the Customer) information which demonstrates how the Supplier complies with its Tax obligations.
- 4.7 If the Supplier:
 - 4.7.1 fails to comply (or if the Customer receives information which demonstrates to it that the Supplier has failed to comply) with Clauses 4.2, 4.4.1 and/or 4.6 this may be a material breach of the Agreement;
 - 4.7.2 fails to comply (or if the Customer receives information which demonstrates to it that the Supplier has failed to comply) with a reasonable request by the Customer that it must not contract, or must cease to contract, with any agent, supplier or Subcontractor of the Supplier as required by Clause 4.3 on the grounds that the agent, supplier or Subcontractor of the Supplier is involved in Tax Non-Compliance this shall be a material breach of the Agreement; and/or
 - 4.7.3 fails to provide details of steps being taken and mitigating factors pursuant to Clause 4.4.2 which in the reasonable opinion of the Customer are acceptable this shall be a material breach of the Agreement;

and any such material breach shall allow the Customer to terminate the Agreement pursuant to the Call-Off Clause which provides the Customer the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).
- 4.8 The Customer may internally share any information which it receives under Clauses 4.3 to 4.4 (inclusive) and 4.6, for the purpose of the collection and management of revenue for which the Customer is responsible.

5. Use of Off-shore Tax Structures

- 5.1 Subject to the principles of non-discrimination against undertakings based either in member countries of the European Union or in signatory countries of the World Trade Organisation Agreement on Government Procurement, the Supplier shall not, and shall ensure that its Connected Companies, Key Subcontractors (and their respective Connected Companies) shall not, have or put in place (unless otherwise agreed with the Customer) any arrangements involving the use of off-shore companies or other off-shore entities the main purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom Tax of any description which would otherwise be payable by it or them on or in connection with the payments made by or on behalf of the Customer under or pursuant to this Agreement or (in the case of any Key Subcontractor and its Connected Companies) United Kingdom Tax which would be payable by it or them on or in connection with payments made by or on behalf of the Supplier under or pursuant to the applicable Key Subcontract ("**Prohibited Transactions**"). Prohibited Transactions shall not include transactions made between the Supplier and its Connected Companies or a Key Subcontractor and its Connected Companies on terms which are at arms-length and are entered into in the ordinary course of the transacting parties' business.
- 5.2 The Supplier shall notify the Customer in writing (with reasonable supporting detail) of any proposal for the Supplier or any of its Connected Companies, or for a Key Subcontractor (or any of its Connected Companies), to enter into any Prohibited Transaction. The Supplier shall notify the Customer within a reasonable time to allow the Customer to consider the proposed Prohibited Transaction before it is due to be put in place.
- 5.3 In the event of a Prohibited Transaction being entered into in breach of Clause 5.1 above, or in the event that circumstances arise which may result in such a breach, the Supplier and/or the Key Subcontractor (as applicable) shall discuss the situation with the Customer and, in order to ensure future compliance with the requirements of Clauses 5.1 and 5.2, the Parties (and the Supplier shall procure that the Key Subcontractor, where applicable) shall agree (at no cost to the Customer) timely and appropriate changes to any such arrangements by the undertakings concerned, resolving the matter (if required) through the escalation process in the Agreement.
- 5.4 Failure by the Supplier (or a Key Subcontractor) to comply with the obligations set out in Clauses 5.2 and 5.3 shall allow the Customer to terminate the Agreement pursuant to the Clause that provides the Customer the right to terminate the Agreement for Supplier fault (termination for Supplier cause).

6 Data Protection and offshoring

- 6.1 The Processor shall, in relation to any Personal Data processed in connection with its obligations under the Agreement:
- 6.1.1 not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- (a) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (b) the Data Subject has enforceable rights and effective legal remedies;
 - (c) the Processor 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 Controller in meeting its obligations); and
 - (d) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- 6.2 Failure by the Processor to comply with the obligations set out in Clause 6.1 shall allow the Customer to terminate the Agreement pursuant to the Clause that provides the Customer the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

7 Commissioners for Revenue and Customs Act 2005 and related Legislation

- 7.1 The Supplier shall comply with, and shall ensure that all Supplier Personnel who will have access to, or are provided with, Customer Data comply with the obligations set out in Section 18 of the Commissioners for Revenue and Customs Act 2005 ('CRCA') to maintain the confidentiality of Customer Data. Further, the Supplier acknowledges that (without prejudice to any other rights and remedies of the Customer) a breach of the aforesaid obligations may lead to a prosecution under Section 19 of CRCA.
- 7.2 The Supplier shall comply with, and shall ensure that all Supplier Personnel who will have access to, or are provided with, Customer Data comply with the obligations set out in Section 123 of the Social Security Administration Act 1992, which may apply to the fulfilment of some or all of the Services. The Supplier acknowledges that (without prejudice to any other rights and remedies of the Customer) a breach of the Supplier's obligations under Section 123 of the Social Security Administration Act 1992 may lead to a prosecution under that Act.
- 7.3 The Supplier shall regularly (not less than once every six (6) months) remind all Supplier Personnel who will have access to, or are provided with, Customer Data in writing of the obligations upon Supplier Personnel set out in Clause 7.1 above. The Supplier shall monitor the compliance by Supplier Personnel with such obligations.
- 7.4 The Supplier shall ensure that all Supplier Personnel who will have access to, or are provided with, Customer Data sign (or have previously signed) a Confidentiality Declaration, in the form provided at Annex 2. The Supplier shall provide a copy of each such signed declaration to the Customer upon demand.
- 7.5 In the event that the Supplier or the Supplier Personnel fail to comply with this Clause 7, the Customer reserves the right to terminate the Agreement with immediate effect pursuant to the clause that provides the Customer the right to terminate the Agreement for Supplier fault (termination for Supplier cause).

Annex 1

Excerpt from HMRC's "Test for Tax Non-Compliance"

Condition one (An in-scope entity or person)

1. There is a person or entity which is either: ("X")
 - 1) The Economic Operator or Essential Subcontractor (EOS)
 - 2) Part of the same Group of companies of EOS. An entity will be treated as within the same Group of EOS where that entities' financial statements would be required to be consolidated with those of EOS if prepared in accordance with *IFRS 10 Consolidated Financial Accounts*¹;
 - 3) Any director, shareholder or other person (P) which exercises control over EOS. 'Control' means P can secure, through holding of shares or powers under articles of association or other document that EOS's affairs are conducted in accordance with P's wishes.

¹ <https://www.iasplus.com/en/standards/ifrs/ifrs10>

Condition two (Arrangements involving evasion, abuse or tax avoidance)

2. X has been engaged in one or more of the following:

- a. Fraudulent evasion²;
- b. Conduct caught by the General Anti-Abuse Rule³;
- c. Conduct caught by the Halifax Abuse principle⁴;
- d. Entered into arrangements caught by a DOTAS or VADR scheme⁵;
- e. Conduct caught by a recognised 'anti-avoidance rule'⁶ being a statutory provision which targets arrangements where either a main purpose, or an expected benefit, is to obtain a tax advantage or where the arrangement is not effected for commercial purposes. 'Targeted Anti-Avoidance Rules' (TAARs). It may be useful to confirm that the Diverted Profits Tax is a TAAR for these purposes;
- f. Entered into an avoidance scheme identified by HMRC's published Spotlights list⁷;
- g. Engaged in conduct which falls under rules in other jurisdictions which are equivalent or similar to (a) to (f) above.

Condition three (Arrangements are admitted, or subject to litigation/prosecution or identified in a published list (Spotlights))

3. X's activity in *Condition 2* is, where applicable, subject to dispute and/or litigation as follows:

- i. In respect of (a), either X:
 - Has accepted the terms of an offer made under a Contractual Disclosure Facility (CDF) pursuant to the Code of Practice 9 (COP9) procedure⁸; or,
 - Has been charged with an offence of fraudulent evasion.
- ii. In respect of (b) to (e), once X has commenced the statutory appeal process by filing a Notice of Appeal and the appeal process is ongoing including where the appeal is stayed or listed behind a lead case (either formally or informally). NB Judicial reviews are not part of the statutory appeal process and no supplier would be excluded merely because they are applying for judicial review of an HMRC or HMT decision relating to tax or national insurance.
- iii. In respect of (b) to (e), during an HMRC enquiry, if it has been agreed between HMRC and X that there is a pause with the enquiry in order to await the outcome of related litigation.
- iv. In respect of (f) this condition is satisfied without any further steps being taken.
- v. In respect of (g) the foreign equivalent to each of the corresponding steps set out above in (i) to (iii).

For the avoidance of doubt, any reference in this Annex 1 to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time including any implementing or successor legislation.

Annex 2 Form

² 'Fraudulent evasion' means any 'UK tax evasion offence' or 'UK tax evasion facilitation offence' as defined by section 52 of the Criminal Finances Act 2017 or a failure to prevent facilitation of tax evasion under section 45 of the same Act.

³ "General Anti-Abuse Rule" means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions

⁴ "Halifax Abuse Principle" means the principle explained in the CJEU Case C-255/02 Halifax and others

⁵ A Disclosure of Tax Avoidance Scheme (DOTAS) or VAT Disclosure Regime (VADR) scheme caught by rules which require a promoter of tax schemes to tell HM Revenue & 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 Section 19 and Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Section 19 and 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.

⁶ The full definition of 'Anti-avoidance rule' can be found at Paragraph 25(1) of Schedule 18 to the Finance Act 2016 and Condition 2 (a) above shall be construed accordingly.

⁷ Targeted list of tax avoidance schemes that HMRC believes are being used to avoid paying tax due and which are listed on the Spotlight website: <https://www.gov.uk/government/collections/tax-avoidance-schemes-currently-in-the-spotlight>

⁸ The Code of Practice 9 (COP9) is an investigation of fraud procedure, where X agrees to make a complete and accurate disclosure of all their deliberate and non-deliberate conduct that has led to irregularities in their tax affairs following which HMRC will not pursue a criminal investigation into the conduct disclosed.

CONFIDENTIALITY DECLARATION

DECLARATION:

I solemnly declare that:

1. I am aware that the duty of confidentiality imposed by section 18 of the Commissioners for Revenue and Customs Act 2005 applies to Customer Data (as defined in the Agreement) that has been or will be provided to me in accordance with the Agreement.
2. I understand and acknowledge that under Section 19 of the Commissioners for Revenue and Customs Act 2005 it may be a criminal offence to disclose any Customer Data provided to me.

4. OBLIGATIONS UNDER THE FINANCE ACT 1989, THE COMMISSIONERS FOR REVENUE AND CUSTOMS ACT 2005 AND THE SOCIAL SECURITY ADMINISTRATION ACT 1992

1. The Supplier undertakes that it will duly observe, and that it shall ensure that all Sub contractors and Supplier Personnel shall duly observe:

- (a) the obligations set out in Section 182 of the Finance Act 1989 and Section 18 of the Commissioners for Revenue and Customs Act 2005 to maintain the confidentiality of Customer Data. Further, the Supplier acknowledges that (without prejudice to any other rights and remedies of the Customer) a breach of the aforesaid obligations may lead to a prosecution under Section 182 of the Finance Act 1989 and/or Section 19 of the Commissioners for Revenue and Customs Act 2005; and
- (b) Section 123 of the Social Security Administration Act 1992, which may apply to the fulfilment of some or all of the Services. The Supplier acknowledges that (without prejudice to any other rights and remedies of the Customer) a breach of the Supplier's obligations under Section 123 of the Social Security Administration Act 1992 may lead to a prosecution under that Act.

2. The Supplier shall regularly (not less than once every six (6) months) remind all Supplier Personnel in writing of the obligations upon Supplier Personnel set out in clause 1 above. The Supplier shall monitor the compliance by Supplier Personnel with such obligations.

3. The Supplier shall ensure that all Supplier Personnel who will have access to, or are provided with, Customer Data sign (or have previously signed) a declaration, in a form acceptable to the Customer, acknowledging that they understand and have been informed about the application and effect of Section 18 and 19 of the Commissioners for Revenue and Customs Act 2005. The Supplier shall provide a copy of each such signed declaration to the Customer upon demand.

5. OFFICIAL SECRETS ACTS

1. The Supplier undertakes that it will comply with the Official Secrets Acts in relation to provision of Goods/Services under this Contract

6. INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS

1. Where the Supplier or any Supplier Personnel are liable to Tax in the UK or to pay national insurance contributions in respect of consideration received under this Agreement, the Supplier shall:

- (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other Laws and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other Laws and regulations relating to national insurance contributions, in respect of that consideration;
- (b) indemnify the Customer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel for which the Supplier is not primarily liable to account to the Authority under the relevant Laws and regulation; and
- (c) provide (promptly or within such other period notified by the Customer) information which demonstrates how the Supplier complies with Clause 1(a) or why Clause 1(a) does not apply to the Supplier (including such specific information as the Customer may request),

and if the Supplier fails to comply (or if the Customer receives information which demonstrates that the Supplier has failed to comply) with any of the provisions above in this Clause 1 then this shall constitute a Supplier Termination Event.

2. The Customer may internally share any information which it receives under Clause 1(c).

7. CUSTOMER BOARDS

The Supplier will be required to be part of the Customer's Operational Board as defined below. The Customer may require the Supplier to be part of their Strategic and or Operational Board upon request, described below

Role of The Operational Board

1.1 Executive Management

The Operational Board shall be responsible for the executive management of the Services and shall:

- (a) be accountable to the Strategic Board for comprehensive oversight of the Services and for the senior management of the operational relationship between the Parties;
- (b) receive reports from the Project Managers on matters such as issues relating to delivery of existing Services and performance against Performance Indicators, progress against the Transition Plan or a Project Plan and possible future developments;
- (c) review and report to the Strategic Board on service management, co-ordination of individual projects and any integration issues;
- (d) deal with the prioritisation of resources and the appointment of Project Managers on behalf of the Parties;
- (e) consider and resolve Disputes (including Disputes as to the cause of a Delay or the performance of the Services) in the first instance and if necessary, escalate the Dispute to the Strategic Board; and

- (f) develop operational/supplier relationship and develop and propose the relationship development strategy and ensure the implementation of the same.

1.2. Change management.

If the Parties are unable to agree a Change in accordance with the Change Control Procedure, the Operational Board shall assess the impact and approve or reject all Change Requests. Changes which will have a significant impact on the Services shall be escalated to the Strategic Board.

Where required in accordance with paragraph **Error! Reference source not found.**, the Operational Board shall:

- (a) analyse and record the impact of all Changes, specifically whether the proposed Change:
 - (i) has an impact on other areas or aspects of this Agreement and/or other documentation relating to the Services;
 - (ii) has an impact on the ability of the Customer to meet its agreed business needs within agreed time-scales;
 - (iii) will raise any risks or issues relating to the proposed Change; and
 - (iv) will provide value for money in consideration of any changes to the Financial Model, future Charges and/or Performance Indicators and Target Performance Levels;
- (b) consider all contract management activities and version control of the Agreement;
- (c) provide recommendations, seek guidance and authorisation from the Strategic Board as required; and
- (d) approve or reject (close) all proposed Changes.

1.3 Risk management

The Operational Board shall identify and manage risks relating to the performance of the Services.

The Operational Board shall:

- (a) provide assurance to the Strategic Board that risks are being effectively managed across the Services, including reporting the 'top 5' risks to the Strategic Board on a monthly basis;
- (b) identify the risks to be reported to the Strategic Board via the regular risk reports;
- (c) subject to the Change Control Procedure, accept or reject new risks proposed for inclusion in the Risk Register;
- (d) ratify or refuse requests to close risks on the Risk Register; and
- (e) identify risks relating to or arising out of the performance of the Services and provisional owners of these risks.

1.4 Technical oversight

The Operational Board shall be accountable to the Strategic Board for oversight of the technology used in the Supplier Solution and ensuring that technological choices are made to maximise the long-term value of the Supplier Solution as a business asset of the Customer.

The Operational Board shall:

- (a) ensure compliance with the Standards;
- (b) grant dispensations for variations from such compliance where appropriate;
- (c) assure the coherence and consistency of the systems architecture for the Supplier Solution;
- (d) monitor developments in new technology and reporting on their potential benefit to the Services;
- (e) provide advice, guidance and information on technical issues; and
- (f) assure that the technical architecture of the Supplier Solution is aligned to the Service Requirements and has sufficient flexibility to cope with future requirements of the Customer.

2. Role of The Strategic Board

2.1 The Strategic Board shall:

- (a) provide senior level guidance, leadership and strategy for the overall delivery of the Services;
- (b) be the point of escalation from the Operational Board and Entry Transition Board; and
- (c) (carry out the specific obligations attributed to it in Paragraph 0.

2.2 The Strategic Board shall:

- (a) ensure that this Agreement is operated throughout the Term in a manner which optimises the value for money and operational benefit derived by the Customer and the commercial benefit derived by the Supplier;
- (b) receive and review reports from the Operational Board and review reports on technology, service and other developments that offer potential for improving the benefit that either Party is receiving, in particular value for money;
- (c) determine business strategy and provide guidance on policy matters which may impact on the implementation of the Services or on any Optional Services;
- (d) authorise the commissioning and initiation of, and assess opportunities for, Optional Services;
- (e) provide guidance and authorisation to the Operational Board on relevant Changes; and
- (f) consider and resolve Disputes referred to it by the Operational Board and, where necessary, escalate Disputes to the Executive Board.

3. Role of The Executive Board

The Executive Board shall consider and resolve Disputes escalated to it by the Strategic Board and shall provide executive level guidance, leadership and strategy for the delivery of the Services when required by the Strategic Board.

8. BENCHMARKING

1. The Customer shall be entitled to benchmark the Call Off Contract Charges and level of performance by the Supplier in the time and manner stated in clause 2 below in respect of the supply of Services, against other suppliers providing services substantially the same during the Call Off Contract Period.

2. Benchmarking may be undertaken in the following periods in respect of:

- i) Additional Support for Services not included in the Scope of the Services/Charges – ‘the Rate Card’), at any time and at any interval during the term of the Call Off Contract without restriction and/or
- ii) the Maintenance Costs in the final year of the term of this Call-Off Contract only.

3. For the avoidance of doubt, the customer shall not be entitled to benchmark the Goods provided under this Call-Off Contract including all Supplier Software and Third-Party Software.

4. The Customer, acting reasonably, shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking evaluation referred to in Clause 2 above.

5. The Customer shall be entitled to disclose the results of any benchmarking of the Call Off Contract Charges and provision of the Goods and/or Services to the Customer and any Contracting Body (subject to the Contracting Body entering into reasonable confidentiality undertakings).

6. The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the Customer in order to undertake the benchmarking and such information requirements shall be at the discretion of the Customer.

7. Where, as a consequence of any benchmarking carried out by the Customer, the Customer decides improvements to the Services should be implemented such improvements shall be implemented by way of the Change Control Procedure at no additional cost to the Customer.

8. The benefit of any work carried out by the Supplier at any time during the Call Off Contract Period to update, improve or provide the Services, facilitate their delivery to any other Contracting Body and/or any alterations or variations to the Charges or the provision of the Goods or the Services, which are identified in the Continuous Improvement Plan produced by the Supplier and/or as a consequence of any benchmarking carried out by the Customer, shall be implemented by the Supplier in accordance with the Change Control Procedure and at no additional cost to the Customer.

BY SIGNING AND RETURNING THIS ORDER FORM THE SUPPLIER AGREES to enter a legally binding contract with the Customer to provide the Goods and/or Services. The Parties hereby acknowledge and agree that they have read the NHS Conditions of Contract for purchase of goods and/or Services and by signing below agree to be bound by the terms of this Contract.

For and on behalf of the Supplier:

Name and Title	<div></div>
Signature	<div></div>
Date	18/01/2024

For and on behalf of the Customer:

Name and Title	<div></div>
Signature	<div></div>
Date	

Order Form: Annex A
Change Control Procedure

1. DEFINITIONS

In this Annex A, the following definitions shall apply:

“Customer Change Manager”	the person appointed to that position by the Customer from time to time and notified in writing to the Supplier or, if no person is notified, the Customer Representative;
“Change Request”	a written request for a Contract Change which shall be substantially in the form of Annex 1 of this Annex A;
“Change Communication”	any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to this Schedule;
“Fast-track Change”	any Contract Change which the Parties agree to expedite in accordance with Paragraph 0;
“Impact Assessment”	an assessment of a Change Request in accordance with Paragraph 0;
“Impact Assessment Estimate”	has the meaning given in Paragraph 0;
“Receiving Party”	the Party which receives a proposed Contract Change;
“Supplier Change Manager”	the person appointed to that position by the Supplier from time to time and notified in writing to the Customer or, if no person is notified, the Supplier Representative.

2. GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE

2.1 This Schedule sets out the procedure for dealing with Changes.

2.2 Operational Changes shall be processed in accordance with Paragraph 0. If either Party is in doubt about whether a change falls within the definition of an Operational Change, then it must be processed as a Contract Change.

2.3 The Parties shall deal with Contract Change as follows:

- a) either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Paragraph 0;
- b) unless this Agreement otherwise requires, the Supplier shall assess and document the potential impact of a proposed Contract Change in accordance with Paragraph 0 before the Contract Change can be either approved or implemented;
- c) the Customer shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in Paragraph 0;
- d) the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 0;

- e) save as otherwise provided in this Agreement, no proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Customer in accordance with Paragraph 0; and
- f) a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Paragraph 0.

2.4 To the extent that any Contract Change requires testing and/or a programme for implementation, then the Parties shall follow the procedures set out in Schedule **Error! Reference source not found.** (*Testing Procedures*), and, where appropriate, the Change Authorisation Note relating to such a Contract Change shall specify Milestones and/or a Key Milestone and Milestone Date(s) in respect of such Contract Change for the purposes of such procedures.

2.5 Until a Change Authorisation Note has been signed and issued by the Customer in accordance with Paragraph 0, then:

- a) unless the Customer expressly agrees (or requires) otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of this Agreement as if the proposed Contract Change did not apply; and
- b) any discussions, negotiations or other communications which may take place between the Customer 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 Agreement.

2.6 The Supplier shall:

- a) within ten (10) Working Days of the Customer's signature and issue of a Change Authorisation Note, deliver to the Customer a copy of this Agreement updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and
- b) thereafter provide to the Customer such further copies of the updated Agreement as the Customer may from time to time request.

3. COSTS

3.1 Subject to Paragraph 0:

- a) the costs of preparing each Change Request shall be borne by the Party making the Change Request; and
- b) the costs incurred by the Supplier in undertaking an Impact Assessment shall be borne by the Party making the Change Request provided that the Customer shall not be required to pay any such costs if:
 - i. such costs are below £1;
 - ii. the Supplier is able to undertake the Impact Assessment by using resources already deployed in the provision of the Services; or
 - iii. such costs exceed those in the accepted Impact Assessment Estimate.

3.2 The cost of any Contract Change shall be calculated and charged in accordance with the principles and day rates, or day costs (as applicable) set out in Schedule **Error! Reference source not found.** (*Charges and Invoicing*). The Supplier shall be entitled to increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and, in any event, any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly

proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract Change.

3.3 Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or default by the Supplier shall be paid for by the Supplier.

4. CHANGE REQUEST

4.1 Either Party may issue a Change Request to the other Party at any time during the Term. A Change Request shall be substantially in the form of Annex 1 of this Annex A and state whether the Party issuing the Change Request considers the proposed Contract Change to be a Fast-track Change.

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

4.3 If the Customer issues the Change Request, then the Supplier shall provide as soon as reasonably practical and in any event within ten (10) working days of the date of receiving the Change Request an estimate ("**Impact Assessment Estimate**") of the cost of preparing an Impact Assessment and the timetable for preparing it. The timetable shall provide for the completed Impact Assessment to be received by the Customer within ten (10) Working Days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by the Customer.

4.4 If the Customer accepts an Impact Assessment Estimate then following receipt of notice of such acceptance the Supplier shall provide the completed Impact Assessment to the Customer as soon as is reasonably practicable and in any event within the period agreed in the Impact Assessment Estimate. If the Supplier requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to the Customer and provided that sufficient information is received by the Customer to fully understand:

- a) the nature of the request for clarification; and
- b) the reasonable justification for the request;

the time period to complete the Impact Assessment shall be extended by the time taken by the Customer to provide that clarification. The Customer shall respond to the request for clarification as soon as is reasonably practicable.

5. IMPACT ASSESSMENT

5.1 Each Impact Assessment shall be completed in good faith and shall include:

- a) details of the proposed Contract Change including the reason for the Contract Change; and
- b) details of the impact of the proposed Contract Change on the Services, the Optional Services (if any) and the Supplier's ability to meet its other obligations under this Agreement;
- c) any variation to the terms of this Agreement that will be required as a result of that impact, including changes to:
- d) the Services Description, the Performance Indicators and/or the Target Performance Levels;
- e) the format of Customer Data, as set out in the Services Description;
- f) the Milestones, Transition Plan or Project Plan and any other timetable previously agreed by the Parties;
- g) other services provided by third party contractors to the Customer, including any changes required by the proposed Contract Change to the Customer's IT infrastructure;
- h) details of the cost of implementing the proposed Contract Change;
- i) details of the ongoing costs required by the proposed Contract Change 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;

- j) a timetable for the implementation, together with any proposals for the testing of the Contract Change;
- k) details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and
- l) such other information as the Customer may reasonably request in (or in response to) the Change Request.

5.2 If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to Clause 23 (*Protection of Personal Data*).

5.3 Subject to the provisions of Paragraph 0, the Customer shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 0 within 15 Working Days of receiving the Impact Assessment.

5.4 If the Customer is the Receiving Party and the Customer reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment, then within five (5) Working 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 Customer within ten (10) Working Days of receiving such notification. At the Customer's discretion, the Parties may repeat the process described in this Paragraph 0 until the Customer is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.

5.5 The calculation of costs for the purposes of Paragraphs h) and i) shall:

- a) be based on the Financial Model;
- b) facilitate the Financial Transparency Objectives;
- c) include estimated volumes of each type of resource to be employed and the applicable rate card;
- d) include full disclosure of any assumptions underlying such Impact Assessment;
- e) include evidence of the cost of any assets required for the Change; and
- f) include details of any new Sub-contracts necessary to accomplish the Change.

6. CUSTOMER'S RIGHT OF APPROVAL

6.1 Within fifteen (15) Working Days of receiving the Impact Assessment from the Supplier or within ten (10) Working Days of receiving the further information that it may request pursuant to Paragraph 0, the Customer shall evaluate the Change Request and the Impact Assessment and shall do one of the following:

(a) approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 0;

(b) in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. The Customer shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any Changes in Law. If the Customer does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or

(c) in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within five (5) Working Days of such request. Subject to Paragraph 0, on receiving the modified Change Request and/or Impact Assessment, the Customer shall approve or reject the proposed Contract Change within ten (10) Working Days.

6.2 If the Customer approves the proposed Contract Change pursuant to Paragraph 0 and it has not been rejected by the Supplier in accordance with Paragraph 0, then it shall inform the Supplier and the Supplier shall prepare two (2) copies of a Change Authorisation Note which it shall sign and deliver to the Customer for its signature. Following receipt by the Customer of the Change Authorisation Note, it

shall sign both copies and return one copy to the Supplier. On the Customer's signature the Change Authorisation Note shall constitute (or, where the Customer has agreed to or required the implementation of a Change prior to signature of a Change Authorisation Note, shall constitute confirmation of) a binding variation to this Agreement.

6.3 If the Customer does not sign the Change Authorisation Note within ten (10) Working Days, then the Supplier shall have the right to notify the Customer and if the Customer does not sign the Change Authorisation Note within five (5) Working Days of such notification, then the Supplier may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.

7. SUPPLIER'S RIGHT OF REJECTION

7.1 Following an Impact Assessment, if:

- a) the Supplier reasonably believes that any proposed Contract Change which is requested by the Customer would:
 - (i) materially and adversely affect the risks to the health and safety of any person; and/or
 - (ii) require the Services to be performed in a way that infringes any Law; and/or
- b) the Supplier demonstrates to the Customer's reasonable satisfaction that the proposed Contract Change is technically impossible to implement and neither the Supplier Solution nor the Services Description state that the Supplier does have the technical capacity and flexibility required to implement the proposed Contract Change,

7.2 then the Supplier shall be entitled to reject the proposed Contract Change and shall notify the Customer of its reasons for doing so within five (5) Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to Paragraph 0.

8. FAST-TRACK CHANGES

8.1 The Parties acknowledge that to ensure operational efficiency there may be circumstances where it is desirable to expedite the processes set out above.

8.2 If:

- a) the total number of Contract Changes in relation to which this Fast-track Change procedure has been applied does not exceed four (4) in any twelve (12) month period; and
- b) the proposed Contract Change is not significant (as determined by the Customer acting reasonably),

then the Parties shall confirm to each other in writing that they shall use the process set out in Paragraphs 0, 0, 0 and 0 but with reduced timescales, such that any period of fifteen (15) Working Days is reduced to five (5) Working Days, any period of ten (10) Working Days is reduced to two (2) Working Days and any period of five (5) Working Days is reduced to one (1) Working Day.

8.3 The Parties may agree in writing to revise the parameters set out in Paragraph 0 from time to time or that the Fast-track Change procedure shall be used in relation to a particular Contract Change notwithstanding that the total number of Contract Changes to which such procedure is applied will then exceed four (4) in a twelve (12) month period.

9. OPERATIONAL CHANGE PROCEDURE

9.1 Any Operational Changes identified by the Supplier to improve operational efficiency of the Services may be implemented by the Supplier without following the Change Control Procedure for proposed Contract Changes provided they do not:

- a) have an impact on the business of the Customer;
- b) require a change to this Agreement;

- c) have a direct impact on use of the Services; or
- d) involve the Customer in paying any additional Charges or other costs.

9.2 The Customer may request an Operational Change by submitting a written request for Operational Change (“**RFOC**”) to the Supplier Representative.

9.3 The RFOC shall include the following details:

- a) the proposed Operational Change; and
- b) the timescale for completion of the Operational Change.

9.4 The Supplier shall inform the Customer of any impact on the Services that may arise from the proposed Operational Change.

9.5 The Supplier shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC and shall promptly notify the Customer when the Operational Change is completed.

10. COMMUNICATIONS

For any Change Communication to be valid under this Schedule, it must be sent to either the Customer Change Manager or the Supplier Change Manager, as applicable. The provisions of Clause 45 (*Notices*) shall apply to a Change Communication as if it were a notice.

ANNEX 1 | Change Request Form

CR NO.:	TITLE:	TYPE OF CHANGE:
CONTRACT:		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 (INCLUDING PROPOSED CHANGES TO THE WORDING OF THE CONTRACT):		
DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS:		
REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED CONTRACT CHANGE:		
SIGNATURE OF REQUESTING CHANGE OWNER:		
DATE OF REQUEST:		

ANNEX 2 | Change Authorisation Note

CR NO.:	TITLE:	DATE RAISED:
CONTRACT:	TYPE OF CHANGE:	REQUIRED BY DATE:
[KEY MILESTONE DATE: <i>[if any]</i>]		
DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND WORDING OF RELATED CHANGES TO THE CONTRACT:		
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 BASIS):		
SIGNED ON BEHALF OF THE CUSTOMER:		SIGNED ON BEHALF OF THE SUPPLIER:
Signature: _____		Signature: _____
Name: _____		Name: _____
Position: _____		Position: _____
Date: _____		Date: _____

Age Group	Male (%)	Female (%)
18-24	~10	~10
25-34	~10	~10
35-44	~10	~10
45-54	~10	~10
55-64	~40	~40
65-74	~60	~65
75-84	~10	~10
85+	~5	~5

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Age Group	Don't know	No	Yes	Strongly yes
18-24	10	10	10	10
25-34	10	10	10	10
35-44	10	10	10	10
45-54	10	10	10	10
55-64	10	10	10	10
65-74	10	10	10	10
75-84	10	10	10	10
85+	10	10	10	10

Call-off Terms and Conditions for the Supply of Goods and the Provision of Services

Where an Order Form is issued by the Authority that refers to the Framework Agreement, the Contract is made between the Authority and the Supplier on the date of that Order Form. The Contract is subject to the terms set out in the schedules of these Call-off Terms and Conditions listed below ("**Schedules**").

The Authority and the Supplier undertake to comply with the provisions of the Schedules in the performance of the Contract.

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

For the avoidance of doubt, any actions or work undertaken by the Supplier prior to the receipt of an Order Form covering the relevant Goods and/or Services shall be undertaken at the Supplier's risk and expense and the Supplier shall only be entitled to invoice for Goods or Services covered by a valid Order Form.

The Definitions in Schedule 4 of these Call-off Terms and Conditions apply to the use of all capitalised terms in the Contract.

Schedules

Schedule 1 of these Call-off Terms and Conditions	Key Provisions
Schedule 2 of these Call-off Terms and Conditions	General Terms and Conditions
Schedule 3 of these Call-off Terms and Conditions	Information and Data Provisions
Schedule 4 of these Call-Off Terms and Conditions	Definitions and Interpretations
Schedule 5 of these Call-Off Terms and Conditions	Accompanying Terms and Conditions
Schedule 6 of these Call-Off Terms and Conditions	Specification and Tender Response Document

Schedule 1

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 of these Call-off Terms and Conditions shall apply to this Contract.
- 1.2 Extra Key Provisions shall only apply to this Contract where such provisions are set out as part of the Order Form.

2 Term

- 2.1 This Contract shall commence on the Commencement Date.
- 2.2 The Term of this Contract shall be as set out in the Order Form.
- 2.3 The Term may be extended in accordance with Clause 15.2 of Schedule 2 of these Call-off Terms and Conditions provided that the duration of this Contract shall be no longer than any maximum applicable to the Contract if such maximum duration is set out in the Framework Agreement (including any options to extend).

3 Contract Managers

- 3.1 The Contract Managers at the commencement of this Contract shall be as set out in the Order Form or as otherwise agreed between the Parties in writing.

4 Names and addresses for notices

- 4.1 Unless otherwise agreed by the Parties in writing, notices served under this Contract are to be delivered to such persons at such addresses as referred to in the Order Form.

5 Management levels for escalation and dispute resolution

- 5.1 Unless otherwise agreed by the Parties in writing, the management levels at which a Dispute will be dealt with are as follows:

Level	Authority representative	Supplier representative
1	Contract Manager	Contract Manager
2	Assistant Director or equivalent	Assistant Director or equivalent
3	Director or equivalent	Director or equivalent

6 Order of precedence

6.1 Subject always to Clause 1.10 of Schedule 4 of these Call-off Terms and Conditions, 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 Order Form
- 6.1.2 Schedule 6 of these Call-off Terms and Conditions: Specification and Tender Response Document
- 6.1.3 the applicable provisions of the Framework Agreement other than the Specification and Tender Response Document;
- 6.1.4 the provisions on the front page of these Terms and Conditions for the Supply of Goods and the Provision of Services (Purchase Order Version);
- 6.1.5 Schedule 1 of these Call-off Terms and Conditions: Key Provisions;
- 6.1.6 Schedule 2 of these Call-off Terms and Conditions: General Terms and Conditions;
- 6.1.7 Schedule 3 of these Call-off Terms and Conditions: Information Governance Provisions;
- 6.1.8 Schedule 4 of these Call-off Terms and Conditions: Definitions and Interpretations;
- 6.1.9 Schedule 5 of these Call-off Terms and Conditions: Accompanying Terms and Conditions
- 6.1.10 the order in which all subsequent schedules, if any, appear; and
- 6.1.11 any other documentation forming part of the Contract in the date order in which such documentation was created with the more recent documentation taking precedence over older documentation to the extent only of any conflict.

7 Application of TUPE at the commencement of the provision of Services

- 7.1 The Parties agree that at the commencement of the provision of Services by the Supplier, TUPE and the Cabinet Office Statement shall not apply so as to transfer the employment of any employees of the Authority or a Third Party to the Supplier.
- 7.2 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:
 - 7.2.1 the Supplier will, within seven (7) days of becoming aware of that fact, give notice in writing to the Authority;

- 7.2.2 the Authority or Third Party may offer employment to such person within twenty-eight (28) days of the notification by the Supplier;
 - 7.2.3 if such offer of employment is accepted, the Supplier or a Sub-contractor shall immediately release the person from their employment;
 - 7.2.4 if after that period specified in Clause 7.2.2 of this Schedule 1 of these Call-off Terms and Conditions 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 in accordance with the requirements of Part D of Schedule 7 of the NHS Terms and Conditions for the Provision of Services (Contract Version) (January 2018).
- 7.3 Authority shall indemnify Supplier for all costs and liabilities in respect of such person's employment with Supplier for the period of this Contract following the date of employment of any person under Clause 7.2.4.

Schedule 2

General Terms and Conditions

Contents

1. Supply of Goods and the provision of Services
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30. General

1 Supply of Goods and the provision of Services

- 1.1 The Supplier shall supply the Goods 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 with reasonable skill and care and in accordance with the provisions of the Framework Agreement as applicable and/or the provisions of the Order Form;
 - 1.1.4 in accordance with the Law and with Guidance;
 - 1.1.5 in accordance with Good Industry Practice;
 - 1.1.6 in accordance with the Policies; and
 - 1.1.7 in a professional and courteous manner.
- 1.2 The Supplier shall comply with the Implementation Requirements (if any) in accordance with any timescales as may be set out in the Specification and Tender Response Document. Without limitation to the foregoing provisions of this Clause 1.2 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall, if specified in the Order Form, carry out all implementation activities fully in accordance with the Implementation Plan. If the Implementation Plan is an outline plan, the Supplier shall, as part of implementation, develop the outline plan into a full plan and agree this with the Authority. Once this is agreed, the Supplier shall comply with the full Implementation Plan.
- 1.3 Where the Supplier is providing services, the Supplier shall commence delivery of the Services on the Commencement Date.
- 1.4 The Supplier shall comply fully with its obligations set out in the Specification and Tender Response Document and/or the Order Form, including, without limitation, the KPIs and all obligations in relation to the quality, performance characteristics, supply, delivery, installation and training in relation to the Goods and their use).
- 1.5 Unless otherwise agreed by the Parties in writing, the Goods 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 the 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 Goods are in place prior to the delivery of any Goods to the Authority; and
 - 1.6.2 required to provide the Services are in place at the Actual 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 Goods 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 Goods.
- 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 Goods, 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 of these Call-off 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 Goods and passing of risk and ownership in the Goods

- 2.1 The Supplier shall deliver the Goods 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 Specification and Tender Response Document, the Order Form or as otherwise agreed with the Authority in writing.
- 2.2 Delivery shall be completed when the Goods 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 Goods are collected by the Authority in return for a discount on the Contract Price 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 Goods, collection is deemed delivery for the purposes of the Contract.
- 2.3 The Supplier shall ensure that a delivery note shall accompany each delivery of the Goods. Such delivery note shall contain the information specified in the 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 Goods, and shall show separately any extra agreed charges for containers and/or any other item not included in the Contract Price 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 Goods is refused by the Authority in accordance with this Clause 2.4 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall be responsible for all risks, costs and expenses associated with the re-delivery of the Goods 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 Goods until the agreed date for delivery.
- 2.5 Unless otherwise set out in the 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 Goods to the delivery location and unloading of the Goods at that location. Without limitation to the foregoing provision of this Clause 2.5 of this Schedule 2 of these Call-off Terms and Conditions, unless otherwise stated in the 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 Goods 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 Goods 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 Goods 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 the Specification and Tender Response Document.
- 2.6 All third party carriers engaged to deliver the Goods 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 Goods to the Authority.
- 2.7 Risk in the Goods shall pass to the Authority when the Goods are delivered as specified in this Contract or, in the case of Goods which require installation by the Supplier, when that installation process is complete.
- 2.8 Ownership of the Goods shall pass to the Authority on the earlier of:
 - 2.8.1 full payment for such Goods; or
 - 2.8.2 where the goods are consumables or are non-recoverable (e.g. used in clinical procedures), at the point such Goods are taken into use. For the avoidance of doubt, where ownership passes in accordance with this Clause 2.8.2 of this Schedule 2 of these Call-off Terms and Conditions, then the full Contract Price for such Goods 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 Goods.

- 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 Goods

- 3.1 As relevant and proportionate to the Goods 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 Goods and/or the storage facilities used in the storage of the Goods 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 Goods 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 of these Call-off Terms and Conditions and subject to Clause 3.7 of this Schedule 2 of these Call-off Terms and Conditions, the Authority shall visually inspect the Goods within a reasonable time following delivery (or such other period as may be set out as part of the Authority's requirements in the Specification and Tender Response Document, if any) and may by written notice reject any Goods found to be damaged or otherwise not in accordance with the requirements of this Contract ("**Rejected Goods**"). The whole of any delivery may be rejected if a reasonable sample of the Goods taken indiscriminately from that delivery is found not to conform in all material respects to the requirements of the Contract.
- 3.3 Without prejudice to the provisions of Clause 3.5 of this Schedule 2 of these Call-off Terms and Conditions, upon the rejection of any Goods in accordance with Clauses 3.2 and/or 3.6 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall at the Authority's written request:
- 3.3.1 collect the Rejected Goods at the Supplier's risk and expense within ten (10) Business Days of issue of written notice from the Authority rejecting the Goods; 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 Goods to the Authority subject to the Authority not cancelling its purchase obligations in accordance with Clause 3.5 of this Schedule 2 of these Call-off Terms and Conditions.

If the Supplier requests and the Authority accepts that the Rejected Goods 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 Goods and the Supplier shall promptly pay any such costs.

- 3.4 Risk and title in respect of any Rejected Goods shall pass to the Supplier on the earlier of: (a) collection by the Supplier in accordance with Clause 3.3 of this Schedule 2; or (b) immediately following the expiry of ten (10) Business Days from the Authority issuing written notification rejecting the Goods. If Rejected Goods are not collected

within ten (10) Business Days of the Authority issuing written notification rejecting the Goods, the Authority may return the Rejected Goods 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 Goods in accordance with Clauses 3.2 and/or 3.6 of this Schedule 2 of these Call-off Terms and Conditions and the Authority no longer requires replacement Goods, the Authority may by written notice cancel its purchase obligations in relation to such quantity of Rejected Goods. Should the Authority have paid for such Rejected Goods 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 Goods.
- 3.6 Without prejudice to any other provisions of this Contract or any other warranties or guarantees applicable to the Goods supplied and subject to Clause 3.7 of this Schedule 2 of these Call-off Terms and Conditions, if at any time following the date of the delivery of any Goods, all or any part of such Goods are found to be defective or otherwise not in accordance with the requirements of this Contract ("**Defective Goods**"), 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 Goods; or
 - 3.6.2 upon written notice of rejection from the Authority, treat such Defective Goods as Rejected Goods in accordance with Clauses 3.2 to 3.5 of this Schedule 2 of these Call-off 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 of these Call-off Terms and Conditions to the extent only that the Goods are damaged, there are defects in the Goods and/or the Goods 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 of these Call-off 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 Goods are Defective Goods or within such other period as may be set out as part of the requirements in the Specification and Tender Response Document, if any. For the avoidance of doubt, Goods not used before their expiry date shall in no event be considered Defective Goods following the date of expiry provided that at the point such Goods were delivered to the Authority they met any shelf life requirements set out in the 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 Goods, the Supplier shall:
 - 3.9.1 promptly (taking into consideration the potential impact of the continued use of the Goods 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 Goods the subject of such recall as Defective Goods in accordance with Clause 3.6 of this Schedule 2 of these Call-off Terms and Conditions;
- 3.9.3 consult with the Authority as to the most efficient method of executing the recall of the Goods and use its reasonable endeavors 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 the Order Form 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 of these Call-off Terms and Conditions, any access granted to the Supplier and its Staff under Clause 4.2 of this Schedule 2 of these Call-off 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 of these Call-off 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 of these Call-off 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 as referred to in any Order Form.
- 4.5 Where it is provided for by a specific mechanism set out in the Specification and Tender Response Document and/or the Order Form, 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 in Clause 4.4 of this Schedule 2 of these Call-off Terms and Conditions. Where there is no such specific mechanism set out in the Specification and Tender Response Document and/or the Order Form, 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 of these Call-off Terms and Conditions. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the dispute resolution process set out in Clause 5 of the Key Provisions and Clause 22.3 of this Schedule 2 of these Call-off Terms and Conditions.

- 4.6 Unless otherwise set out in the 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 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 of these Call-off Terms and Conditions or any report or communication pursuant to Clause 4.9 of this Schedule 2 of these Call-off 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 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, but not be limited to, the Supplier providing a sufficient reserve of trained and competent Staff to supply the Goods 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 the Specification and Tender Response

Document, the Order Form 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; and
 - 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 Not Used
- 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 of these Call-off 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 of these Call-off 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 of these Call-off Terms and Conditions.
- 5.10 Not Used
- 5.11 Not Used.
- 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 of these Call-off 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 Not Used.

6 Business continuity

- 6.1 Throughout the Term, the Supplier will ensure its Business Continuity Plan provides for continuity during a Business Continuity Event. The Supplier confirms and agrees such Business Continuity Plan details and will continue to detail robust arrangements that are reasonable and proportionate to:
 - 6.1.1 the criticality of this Contract to the Authority; and
 - 6.1.2 the size and scope of the Supplier's business operations,
 regarding continuity of the supply of the Goods and the provision of the Services during and following a Business Continuity Event.
- 6.2 The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this 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 of these Call-off 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.

- 6.3 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.
- 6.4 During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to supply the Goods and provide the Services in accordance with this Contract.

7 The Authority's obligations

- 7.1 Subject to the Supplier supplying the Goods and providing the Services in accordance with this Contract, the Authority will pay the Supplier for the Goods and/or Services in accordance with Clause 9 of this Schedule 2 of these Call-off 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 Goods and the provision of the Services.
- 7.3 The Authority shall comply with the Authority's Obligations.
- 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 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 the Contract Manager be replaced, the Party replacing the Contract Manager shall promptly inform the other Party in writing of the name and contact details for the new Contract Manager. Any Contract Manager appointed shall be of sufficient seniority and experience to be able to make decisions on the day-to-day operation of the 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 the Contract. Review meetings shall take place at the frequency specified in the Specification and Tender Response Document. Should the 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 the Specification and Tender Response Document) the Supplier shall

provide a written contract management report to the Authority regarding the supply of the Goods, 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 Goods 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 the 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 the 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 process set out in Clause 5 of the Key Provisions and Clause 22.3 of this Schedule 2 of these Call-off Terms and Conditions.
- 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: (a) 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); or (b) manage the Framework Agreement with the Supplier ("**Third Party Body**"). The Supplier confirms and agrees that the Authority may itself provide the Third-Party Body with management information relating to the Goods 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 of these Call-off 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 anybody 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 Contract Price shall be calculated in accordance with the provisions of the Framework Agreement, as confirmed in the Order Form.

9.2 Unless otherwise stated in the Framework Agreement and/or the Order Form, the Contract Price:

9.2.1 shall remain fixed during the Term; and

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

- (i) packaging, packing materials, addressing, labelling, loading, delivery to and unloading at the delivery location, the cost 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 Goods;
- (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 licence rights granted to the Authority in accordance with Clause 11 of this Schedule 2 of these Call-off Terms and Conditions; and
- (iii) costs and expenses in relation to supplies and materials used by the Supplier or any third party in the manufacture of the Goods, and any other costs incurred by the Supplier in association with the manufacture, supply or installation of the Goods; and

9.2.3 in respect of the Services:

- (i) shall be payable from the Actual Services Commencement Date; and
- (ii) is the entire price payable by the Authority to the Supplier in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and 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 Framework Agreement and/or the Order Form:

9.3.1 where the Framework Agreement and/or the Order Form confirms 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 Contract Price in respect of the Goods supplied or the Services provided in compliance with this Contract in the preceding calendar month; or

9.3.2 where Clause 9.3.1 of this Schedule 2 of these Call-off Terms and Conditions does not apply, the Supplier shall invoice the Authority for the Goods or Services at any time following completion of the supply of the Goods or the provision of the Services in compliance with this Contract.

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 Contract Price is 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 Contract Price is 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 of these Call off 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, the invoice shall be regarded as valid and undisputed for the purposes this Clause 9.6 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 Clause 22 of this Schedule 2 of these Call off Terms and Conditions. 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 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 Contract Price) that may become due in accordance with the provisions of the Specification and Tender Response Document and/or the Order Form. 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 the Specification and Tender Response Document and/or Order Form. Such invoice shall be paid by the Supplier within 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 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 warrants and undertakes that:
- 10.1.1 it shall comply with the Framework Agreement;
 - 10.1.2 the Goods shall be suitable for the purposes and/or treatments as referred to in the 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;
 - 10.1.3 unless otherwise confirmed by the Authority in writing (to include, without limitation, as part of the Specification and Tender Response Document), it will ensure that the Goods 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 Goods;

- 10.1.4 it shall ensure that prior to actual delivery to the Authority the Goods are manufactured, stored and/or distributed using reasonable skill and care and in accordance with Good Industry Practice;
- 10.1.5 without prejudice to the generality of the warranty at 10.1.4 of this Schedule 2 of these Call-off Terms and Conditions, it shall ensure that, the Goods are manufactured, stored and/or distributed 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 Goods, and in accordance with any specific instructions of the manufacturer of the Goods;
- 10.1.6 it shall ensure that all facilities used in the manufacture, storage and distribution of the Goods are kept in a state and condition necessary to enable the Supplier to comply with its obligations in accordance with this Contract;
- 10.1.7 it has, or the manufacturer of the Goods has, manufacturing and warehousing capacity sufficient to comply with its obligations under this Contract;
- 10.1.8 it will ensure sufficient stock levels to comply with its obligations under this Contract;
- 10.1.9 it shall ensure that the transport and delivery of the Goods mean that they are delivered in good and useable condition;
- 10.1.10 where the Goods are required to be stored at a certain temperature, it shall provide, or shall procure the provision of, complete and accurate temperature records for each delivery of the Goods during the period of transport and/or storage of the Goods from the point of manufacture to the point of delivery to the Authority;
- 10.1.11 where there is any instruction information, including without limitation patient information leaflets, that accompany the Goods, 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;
- 10.1.12 all Goods delivered to the Authority shall comply with any shelf life requirements set out in the Specification and Tender Response Document;
- 10.1.13 it shall not make any significant changes to the Goods without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed;

- 10.1.14 any equipment it uses in the manufacture, delivery, or installation of the Goods shall comply with all relevant Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification;
- 10.1.15 it has and shall as relevant maintain all rights, consents, authorisations, licences and accreditations required to supply the Goods;
- 10.1.16 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;
- 10.1.17 it has all rights, consents, authorisations, licences and accreditations required to provide the Services and shall maintain such consents, authorisations, licences and accreditations throughout the Term;
- 10.1.18 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;
- 10.1.19 it shall not make any significant changes to its system of quality controls and processes in relation to the Goods 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);
- 10.1.20 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;
- 10.1.21 receipt of the Goods and/or Services by or on behalf of the Authority and use of the Goods and/or deliverables 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 Goods 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 the 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 Services;
- 10.1.25 without limitation to the generality of Clause 10.1.22 of this Schedule 2 of these Call-off 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 the 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 Goods, 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 Goods 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 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;
- 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 Goods, the provision of the Services, any complaints and any Disputes at the frequency, in the timeframes and in the format as requested by the Authority from time to time (acting reasonably);
- 10.1.32 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 the Specification and Tender Response Document and/or Order Form) 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 Goods 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 Goods are supplied to the Authority, all such Goods 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 Goods shall have been complied with. Without limitation to the foregoing provisions of this Clause 10.2 of this Schedule 2 of these Call-off 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 Goods are supplied to the Authority, all such Goods which are medicinal products shall have a valid marketing authorisation as required by Law and Guidance in order to supply the Goods 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 Goods shall have been complied with. Without

limitation to the foregoing provisions of this Clause 10.2 of this Schedule 2 of these Call-off 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 Goods in accordance with Law and Guidance until such time as the Goods expire or the Authority notifies the Supplier in writing that it has used or disposed of all units of the Goods supplied under this Contract.
- 10.3 If the Supplier is in breach of Clause 10.2 of this Schedule 2 of these Call-off 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 Goods and the Supplier shall, subject to Clause 13.2 of this Schedule 2 of these Call-off 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 Goods 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 the Specification and Tender Response Document shall be submitted to the Authority in the format and in accordance with any timescales set out in the Specification and Tender Response Document.
- 10.6 Without prejudice to the generality of Clause 10.5 of this Schedule 2 of these Call-off 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 of these Call-off 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 Unless specified otherwise in the Specification and Tender Response Document, the Supplier hereby grants to the Authority, for the life of the use of Goods 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 Goods (to include any associated technical or other documentation and information supplied or made accessible to the Authority in any media) in accordance with this Contract.
- 11.2 Unless specified otherwise 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, material or any other output supplied to the Authority in any format as part of the 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 any Key Provisions and/or the 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.
- 11.3 If a third party asserts a claim against the Authority that an IBM product acquired under this Contract infringes a patent or copyright, the Supplier will indemnify the Authority against that claim and pay amounts finally awarded by a court against the Authority or included in a settlement approved by the Supplier, provided that the Authority promptly: i) notifies the Supplier in writing of the claim; ii) supplies information requested by the Supplier; and iii) allows the Supplier to control, and reasonably cooperates in, the defence and settlement, including mitigation efforts.

12 Not Used**13 Limitation of liability**

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

13.1.1 for death or personal injury resulting from its negligence;

13.1.2 for fraud or fraudulent misrepresentation; 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 13.1, 13.3, 13.5 and 13.6 of this Schedule 2 of these Call-off 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:

13.2.1 in relation to any claims occurring in the twelve (12) months from the Commencement Date (Year 1), the higher of £1,000,000 or a sum equal to one hundred and twenty-five per cent (125%) of the estimated Year 1 Contract Price; and

13.2.2 in relation to any claims occurring in each subsequent twelve month period, the higher of £1,000,000 in each twelve (12) month period or a sum equal to one hundred and twenty-five per cent (125%) of the Contract Price payable to the Supplier under this agreement in the previous twelve (12) month period;

13.3 Subject to Clause 13.1 neither Party shall be liable to the other Party for any:

13.3.1 indirect, special or consequential loss;

13.3.2 loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

13.4 Subject to Clause 13.2, and notwithstanding Clause 13.3, the Supplier acknowledges that the Authority may recover from the Supplier the following losses incurred by the Authority to the extent that they arise as a result of, and relate to, a default by the Supplier:

13.4.1 any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of a default;

13.4.2 any wasted expenditure or charges;

13.4.3 the additional cost of procuring replacement Goods and/or Services for the remainder of the Contract Term and/or replacement contractual deliverables, which shall include any incremental costs associated with such replacement Goods and/or Services and/or replacement

contractual deliverables above those which would have been payable under this Contract;

13.4.4 any compensation or interest paid to a third party by the Authority; and

13.4.5 any fine, penalty or costs incurred by the Authority pursuant to Law.

13.5 Liability under Clause 7.3 of Schedule 1 of these Call-Off Terms and Conditions and 17.13 of this Schedule 2 of these Call-off Terms and Conditions shall be unlimited. Liability under Clause 2.6 of Schedule 3 of these Call-Off Terms and Conditions shall be subject to the limitation of liability set out in Clause 13 of this Schedule 2 of these Call-off Terms and Conditions.

13.6 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.

13.7 Clause 13 of this Schedule 2 of these Call-off 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 of these Call-off 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 and the aggregate of claims within each insurance arrangement, 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 specified in the Framework Agreement, if any.

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 of these Call-off Terms and Conditions on condition that such self-insurance arrangements offer the appropriate levels of protection.

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 of these Call-off Terms and Conditions and/or the provisions of the Framework Agreement 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 six (6) 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:
- 15.2.1 subject to Clause 15.2.2 of this Schedule 2 of these Call-off Terms and Conditions 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 referred to in the Key Provisions; or
- 15.2.2 where the Term or any extension of the Term expires at a date the same as or after expiry of the Framework Agreement (including any extensions of the Framework Agreement in accordance with its terms), shall only be entitled to extend the Term with the prior written agreement of the Supplier, such agreement not to be unreasonably withheld or delayed.
- 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 of this Schedule 2 of these Call-off 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 of these Call-off 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 of these Call-off 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 does not commence supply of the Goods and/or delivery of the Services by any 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 of this Schedule 2 of these Call-off Terms and Conditions;
 - 15.5.5 pursuant to and in accordance with any termination rights set out in any Key Provisions and Clauses 15.6, 23.8; 25.2; 25.4 and 29.2 of this Schedule 2 of these Call-off Terms and Conditions;
 - 15.5.6 the warranty given by the Supplier pursuant to Clause 10.8 of this Schedule 2 of these Call-off 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 of this Schedule 2 of these Call-off Terms and Conditions, or the Supplier fails to provide details of proposed mitigating factors as required by Clause 10.8 of this Schedule 2 of these Call-off Terms and Conditions that in the reasonable opinion of the Authority are acceptable; and
 - 15.5.7 where there is a benchmarking activity that leads to a Dispute that cannot be remedied.
- 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 of these Call-off 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 (as set out in

Clause 22.3 of this Schedule 2 of these Call-off Terms and Conditions) shall entitle, but shall not compel, the Authority to terminate this Contract in accordance with Clause 15.4(i) of this Schedule 2 of these Call-off 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 of these Call-off 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 the 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 the 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 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
- 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 of these Call-off 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 three (3) months of a written request from the Authority the Supplier shall prepare an exit plan consistent with the Exit Requirements, which shall ensure continuity of the Services on expiry or earlier termination 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 of these Call-off 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.
- 15.10 The Authority may terminate without cause:

- 15.10.1 any specific Contract Change by giving the Supplier at least at 30 days' notice; and
- 15.10.2 the whole of this Contract by giving the Supplier at least at 30 days' notice, following the preparation and agreement of an Exit plan as described in Clause 15.9.

For the avoidance of doubt, should the Authority terminate the contract in accordance with this Clause 15.10 the Authority shall be liable to pay for any unrecoverable or stranded costs or expenses including but not limited to:

- the redeployment costs for any professional resources assigned by the Supplier to the delivery of this Contract; and
- any irrecoverable third-party costs of the Supplier.

The Supplier shall use reasonable endeavours to mitigate these costs wherever possible

16 Consequences of expiry or early termination of this Contract

- 16.1 Subject to the provision set out in Clause 16.5 of this Schedule 2 of these Call-off Terms and Conditions, upon expiry or earlier termination of this Contract, the Authority agrees to pay the Supplier for:
 - 16.1.1 the Goods 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 all data, excluding Personal Data, documents and records (whether stored electronically or otherwise) relating in whole or in part to the 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 Services that are not transferred or destroyed pursuant to Clause 16.2 of this Schedule 2 of these Call-off Terms and Conditions for the period set out in Clause 24.1 of this Schedule 2 of these Call-off 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 If the Authority terminates the Contract in accordance with Clause 15.5.1 of this Schedule 2 of these Call-off 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 Goods already delivered, the Authority shall return such Goods to the Supplier at the Supplier's written request and at the Supplier's cost and expense.
- 16.6 Immediately upon expiry or earlier termination of this Contract any licence or lease entered into in accordance with any Order Form shall automatically terminate.
- 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 expiry or earlier termination of the Framework Agreement shall not affect this Contract. For the avoidance of doubt, any obligations set out in the Framework Agreement that form part of this Contract shall continue to apply for the purposes of this Contract notwithstanding any termination of the Framework Agreement.

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 the 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 Supplier Personnel (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 of these Call-off Terms and Conditions, the Authority may withhold payment under Clause 9 of this Schedule 2 of these Call-off 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 of these Call-off Terms and Conditions.
- 17.5 Subject to Clauses 17.6 and 17.7 of this Schedule 2 of these Call-off 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 Supplier Personnel;
 - 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 Supplier Personnel;
 - 17.5.3 replace any of the Supplier Personnel or increase the total number of employees providing the Services;
 - 17.5.4 deploy any person other than the Supplier Personnel to perform the Services;
 - 17.5.5 terminate or give notice to terminate the employment or arrangements of any of the Supplier Personnel;
 - 17.5.6 increase the proportion of working time spent on the Services by any of the Supplier Personnel; 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 Supplier Personnel.
- 17.6 Clause 17.5 of this Schedule 2 of these Call-off 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 of these Call-off 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 Supplier Personnel 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 Supplier Personnel 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 of these Call-off Terms and Conditions and (where relevant) the requirements of Clause 1.5 of Part D of Schedule 7 of the NHS Terms and Conditions for the Provision of Services (Contract Version) (December 2016) shall apply.
- 17.10 If on the termination or at the end of the Contract TUPE does not apply, then all Employment Liabilities and any other liabilities in relation to the Supplier Personnel 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 Supplier Personnel.
- 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 17.2 of this Schedule 2 of these Call-off 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 of these Call-off 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 Supplier Personnel 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 of these Call-off 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 Goods in relation to packaging, identification, and obligations following end of use by the Authority.
- 18.2 Unless otherwise specified in the Specification and Tender Response Document or otherwise agreed with the Authority in writing, the Goods shall be securely packed in trade packages of a type normally used by the Supplier for deliveries of the same or similar goods in the same quantities within the United Kingdom.

- 18.3 The Supplier shall comply with any labelling requirements in respect of the Goods: (a) specified in the 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 Goods 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 Goods are delivered shall comply with such requirements at the point of delivery.
- 18.5 Unless otherwise set out in the 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 Clause 18.5 of this Schedule 2 of these Call-off 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 of these Call-off 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 of these Call-off Terms and Conditions, the Supplier shall, during the Term, maintain the required level of compliance relating to the Goods in accordance with any such requirements and Guidance referred to as part of this Contract.
- 18.8 Once product information relating to Goods 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 Goods.

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 Goods and Services. Where the provisions of any such Law are implemented by the use of voluntary agreements, the Supplier shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Specification 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 the Specification and Tender Response Document in relation to any stated

environmental, social and labour requirements, characteristics and impacts of the Goods and Services and the Supplier's supply chain;

19.1.2 maintain relevant policy statements documenting the Supplier's significant labour, social and environmental aspects as relevant to the Goods and Services being 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 in Clause 19.1.2 of this Schedule 2 of these Call-off 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 of these Call-off 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 of these Call-off 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 goods and services (including, without limitation, the Goods and Services) available pursuant to the Authority's contracts from time to time. Subject to Clause 20.5 of this Schedule 2 of these Call-off 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 of these Call-off 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 of these Call-off 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 the Specification and Tender Response Document, 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 Goods and/or Services may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification 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 of these Call-off Terms and Conditions, any change to the Goods and/or Services or other variation to this Contract shall only be binding once it has been agreed (a) in accordance with any Change Control Process if any Key Provisions specify that changes are subject to a formal change control process; or (b) if the Key Provisions make no such reference, in writing and signed by an authorised representative of both Parties.
- 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 the 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 of these Call-off Terms and Conditions as the first stage in the Dispute Resolution Procedure.
- 22.3 If any Dispute arises out of the 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 of the Key Provisions. Respective representatives at each level, as set out in Clause 5 of the Key Provisions, shall have five (5) Business Days at each level during which they will use their reasonable endeavours to resolve the Dispute before escalating the matter to the next level until all levels have been exhausted. Level 1 will

commence on the date of service of the Dispute Notice. The final level of the escalation process shall be deemed exhausted on the expiry of five (5) Business Days following escalation to that level unless otherwise agreed by the Parties in writing.

- 22.4 If the procedure set out in Clause 22.3 of this Schedule 2 of these Call-off Terms and Conditions above has been exhausted and fails to resolve such Dispute, as part of the Dispute Resolution Procedure, the Parties will attempt to settle it by mediation. The Parties shall, acting reasonably, attempt to agree upon a mediator. In the event that the Parties fail to agree a mediator within five (5) Business Days following the exhaustion of all levels of the escalation procedure at Clause 22.3 of this Schedule 2 of these Call-off 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 of these Call-off 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 Goods 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 of these Call-off 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 of these Call-off 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 of these Call-off 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 of this Schedule 2 of these Call-off 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 of these Call-off 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 the 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 of these Call-off Terms and Conditions and subject to Clause 23.10 of this Schedule 2 of these Call-off 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 of these Call-off 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 of these Call-off 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 Not Used.
- 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 of these Call-off 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.

24.9 OPEN BOOK DATA

- 24.9.1 The Supplier acknowledges the Authority's need for complete transparency in the way in which the Charges are calculated.
- 24.9.2 During the Term, and for a period of seven (7) years following the end of the Term, the Supplier shall:
- (i) maintain and retain the Open Book Data; and
 - (ii) disclose and allow the Authority and/or its authorised representative access to the Open Book Data.

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 of these Call-off 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 Goods 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 Goods 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 of these Call-off 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 of these Call-off Terms and Conditions.

27 Notice

- 27.1 Subject to clause 22.5 of Schedule 2 of these Call-off Terms and Conditions, any notice required to be given by either Party under this Contract shall be in writing quoting the date of the Contract and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the Order Form or such other person as one Party may inform the other Party in writing from time to time or to a director of the relevant Party at the head office, main UK office or registered office of such Party.
- 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 of these Call-off 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 of these Call-off 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 of these Call-off 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 of this Schedule 2 of these Call-off 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 of this Schedule 2 of these Call-off 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 Goods 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 Goods 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 goods 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 of these Call-off Terms and Conditions, the invoice shall be regarded as valid and undisputed for the purpose of Clause 28.4.7 of this Schedule 2 of these Call-off 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 of this Schedule 2 of these Call-off 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 of these Call-off 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 of these Call-off 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 Goods 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 of these Call-off 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 Clause 22 of this Schedule 2 of these Call-off Terms and Conditions, any Dispute relating to:
 - (i) the interpretation of Clause 29 of this Schedule 2 of these Call-off 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 of these Call-off 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 Goods 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 of this Schedule 2 of these Call-off 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 of these Call-off Terms and Conditions, 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 or gained during the performance of a Call Off Contract;
- 1.1.2 the provisions of Clause 1 of this Schedule 3 of these Call-off Terms and Conditions 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 of these Call-off Terms and Conditions 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 of these Call-off Terms and Conditions.

- 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 of these Call-off Terms and Conditions 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 of these Call-off Terms and Conditions, 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 of these Call-off Terms and Conditions 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 information governance toolkit;

2.4.2 achieve a minimum level 2 performance against all requirements in the relevant NHS information governance 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, but not limited to, 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 the 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 of these Call-off Terms and Conditions, 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 of these Call-off Terms and Conditions, 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 of these Call-off Terms and Conditions, 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 of these Call-off Terms and Conditions, the Supplier shall:
 - 4.1.1 notify the Authority forthwith of any information security breaches or near misses (including without limitation any potential or actual breaches of confidentiality or actual information security breaches) in line with the Authority's information governance Policies; and
 - 4.1.2 fully cooperate with any audits or investigations relating to information security and any privacy impact assessments undertaken by the Authority and shall provide full information as may be reasonably requested by the Authority in relation to such audits, investigations and assessments.
- 4.2 Where required in accordance with the Specification 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 the Specification and Tender Response Document.
- 4.3 Where required in accordance with the 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 the Specification and Tender Response Document.

Schedule 4 of these Call-off Terms and Conditions**Definitions and Interpretations****1 Definitions**

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

“Actual Services Commencement Date”	means the Commencement Date, as defined in Section 1.1 of the Order Form, of the Services defined within this Contract as at the signature date of the Contract.
“Agreement”	means the Order Form, the provisions on the front page and all Schedules of these Call-off Terms and Conditions, the Specification and Tender Response Document and the applicable provisions of the Framework Agreement;
“Authority”	means the authority named on the Order Form;
“Authority’s Obligations”	means the Authority’s further obligations, if any, referred to in the Specification and Tender Response Document and/or the Order Form;
“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;
“Business Continuity Event”	means any event or issue that could impact on the operations of the Supplier and its ability to supply the Goods 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 Goods 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”	the Cabinet Office Statement of Practice – Staff Transfers in the Public Sector 2000 (as revised 2013) as may be amended or replaced;

“Call-off Terms and Conditions”	means these Call-off Terms and Conditions for the Supply of Goods and the Provision of Services;
“Change Control Process/Procedure”	means the change control process defined at Annex A to the Order Form;
“Codes of Practice”	shall have the meaning given to the term in Clause 1.2 of Schedule 3 of these Call-off Terms and Conditions;
“Commencement Date”	means the start date of this Order Form, and the commencement of the Services;
“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 the 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 <p>Policies and such other documents which the Supplier may obtain or have access to through the Authority’s intranet;</p>
“Contract”	means the Order Form, the provisions on the front page and all Schedules of these Call-off Terms and Conditions, the Specification and Tender Response Document and the applicable provisions of the Framework Agreement;
“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;
“Contract Manager”	means for the Authority and for the Supplier the individuals specified in the Order Form or as otherwise agreed between the Parties in writing or such other person notified by a Party to the other Party from time to time in accordance with Clause 8.1 of Schedule 2 of these Call-off Terms and Conditions;
“Contract Price”	means the price exclusive of VAT that is payable to the Supplier by the Authority under the Contract for the full and proper performance by the Supplier of its obligations under the Contract calculated in

	accordance with the provisions of the Framework Agreement and as confirmed in the Order Form;
“Controller”	shall have 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 Service Failure”	<p>is when:</p> <ol style="list-style-type: none"> 1. There is a delay of 6 calendar months in the delivery of a non-critical milestone that is within a fixed price Contract Changes, that is due to the fault of the supplier, unless revised delivery dates have been agreed between the parties. 2. There is a delay of 3 calendar months in the delivery of a critical milestone that is within a fixed price Contract Changes that CR, that is due to the fault of the supplier, unless revised delivery dates have been agreed between the parties. 3. 15% Service Credits have been gained in more than 2 monthly reporting periods of any rolling 3-month period. <p>(warranty substitution) Where severity 1 or 2 fix SLAs have not been met for 3 consecutive months.</p>
“Data Protection Legislation”	means (i) the Data Protection Act 1998 or, from the date it comes into force, 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 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 the Order Form;
“Defective Goods”	has the meaning given under Clause 3.6 of Schedule 2 of these Call-off 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 Goods and/or Services, any matters of contractual construction and interpretation relating to the Contract, or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
“Dispute Notice”	means a written notice served by one Party to the other stating that the Party serving the notice believes there is a Dispute;
“Dispute Resolution Procedure”	means the process for resolving Disputes as set out in Clause 22 of Schedule 2 of these Call-off Terms and Conditions;
“DOTAS”	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
“Electronic Trading System(s)”	means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as the Authority may specify from time to time;
“Employment Liabilities”	means all claims, demands, actions, proceedings, damages, compensation, tribunal awards, fines, costs (including but not limited to reasonable legal costs), expenses and all other liabilities whatsoever;
“Environmental Regulations”	shall have the meaning given to the term in Clause 1.2 of Schedule 3 of these Call-off Terms and Conditions;
“eProcurement Guidance”	means the NHS eProcurement Strategy available via: http://www.gov.uk/government/collections/nhs-procurement

	together with any further Guidance issued by the Department of Health in connection with it;
“Equality Legislation”	means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998;
“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);
“FOIA”	shall have the meaning given to the term in Clause 1.2 of Schedule 3 of these Call-off Terms and Conditions;
“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 Goods and/or to provide the Services, but which is not confined to the workforce of the Supplier or the workforce of any Sub-contractor of the Supplier; and

	<p>(i) a failure in the Supplier's and/or Authority's supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties;</p> <p>but excluding, for the avoidance of doubt, the withdrawal of the United Kingdom from the European Union and any related circumstances, events, changes or requirements;</p>
"Framework Agreement"	means the Framework Agreement referred to in the Order Form;
"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"	<p>means:</p> <p>(a) the legislation in Part 5 of the Finance Act 2013; and</p> <p>(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;</p>
"Good Industry Practice"	means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier and/or service provider engaged in the manufacture and/or supply of goods and/or the provision of services similar to the Goods and Services under the same or similar circumstances as those applicable to this Contract; including in accordance with any codes of practice published by relevant trade associations;
"Goods"	means all goods, materials or items that the Supplier is required to supply to the Authority under this Contract;

“Guidance”	means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Goods and/or Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Authority and/or have been published and/or notified to the Supplier by the Department of Health, Monitor, NHS England, the Medicines and Healthcare Products Regulatory Agency, the European Medicine Agency, the European Commission, the Care Quality Commission and/or any other regulator or competent body;
“Halifax Abuse Principle”	means the principle explained in the CJEU Case C-255/02 Halifax and others;
“HM Government Cyber Essentials Scheme”	means the HM Government Cyber Essentials Scheme as further defined in the documents relating to this scheme published at: https://www.gov.uk/government/publications/cyber-essentials-scheme-overview ;
“Implementation Plan”	means the implementation plan, if any, referred to in the Key Provisions;
“Implementation Requirements”	means the Authority’s implementation and mobilisation requirements (if any), as may be set out in the Specification and Tender Response Document and/or otherwise as part of this Contract, which the Supplier must comply with as part of implementing the Services;
“Intellectual Property Rights”	means all patents, copyright, design rights, registered designs, trademarks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trademarks and registered designs;
“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;
“Key Provisions”	means the key provisions set out in Schedule 1 of these Call-off Terms and Conditions and/or as part of the Order Form;

“KPI”	means the key performance indicators as set out in the Specification and Tender Response Document and/or the Order Form, if any;
“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, byelaw, order, regulation or instrument as applicable in England and Wales; (b) any applicable European Union obligation, directive, regulation, decision, law or right (including any such obligations, directives, regulations, decisions, laws or rights that are incorporated into the law of England and Wales or given effect in England and Wales by any applicable statute, proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument); (c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972; (d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales; (e) requirements set by any regulatory body as applicable in England and Wales; (f) any relevant code of practice as applicable in England and Wales; and <p>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 the Specification and Tender Response Document;
“NHS”	means the National Health Service;
“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;

	<p>(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</p> <p>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 Effective Date or to a civil penalty for fraud or evasion;</p>
“Open Book Data”	<p>means complete and accurate financial and non-financial information which is sufficient to enable the Supplier to verify the Sub-Contract Charges already paid or payable and Sub-Contract Charges forecast to be paid during the remainder of the Sub-Contract, including details and all assumptions relating to:</p> <ul style="list-style-type: none"> a) the Sub-Contractor's costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software; b) operating expenditure relating to the provision of the Goods and/or Services including an analysis showing: <ul style="list-style-type: none"> i) the unit costs and quantity of consumables and bought-in services; ii) manpower resources broken down into the number and grade/role of all Sub-Contractor Personnel (free of any contingency) together with a list of agreed rates against each manpower grade; iii) a list of costs underpinning those rates for each manpower grade, being the agreed rate less the Sub-Contractor's profit margin; and iv) Reimbursable Expenses; c) overheads; d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services; e) the Sub-Contractor profit achieved over the Sub-Contract Period and on an annual basis; f) confirmation that all methods of cost apportionment and overhead allocation are consistent with and not more onerous than such methods applied generally by the Sub-Contractor; g) an explanation of the type and value of risk and contingencies associated with the provision of the Goods and/or Services, including the amount of money attributed to each risk and/or contingency; and <p>the actual costs profile for each Service Period.</p>

“Order Form”	means the order form for the Goods and/or Services issued by the Authority in accordance with the Framework Agreement;
“Party”	means the Authority or the Supplier as appropriate and Parties means both the Authority and the Supplier;
“Personal Data”	shall have the same meaning as set out in the GDPR;
“Policies”	means the policies, rules and procedures of the Authority and or the Supplier as specified in this Order Form;
“Premises and Locations”	has the meaning given under Clause 4.1 of Schedule 2 of these Call-off Terms and Conditions;
“Process”	shall have the same meaning as set out in the GDPR. Processing and Processed shall be construed accordingly;
“Processor”	shall have the same meaning as set out in the GDPR;
“Product Information”	means information concerning the Goods as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 20 of Schedule 2 of these Call-off Terms and Conditions for inclusion in the Authority’s product catalogue from time to time;
“Rejected Goods”	has the meaning given under Clause 3.2 of Schedule 2 of these Call-off Terms and Conditions;
“Relevant Tax Authority”	means HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
“Remedial Proposal”	has the meaning given under Clause 15.3 of Schedule 2 of these Call-off Terms and Conditions;
“Requirement to Recall”	has the meaning given under 3.9 of Schedule 2 of these Call-off Terms and Conditions;
“Services”	means the services set out in this Contract;

“Services Information”	means information concerning the Services as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 20 of Schedule 2 of these Call-off Terms and Conditions for inclusion in the Authority’s services catalogue from time to time;
“Specification and Tender Response Document”	means the Specification and Tender Response Document set out in Schedule 6 of this Order Form and as amended and/or updated in accordance with this Contract;
“Staff”	means all persons employed or engaged by the Supplier to perform its obligations under this Contract including any Sub-contractors and person employed or engaged by such Sub-contractors;
“Sub-contract”	means a contract between two or more suppliers, at any stage of remoteness from the Supplier in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of the whole or any part of this Contract;
“Sub-contractor”	means a party to a Sub-contract other than the Supplier;
“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 services fundamentally the same as the 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”	means the supplier named on the Order Form;

“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 Personnel”	means any employee, agent, consultant and/or contractor of the Supplier or Sub-contractor who is either partially or fully engaged in the performance of the Services;
“Term”	means the term as referred to in the Key Provisions;
“Termination Notice”	means a written notice of termination given by one Party to the other notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;
“Third Party”	means any supplier of services fundamentally the same as the Services (either in whole or in part) immediately before the Transfer Date;
“Third Party Body”	has the meaning given under Clause 8.5 of Schedule 2 of these Call-off Terms and Conditions;
“Transfer Date”	means the Actual Services Commencement 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; and
“VAT”	means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax.

- 1.2 References to any Law shall be deemed to include a reference to that Law as amended, extended, consolidated, re-enacted, restated, implemented or transposed from time to time.
- 1.3 References to any legal entity shall include any body that takes over responsibility for the functions of such entity.
- 1.4 References in this Contract to a “Schedule”, “Appendix”, “Paragraph” or to a “Clause” are to schedules, appendices, paragraphs 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 the Contract as a chargeable item and subject to Clause 30.6 of Schedule 2 of these Call-off 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 requirements set out in the 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 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.

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.

Schedule 5 of these Call-off Terms and Conditions

Accompanying Terms and Conditions

NOT USED

Schedule 6 of these Call-off Terms and Conditions

Specification and Tender Response Document

This Schedule includes the following:

- i) HMRC specification/requirements document – annotated with the Supplier's comments
- ii) IBM solution document
- iii) DMS licence document (contracted under Technology Products in 2016. Restated for information only)
- iv) IBM Software Licence list
- v) Baseline Security Requirements
 - ANNEX 1 - IBM security questionnaire response

i) HMRC specification/requirements document – annotated with the Supplier's comments

CDP CONTRACT RENEWAL - CUSTOMER REQUIREMENTS

The original CDP (Customs Declaration Processing) contract was for the implementation of a new core customs workflow system at the heart of CDS including support.

The Customer wish to continue to use DMS as the core component of CDS for the duration of this Order Form. DMS is an Enterprise, perpetual licence, therefore the Customer requires continued support of the product and use of goods and services provided as part of the supplier solution under this contract. In addition, the customer requires development, integration, implementation, and support for change, including functional and non-functional requirements, throughout the operation and evolution of CDS over the duration of this Order Form to meet the Customer business and IT strategic objectives.

1.	DMS SUPPORT (billed quarterly service)
1.1	Support and maintain DMS and related modules, developed or to be developed, as agreed with the Customer including Microflows.
1.2	DMS support required to operation the CDP solution in Pre-Production and Live in line with the current arrangement.
1.3	DMS support in line with current Incident Management processes, service levels, KPIs and service credit regime, this includes the enhanced SLAs agreed under CR085/Variation 139 by the Customer live-services. These SLA changes brought DMS in-line to the other major technical components managed by live-services.

1.4	Provide UCC alignment by delivering to the Customer DMS changes driven by EU legislation as validated and requested by UK policy.
1.5	Deliver the UCC-driven policy changes in 1.4 above within the timescales agreed by both parties.
1.6	The supplier is responsible for fixing/patching any security vulnerabilities discovered during penetration testing or otherwise.
1.7	Support and maintenance of DMS in line with, and to de-risk any future upgrades to, Red Hat for the DMS product.
2.	IBM LICENCES AND SUPPORT
2.1	Required to operation the CDP solution in all environments including but not limited to Live, Test, Training, Trade Test, Acceptance Test, Supplementary Test and Disaster Recovery.
2.2	Unlimited, Enterprise, perpetual licence and support for the infrastructure components already in operation, these include Websphere, (WAS), BPM, MQ. The supplier should provide in their response full detail of the unlimited arrangement proposed.
2.3	The supplier must make it clear what software consumption, monitoring, reporting and audit requirements are the responsibility of the customer under the unlimited arrangement.
3.	PROFESSIONAL SERVICES (discretionary)
3.1	Professional services are limited to experts in DMS and DMS related modules, IBM's software delivered as part of the supplier's solution.
3.2	Unless otherwise required by the customer, the current CDP change control arrangement to 'call-off' services is expected to be adopted. Spend is as the customer's discretion within the scope of this contract. The supplier's proposal for services will be based on the supplier's previously benchmarked rate-card.
3.3	The supplier has responsibility for delivering outcomes to time, quality and cost. the Customer engage, unless exceptionally agreed, outcomes based, fixed price, vfm transparent, professional service agreements called-off from this contract and fully managed and delivered by the supplier. The supplier is wholly responsible for their workforce and deployment.
3.4	Failure to meet agreed milestones contained in professional services agreements or call-off under this contract will be treated in accordance with a service level and KPI which may incur service credits. Continued failure may be treated as critical service level failure leading to termination for material breach.
3.5.	Services may include, but are not limited to:

3.5.1	Continuation of the Declaration Management Service delivering performance, functional and operational improvements and support in relation to Delivery Architecture, Business Architecture, Delivery Management and Integration.
3.5.2	Accommodate required business changes for example iterating business rules for GB/ ROW and Northern Ireland Protocols, alignment with EU MASP (Multi-Annual Strategic Plan) for Standardisation of Customs, compliance with EU Union Customs Code (UCC).
3.5.3	<p>Continuation of IBM Development Engine (IDE) to changes and uplifts DMS related components delivered, initial ILE and CDA component and more recently DOS, Case Emulator, Event Co-ordinator as well as potential future DMS related components required by the customer.</p> <p>Provide knowledge transfer to enable the Customer to take over live support of implemented components.</p>
3.5.4	<p>Continuation of non-functional and scaling of DMS as part of IBM's commitment to scale DMS to achieve agreed performance levels within the milestones already agreed, although not contracted, by the parties.</p> <p>The Customer require additional assurances of DMS capacity to handling expedient growth in declarations anticipate as part of economic and legislative changes and the migration of Traders from CHIEF to CDS.</p>
3.5.5	Lead technical working group between the Customer, AWS and IBM in relation to the scaling and NFR commitment.
3.5.6	Continue to deliver DMS application changes by way of the CR process in line with UK and NI legislative and policy driven requirements.
3.5.7	Capability to fast-track analysis, impacting, change or development to allow the Customer to respond rapidly to minor, urgent, unplanned demands outside the standard contract change process. This new requirement should also aim to reduce the administrative overhead and timeline whilst satisfying the customer's financial and business governance.
3.5.8	Option to create, operate or support an academy model to enable the customer to grow in-house capability, knowledge, self-sufficiency. This is a new requirement we may seek to adopt in future.
4.	OTHER REQUIREMENTS
4.1	Future evolutions of DMS and related components including licensing, development, integration, implementation and support.
4.2	Deployment automation of the DMS product and IBM technical stack must be adherent to CDS I&T documented standards, automation code will be subject to monthly playbook reviews in the short term followed by knowledge transfer into the Customer.
4.3	The supplier is responsible for fixing/patching any security vulnerabilities discovered during penetration testing or otherwise.

4.4	the Customer may require supplier personnel to collaborate with the Customer and 3 rd party personnel and share, impart and transfer knowledge.
4.5	Supplier personnel are required to work remotely, or as required by the customer, at the customer's premises in Southend or London. Such arrangements should incur not additional charge by the supplier.
4.6	As part of Cabinet Office Transparency initiatives, the Customer may publish performance against the key KPIs.
4.7	The Customer may wish to manage SCC and/or IBM as strategic suppliers where additional governance and transparency maybe expected, this is known as being a Tier 1 or Tier 2 supplier. The level of engagement by both parties will depend on the tiering based on factors such as criticality, risk and spend. Provisions will be incorporated into the contract T&Cs and may need to be adapted throughout the contract life.
4.8	As is common for its strategic suppliers, the Customer may wish to conduct a benchmark and/or open book arrangements in relation to the supply of professional services. Both the supplier and sub-contractor are expected to participate fully. As under the CDP contract, a benchmark will determine the contract's VFM, best VFM is defined as being within top quartile for the industry.
4.9	As was the arrangement under the CDP contract, the supply-chain is prevented publishing details of this contract, nor issuing press releases, or use of the customer's name or logos to publicise, promote or endorse themselves.
4.10	The supplier will be expected to comply with current and future Government Procurement initiatives concerning, but not limited to, Corporate and Social Value and Responsibilities, Environmental and Carbon Reduction plans.
4.11	The NHS framework call-off must incorporate the Customer mandatory requirements concerning tax compliance, office-shore tax structures, data protection and off-shoring, confidentiality, official secrets and other security policies.
4.12	The Customer will issue a Security Questionnaire for the supplier and/or sub-contractor to complete, review together and agreed prior to contract signature.
4.13	Application and continuation of current CDP service level management, KPIs, service credits, critical service level failure.



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