**CALL-OFF TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES**

Where an Order Form is issued by the Customer that refers to the Framework Agreement and this Contract, this Contract is made between the Customer and the Supplier on the date specified on that Order Form. This Contract is subject to the terms set out below.

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

The Supplier shall supply to the Customer, and the Customer shall receive and pay for, the Goods and/or Services on the terms of this 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 and/or Services covered by a valid Order Form.

The Definitions in Clause 1 shall apply to the use of all capitalised terms in this

Contract.

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# INTERPRETATION

## The terms and conditions set out herein (“are additional to the terms and conditions set out in the Framework Agreement (defined below).

## Words denoting the singular shall include the plural and vice versa.

## As used herein unless the context otherwise requires, the masculine includes the feminine and vice versa.

## Definitions. Save where otherwise provided below, the capitalised terms used within this Contract shall bear the same meaning as set out in the Framework Agreement Terms.

|  |  |
| --- | --- |
| **Acceptance Date** | means the date upon which Acceptance Criteria are met in accordance with Clause 19.7.1. |
| **Acceptance Completion Date** | means any date, contained in the Timetable under the provisions of sub-Clause 4.1, by which the Supplier undertakes to have met Acceptance Criteria; |
| **Acceptance Criteria** | means the criteria for the System or Sub-system or any Deliverable or Task as specified in the Order Form; |
| **Acceptance Test** | means a test or sequence of tests specified in the Order Form to establish, by compliance with Acceptance Criteria, that the System, any Sub-system, the Hardware and/or Software conform to the relevant Supplier Undertakings; |
| **Allowable Assumptions** | means the assumptions set out in the Order Form which the Supplier is permitted to use in order to inform its due diligence; |
| **Anti-Bribery Laws** | means applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010; |
| **Appendix** | means an appendix to an Attachment, and “Appendices” shall be construed accordingly; |
| **Approved Subcontractor** | means a subcontractor which is: set out in the Order Form; oris otherwise sub-contracted by the Supplier in accordance with the terms of this Contract; |
| **Attachment** | means an attachment to the Order Form that is labelled as such, including its Appendices if any; |
| **Authorised Officer** | means an individual specified in the Order Form who is designated by each Party as its official representative for the purposes of liaison, communication and resolution of issues between them; |
| **BCDR Plan** | means any plan prepared pursuant to Schedule H (Business Continuity and Disaster Recovery, as may be amended from time to time; |
| **Benchmark Review** | shall be as further described in Schedule F (Benchmarking); |
| **Breach of Security** | means the occurrence of unauthorised access to or use of the any of the Customer’s premises, the Locations, the Services, the Supplier System or any information and communications technology or data (including the Customer's Data) used by the Customer or the Supplier in connection with this Contract; |
| **Business Continuity Plan** | has the meaning set out in Paragraph 1.2.1 of Schedule H (Business Continuity and Disaster Recovery); |
| **Change** | has the meaning set out in Clause 5.3; |
| **Charges or Contract Charges** | means the total sum set out in the Order Form which shall remain fixed unless otherwise provided for therein, to be paid by the Customer to the Supplier for the supply of all Deliverables and/or the completion of Tasks, as applicable; |
| **Commencement Date** | means the effective date of this Contract as set out in the Order Form; |
| **Contractual Date** | means any date specified for the fulfilment of Contractual obligations in the Timetable, which is identified as a Contractual Date therein or otherwise stated to be a Contractual Date in sub-Clause 4.1; |
| **Contract Reference Number** | means the number stated on the Order Form, which shall be quoted in all communications under the Contract including invoices; |
| **Crown Body** | means any department office or agency of the Crown; |
| **CSR Laws** | means Laws relating to corporate social responsibility issues (e.g. anti-bribery and corruption, health and safety, the environmental and sustainable development, equality and diversity), including but not limited to the Modern Slavery Act 2015, the Public Services (Social Value) Act 2012, the Public Contracts Regulations 2015 and Article 6 of the Energy Efficiency Directive 2012/27/EU, from time to time in force; |
| **Customer** | means the customer named on the Order Form; |
| **Customer Background IPR** | means IPR owned by or licensed to the Customer and developed independently of the Contract whether developed before or after the Commencement Date; |
| **Customer Data** | means:  (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:  (i) supplied to the Supplier by or on behalf of the Customer; or  (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Supplier  (b) any Personal Data for which the Customer is the Data Controller; |
| **Customer Requirements** | means the requirements of the Customer as set out in the Tender Documentation, and Attachment 1 and Attachment 2 to the Order Form; |
| **Customer Responsibilities** | means those responsibilities set out in the Order Form; |
| **Customer Software** | means Software listed in Paragraph 1 of Appendix 2 to Attachment 1 to the Order Form to be provided by the Customer for Use on or with any Deliverable and for which the Customer takes responsibility except as specified in the Supplier Undertakings; |
| **Customer System** | means the Customer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Customer or the Supplier in connection with this Contract which is owned by or licensed to the Customer by a third party and which interfaces with the Supplier System or which is necessary for the Customer to receive the System; |
| **Data Protection Legislation** | (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (iiii) all applicable Law about the processing of personal data and privacy; (iv) all applicable guidance and codes of conduct issued by the Information Commissioner and/or European Data Protection Board from time to time. |
| **Default** | means any breach of the obligations of either Party, (including but not limited to fundamental breach or breach of a fundamental term), or any default, act, omission, negligence or statement of either Party, its employees, agents or sub- contractors in connection with or in relation to the subject matter of the Contract and in respect of which such party is liable to the other hereunder; |
| **Deliverable(s)** | means the deliverables required to be provided to the Customer under this Contract as are more particularly detailed in Attachment 1 to the Order Form (but excludes the Specially Written Software); |
| **Delivery Point** | means the location where Deliverables are to be delivered as specified in the Order Form; |
| **Disaster** | means the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Service is or will be unavailable for a period of 8 hours or which is reasonably anticipated will mean that the Services or a material part will be unavailable for that period; |
| **Disaster Recovery Plan** | has the meaning set out in Paragraph 1.2.2 of Schedule H (Business Continuity and Disaster Recovery); |
| **Disaster Recovery Services** | means the disaster recovery and/or business continuity services (as the context may require) to be provided by the Supplier pursuant to Schedule H (Business Continuity and Disaster Recovery); |
| **Disaster Recovery System** | means the system referred to at Schedule H which shall be used for the purpose of delivering the Disaster Recovery Service |
| **Disaster Recovery** | means the process of restoration of the Service by the provision of the Disaster Recovery Services; |
| **Documentation** | means all technical specifications, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:  (a) is required to be supplied by the Supplier to the Customer to enable the Customer to use the Services;  (b) is required by the Supplier in order to provide the Services; and  (c) would reasonably be required by a competent third party contracted by the Customer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Services. |
| **Expiry Date** | means the expiry date set out in the Order Form; |
| **Environmental Information Regulations** | means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations; |
| **Facilities** | means any or all of the Hardware, Software and any other facilities or equipment listed in Schedule A (Facilities) to be used by the Supplier in the provision of the Services; |
| **Framework Agreement** | means the agreement dated 3rd February 2021 and made between NHSSC and the Supplier as referred to in the Order Form; |
| **Force Majeure Event** | means an event or circumstance not within a Party’s reasonable control; |
| **Hardware** | means any hardware listed or computing Facility set out in the Order Form to be used by the Supplier in the provision of the Services. Hardware may include code which is an integral part of and required by such hardware to operate correctly (“internal code”); |
| **General Principles** | has the meaning set out in Paragraph 1.2 of Schedule H (Disaster Recovery and Business Continuity and Disaster Recovery Provisions); |
| **Guidance** | means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Goods and 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 Customer or NHS Supply Chain 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; |
| **Health Service Body** | means a health service body as defined in section 9 of the National Health Service Act 2006 or any NHS foundation trust listed in the register of NHS foundation trusts maintained pursuant to section 39 of that Act and NHSSC; NHS Customers; other NHS entities; any private sector entity which is active in the United Kingdom healthcare sector; or any government department, government agency or other statutory body; |
| **Information Assurance Standards** | the HMG Information Assurance Standards issued by the Cabinet Office as a supplement to the Manual of Protective Security; |
| **Initial Period** | means the initial period set out in the Order Form; or, if no initial period is stated in the Order Form, the initial period shall be one (1) year from the commencement of Services in accordance with Clause 2.1; |
| **Insurance** | means, considering the Supplier’s obligations under the Contract, appropriate and adequate insurance (which shall include self-insurance only if permitted by Attachment 6 of the Order Form against losses which result from the Supplier’s fault or negligence except those risks which are inherently incapable of being insured against; |
| **Intellectual Property or IPR** | 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; |
| **Law** | any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body; |
| **Location** | shall mean a Customer's building or location where Services will be used by the Customer and where Facilities, as identified in the Order Form, if any, are installed. Locations shall be identified in the Order Form; |
| **Materials** | means any literary works or other works of authorship, including Software, instructions, reports, specifications, drawings and similar works developed or produced by the Supplier, or any third party employed by it, for the performance of the Contract as separately identified in Appendix 2 to Attachment 1 of the Oder Form (but , for the avoidance of doubt, excluding the Deliverables); |
| **NHS Supply Chain** | means DHL Supply Chain Limited (registered number 00528867) whose registered office is at 251 Midsummer Boulevard, Central Milton Keynes, Milton Keynes, MK9 1EQ, acting as agent for Supply Chain Coordination Limited (registered number 10881715) whose registered office is at Skipton House, 80 London Road, London, United Kingdom, SE1 6LH; |
| **Operating Environment** | has the same meaning as Customer System; |
| **Order Form** | means an Order Form in such form and containing such terms and information as may be agreed between the Parties; |
| **Output Based Specification** | means the output based specification as set out in the Order Form; |
| **Parties** | means the Supplier and the Customer and "Party" shall be construed accordingly; |
| **Person** | means a partnership, firm, corporation or association, (whether incorporated or unincorporated) as well as a natural person; |
| **Personal Data** | has the meaning set out in Schedule G (Data Processing); |
| **Planned Acceptance Date** | means the date in the Timetable by which it is planned that the Supplier shall have met such criteria; |
| **Prohibited Act** | means to directly or indirectly offer, promise or give any person working for or engaged by a buyer or CCS a financial or other advantage to:   1. induce that person to perform improperly a relevant function or activity; 2. reward that person for improper performance of a relevant function or activity; or 3. commit any offence:    1. under the Bribery Act 2010    2. under legislation creating offences concerning Fraud    3. at common Law concerning Fraud; |
| **Project-Specific IPR** | means IPRs in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of the Contract except for IPR in the Deliverables (IPR in which, for the avoidance of any doubt, is allocated in accordance with Clause 8.2.10); |
| **Published Specification** | means the functional and technical specification of any product, including any item of Hardware or Software, which its manufacturer or developer publishes or makes generally available which is current at the date of execution of the Contract or, with the agreement of both Parties, current at the Acceptance Date of the Services; |
| **Recommended Items** | means the software items recommended by the Supplier as set out in Paragraph 4 of Appendix 2 to Attachment 1 of the Order Form); |
| **Regulatory Body** | those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Customer; |
| **Related Supplier** | any person who provides services to the Customer in relation to the subject matter of this Contract from time to time which persons include without limit as at the date of this Contract those persons identified as such in the Order Form; |
| **Related Company** | means any subsidiary, holding company or company with a holding company in common as defined in section 1109 of the Companies Act 2006; |
| **Remediation Plan** | means a plan which:   1. is provided by a breaching Party within [5] Working Days of being notified of its breach by the non-breaching Party; and 2. is agreed by the non-breaching Party; and 3. sets out the actions that will be taken by the breaching Party in order to remedy a breach of which it has been notified by the non-breaching Party; and 4. sets out the timescales in which such actions will be taken; |
| **Replacement Supplier** | means any third party supplier appointed by the Customer to provide services substantially similar to the Services; |
| **Security Plan** | the Supplier's security plan prepared pursuant to Schedule E (Security Requirements) an outline of which is set out in Appendix 1 of Schedule E (Security Requirements); |
| **Security Policy** | the Customer's security policy annexed to Schedule E (Security Requirements) as updated from time to time; |
| **Security Policy Framework** | The HM Government Security Policy Framework (available from the Cabinet Office); |
| **Services** | any and all services provided under the terms of this Contract including but not limited to the provision of the System, those services referred to in the Order Form and Clause 3 of this Contract, and the Support Services; |
| **Service Levels** | means the standards of service or service objectives specified in Attachment 5 to the Order Form which the Supplier is required to achieve in the performance of the Services details of which are contained in the Order Form; |
| **Software** | means Customer Software, Supplier Software, Third Party Software, any Recommended Items, or any of them, listed as such in the Order Form; |
| **Source Code** | means any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Contract; |
| **Specification** | means the Specification as set out in the Order Form, including the Published Specification and Output Based Specification as applicable; |
| **Staff Vetting Procedures** | means the Customer’s procedures and departmental policies for the vetting of personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures, including, but not limited to, the provisions of the Official Secrets Act 1989; |
| **Step-in Event** | (a) the Supplier is in material breach of the Service Levels for a consecutive period of six (6) months;  (b) the Customer has reasonable grounds for believing that the Supplier is unable to deliver the Services, or that those Services will be in material breach of the Service Levels;  (c) a Force Majeure Event occurs that materially prevents or materially delays the performance of the Services or a substantial part of the Services by the Supplier for a consecutive period of 180 days;  (d) the Supplier undergoes a change of control;  (e) the Customer is required by a Regulatory Body that the exercise by the Customer of its rights under Clause 22.10 (Step-in rights) is necessary; or  (f) a condition occurs that triggers the Customer's right to terminate the Contract under Clause 11 (Termination) or otherwise in accordance with the terms herein; |
| **Sub-system** | means a part of the System identified in the Order Form as a separate, logical entity which shall deliver the function and performance specified in the Supplier Undertakings in relation to it; |
| **Supplier Personnel** | means any person employed or engaged by or on behalf of the Supplier from time to time and who is engaged in the performance of the Supplier’s obligations under this Contract including its employees, contractors, subcontractors, agents and representatives; |
| **Supplier Premises** | means any Supplier's building or location where Facilities are installed for the purposes of providing the Services; |
| **Supplier** | means the supplier named on the Order Form who undertakes the obligations specified in Clause 3, its successors and permitted assignees; |
| **Supplier Background IPR** | means IPR owned by or licensed to the Supplier and developed independently of the Contract whether developed before or after the Commencement Date; |
| **Supplier Software** | means the Software which is listed in Paragraph 2 of Appendix 2 to Attachment 1 of the Order Form to be supplied by the Supplier for use in the provision of the Services and any Third Party Software which is supplier by, or recommended by, the Supplier; |
| **Supplier System** | the information and communications technology system used by the Supplier in performing the Services including any software, the hardware, computer and telecoms devices and equipment supplied by the Supplier or its Sub- contractors (but not hired, leased or loaned from the Customer) for the provision of the Services and related cabling (but excluding the Customer System); |
| **Supplier Undertakings** | means the statements and undertakings contained in the Order Form which specify:  (a) the functions and performance of the System that the Supplier undertakes to meet in all material respects;  (b) the elements of the environment in which the System will operate that the Supplier undertakes to provide, if any, as set out in the Order Form;  (c) implementation responsibilities in respect of such Services as the Supplier undertakes;  (d) any other services the Supplier undertakes to perform as set out in the Order Form, which may or may include any Support Services; and  (e) Tasks to be undertaken by the Supplier, if any, to enable the Customer’s Use of the System with the Functions and performance referred to in (a) above in the environment referred to in (b) above),  and for the avoidance of doubt, for any such undertakings to be met,. no action shall be required by the Supplier or Customer including but not limited to customisation, tailoring, setting up of parameters, or other personalization in order for the System, any Sub-system, or Deliverable to conform with the Specification unless any such action is appropriately set out in the Order Form and any actions for which the Customer is or will be responsible is set out as a Customer Obligation; |
| **Support Service** | means any ongoing support service or Tasks, including but not exclusively Hardware maintenance and / or Software maintenance and support and any other Support Services as specified in the Supplier's Undertakings; |
| **Support Service Term** | means the term of the Support Services as set out in the Order Form; |
| **System** | means the combination of Hardware and Software working together the deliver the function and performance specified in the Specification; |
| **Task** | means any discrete item of work identified in the Supplier’s Undertakings to be performed by the Supplier in accordance with any Acceptance Criteria (where applicable); |
| **Term** | the period from the Commencement Date to the Expiry Date as may be varied by earlier termination or extension in accordance with the terms of the Contract; |
| **Termination Trigger Period** | means the number of days specified in the Order Form; |
| **Terms and Conditions** | means these terms and conditions; |
| **Third Party IPR** | means Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software; |
| **Third Party Software** | means any software listed in Paragraph 3 of Appendix 2 to the Order Form of the Order Form together with all other software which is not listed in the Order Form which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which is or will be used by the Supplier for the purposes of providing the Services); |
| **Timetable** | means the timetable for the provision of the Services as contained in Attachment 4 of the Order Form |
| **Transition Project** | means a project to achieve the transfer of responsibility for the provision of Services between the Parties with the minimum disruption to processing the Customer’s workload in accordance with Clause 18 whether at the commencement of the Services (the assumption of responsibility by the Supplier for the provision of Services) or on discontinuance of Services by the Customer (transfer of responsibility between the Supplier and the Customer or its third-party Supplier); |
| **TUPE** | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and any subsequent amendment or statute replacing such regulations as it shall apply to the Contract in accordance with Clause 25; |
| **Use** | means the right of the Customer, insofar as such meaning shall not adversely affect the Customer's right to utilise Software in accordance with the Software Directive:  a) to load, execute, store, transmit, display (for the purposes of loading, storing, transmission and displaying) or otherwise utilise Software only for the purposes of processing data owned by or under the control of the Customer; and  b) to copy Software (for archival and back- up purposes).  c) use of Software shall be subject to the provisions of this Contract and any licence granted hereunder; |
| **Virus** | means any computer code intended to corrupt, destroy or otherwise damage or interfere with the use of Software or other Software or data owned by or under the control of the Customer whether such Software is introduced wilfully or negligently and "Viruses" shall be construed accordingly; and |
| **Working Day** | any day other than a Saturday, Sunday or public holiday in England and Wales. |

## Reference to Clauses and Schedules herein are references to the Clauses and schedules of the Contract. In the event of any conflict or inconsistency between the Clauses and Schedules, the Clauses shall prevail over the Schedules.

## References herein to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

## If any provision of the Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence good faith negotiation to remedy such invalidity.

## 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.

## Subject to Clause 24, the Parties accept the exclusive jurisdiction of the English courts and agree that the Contract and any non-contractual dispute arising out of or in connection with it shall be governed by and construed according to English Law.

# CONTRACT DURATION

## The Contract shall commence on the Commencement Date and shall (subject to earlier termination in accordance with its terms) remain in force until the Expiry Date.

## Not used.

# **OBLIGATIONS OF THE SUPPLIER**

## The Supplier:

### shall:

#### meet the Supplier Undertakings and perform the Services in accordance with the Customer Requirements and the Published Specification, and fulfil all its other obligations under the Contract in accordance with the Timetable, in consideration of which the Customer shall pay the applicable Charges;

#### provide the Software, Deliverables, Support Services, and perform any Task to enable the customer to Use the System with the functions and Performance set out in the Specification; and

#### grant the Supplier Software Licence(s).

### agrees to work together with the Customer during the Term to achieve innovative and continuous improvement in the quality and value of the Services including the way in which the Services are supplied and to achieve the lowest possible price for the Services;

### shall:

#### comply with all of the procedures referred to in Schedule E (Security Requirements), as reasonably updated from time to time where such updates are notified to the Supplier in writing;

#### (save where expressly agreed otherwise by both Parties in writing) provide, at its own expense, all staff, equipment, tools, appliances, materials or items required for the provision of the Services;

#### ensure that all computer systems and/or Hardware and/or Software used in the performance or delivery of the Services are free from corrupt data, Viruses, works and any other programs which will or might cause harm or disruption to the Customer's business;

#### ensure that it does not do or fail to do any thing which will or could cause any interruption, interference or otherwise deleterious effect on the discharge by the Customer of its statutory duties and/or any functions undertaken by the Customer;

#### perform its obligations in a professional and co-operative manner and as might reasonably be expected not to harm the reputation of the Customer or that of any other person who may provide services to or on behalf of the Customer, from time to time;

#### Not used;

#### maintain and keep up to date comprehensive solution design documentation and business process manuals relevant to the provision of the Services hereunder and promptly make those available to the Customer at any time upon written request for the same; and

#### prepare and maintain an Exit Plan in accordance with Schedule J (Exit Plan);

### Not used;

### Not used;

### Not used;

### expressly agrees that it shall be solely responsible for ensuring that it has in place at all times during the term of this Contract all necessary permissions, consent and licences to enable it to use all Software to enable it to provide the Services to the Customer;

### provide such education and training for the Customer’s personnel as is sufficient to allow, in conjunction with the Documentation, proper Use, operation, and management of the System and Deliverables by appropriately qualified personnel which have access to such training and Documentation. For the avoidance of doubt, “appropriately qualified” shall mean a generally accepted level of ability, education and experience required for such Tasks and shall not refer to any particular personnel of the Customer; and

### supply the Documentation.

## **Quality management**

### The Supplier shall apply the quality management system, described in the Order Form, to all its operations related to performance of the Contract. Such quality management system shall adhere to the quality standards and requirements specified in the Supplier Undertakings or, where no such standards or procedures are specified therein, to good practices recognised in the information systems industry in relation to quality.

### If through no fault of the Customer, the Supplier materially fails to adhere to the Timetable, the Customer may request the Supplier to provide a written, quality assurance report of its operation of the quality management system referred to in sub-Clause 3.2.1 above in respect of its performance of the Contract and the Supplier shall provide a plan for the implementation of any appropriate remedial actions recommended therein.

### The quality assurance report referred to in sub-Clause 3.2.2 above shall be delivered to the Customer within thirty (30) days of being so requested or within any period stated in such request and agreed by the Supplier and shall be prepared by a Person appropriately qualified in quality assurance techniques who shall be appointed by the Supplier with the approval of the Customer, such approval not to be unreasonably withheld or delayed.

## **Supplier’s Due Diligence**

### The Supplier acknowledges that, subject to the Allowable Assumptions:

#### the Customer has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Contract (“Due Diligence Information”);

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

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

##### the Customer Requirements;

##### the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Commencement Date) future Operating Environment;

##### the operating processes and procedures and the working methods of the Customer;

##### the ownership, functionality, capacity, condition and suitability for use in the Services of the customer assets used in the delivery of the Services; and

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

#### it has advised the Customer in writing of:

##### each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;

##### the actions needed to remedy each such unsuitable aspect; and

##### a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions, and such actions, timetable and costs are fully reflected in this Contract, including the Services Description and/or Customer Responsibilities as applicable.

### The Supplier shall not be excused from the performance of any of its obligations under this Contract on the grounds of, nor, subject to Clause 3.3.3, shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:

#### any unsuitable aspects of the Operating Environment;

#### any misinterpretation of the Customer Requirements; and/or

#### any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

### The Parties shall comply with the provisions Schedule G (Data Processing) in relation to the verification of any Allowable Assumptions.

# TIME

## **Timetable**

### The Supplier shall implement the Services according to the Timetable. However, the Supplier shall not be liable for delay or failure to meet any dates specified in the Timetable unless such dates are stated therein or otherwise stated in sub-Clause 4.1.2 to be Contractual Dates.

### The Timetable is constructed relative to the Commencement Date, unless stated otherwise in the Timetable, and shall contain planned dates for major events in the implementation of the Services including:

#### a Planned Acceptance Date for the System and/or any Sub-systems and, as appropriate, Planned Acceptance Dates for any Deliverables or any Tasks that are subject to separate acceptance; and

#### an Acceptance Completion Date in respect of the System and/or any Sub-systems, and/or any Deliverables and/or Tasks which are subject to separate acceptance, which if no such date is specified in the Timetable, shall be thirty (30) days after the applicable Planned Acceptance Date. The Acceptance Completion Date for Services shall be a Contractual Date; and

for the avoidance of doubt, each Planned Acceptance Date and the Acceptance Completion Date for the Services shall be Contractual Dates.

### Delay or failure by the Supplier to meet any Contractual Date shall be subject to the provisions of Clause 9 (Delays).

### Without prejudice to the Customer's other rights and remedies, the Supplier agrees that the Customer shall be entitled to issue the Supplier with "Warning Notices", in accordance with the process and subject to the consequences, set out in Schedule B (Procedures Specified Under the Contract).

## **Extension of time**

### If the performance of the Contract by the Supplier is delayed by reason of Default by the Customer or by its employees or agents or by other contractors of the Customer, the Supplier shall be entitled to a reasonable extension of time and to any reasonable additional costs which it can show were directly incurred as a result of the delay, provided always that it advises appropriate Customer personnel in writing without undue delay and the Supplier has complied with sub-Clause 9.1.3(c) and has used all reasonable endeavours to mitigate the effects of the delay including the associated additional costs.

# CONTRACTUAL COMMUNICATIONS AND VARIATIONS TO THE CONTRACT

## **Notices**

### Any notice or other communication which the Customer or the Supplier is required or authorised by the Contract to serve on the other shall be sufficiently served if sent to the Authorised Officer of the other at the correspondence address specified in the Order Form for each Party:

#### by hand; or

#### by registered first class post or recorded delivery; or

#### by facsimile transmission confirmed by registered first class post or recorded delivery; or

#### by email, provided that a telephone call is made to the recipient warning them that an email has been sent to them and a hard copy of such notice is also sent by first class recorded delivery on the same day as that on which the email is sent.

### Notices sent by registered first class post or recorded delivery shall be deemed to be served three (3) working days following the day of posting. Notices sent by facsimile transmission shall be deemed to be served on the day of transmission if transmitted before 4:00 pm on a working day but otherwise on the next working day, provided that confirmation by registered post or recorded delivery is sent the same day. Provided the requirements of sub-Clause 5.1.1(d) have been met, notices sent by email, where such is an established means of communication between the Parties, shall be deemed to be served on the day of transmission if transmitted before 4:00 pm on a working day but otherwise on the next working day. In all other cases, notices and other communications will be deemed to have been served on the day they are actually received.

### All notices and other communications served hereunder shall quote the Contract Reference Number of the Contract (if one is present on the Order Form). Notices of termination served hereunder shall expressly refer to the Clause or sub-Clause under the provisions of which they are served.

## **Validity of Communications**

## No notice, approval, acceptance, waiver, consent or other communication by the Customer or the Supplier shall be valid unless made in writing and executed on behalf of the Party sending the communication by the Authorised Officer specified in the Order Form (Customer's responsibilities) for the Customer and in the Order Form (Supplier's other responsibilities) for the Supplier or on behalf of the relevant Authorised Officer by a Person delegated by him to serve such notice, approval, acceptance, waiver, consent or other communication.

## **Change control**

## The control of “Change” hereunder shall be in accordance with the change control principles and procedures laid down in Schedule B (Procedures Specified under the Contract). For these purposes, a Change includes any proposed amendment to the Contract, including the proposed assignment or sub-contracting of the Contract, whether in whole or in part. For each such change, which is agreed by the Customer and the Supplier, the Contract shall be amended using the form of amendment set out in Schedule B (Procedures Specified Under the Contract).

## **Benchmarking**

## The Customer may, by written notice to the Supplier and in accordance with Schedule F (Benchmarking), require a Benchmark Review of any or all of the Services under the Contract.

## **Assignment**

### The Contract is personal to the Supplier. Save as set out in Clause 5.6 the Supplier shall not assign, novate, sub-contract or otherwise dispose of the Contract or any part thereof or the benefit or advantage of the Contract or any part thereof without previous consent in writing of the Customer.

### Subject to the provisions of sub-Clause 5.5.3, the Customer shall have the right to assign, novate, sub-contract or otherwise dispose of its rights and obligations under the Contract provided that any such assignment, novation, subcontracting or disposal of the Contract shall not increase the burden on the Supplier of the obligations accepted by the Supplier under this Contract. Any resulting changes to the Contract shall be carried out in accordance with the change control procedures specified in Schedule B (Procedures Specified Under the Contract) always provided that the use of such procedures shall not restrict or prevent the Customer from exercising its rights under this Clause.

### Where the Customer elects to assign, novate, sub-contract or otherwise dispose of its rights and obligations under the Contract (assignment) and such assignment relates solely to the management of the Contract other than in circumstances in which the Customer transfers or divest all or part of its functions to a third party the Customer shall first consult with the Supplier in respect of the same but consent of the Supplier is not required and the Supplier is not entitled to unreasonably avoid, condition or delay any such consultation nor make such consultation the subject of any additional payment.

### The Customer’s right to lease

#### The Customer reserves the right to finance the acquisition of Deliverables by leasing arrangements with a lessor nominated by the Customer and approved by the Supplier provided that such lessor shall agree to conditions of Contract such that neither the Customer nor the Supplier thereby becomes inhibited in any way in its ability to perform its obligations under the Contract.

#### The Customer may, on receipt of the Supplier's written consent and approval, assign to any such lessor those parts of the Contract relating to the acquisition of Hardware and the Supplier agrees to enter into, with any such lessor, an agreement such as may be appropriate and reasonable to give effect to such an arrangement. Any such agreement with a lessor shall contain provisions to the effect that the due payment or payments to be made under the Contract shall be a fundamental term of that agreement. In the case of Default by the nominated lessor, the liability for payments due under the Contract shall revert forthwith to the Customer.

#### The Customer shall remain the licensee of the Software and any internal code to be used by the Customer on Hardware.

## **Sub-contracting**

### A list of Approved Sub-contractors approved by the Customer at the date of signature of the Contract is contained in Paragraph 8 of the Order Form. Additional or substituted sub-contractors may be approved in accordance with sub-Clause 5.5.1 after the date hereof, in which case the Order Form shall be amended accordingly.

### The Supplier shall not sub-contract any of its obligations under this Contract other than to an Approved Sub-contractor.

### Notwithstanding any sub-contracting permitted hereunder, the Supplier shall remain responsible for the acts and omissions of its sub-contractors as though they were its own.

### Contracts between the Supplier and its Approved Sub-contractors shall contain terms, conditions and obligations as may be necessary to enable the Supplier to meet all its obligations to the Customer under the Contract.

### Such sub-contracts referred to in sub-Clause 5.6.4 above, shall contain:

#### provisions which require the Supplier to consider and verify invoices in a timely manner;

#### a term requiring payment by the Supplier of all sums due within a specified period, not greater than thirty (30) days after the fulfilment of appropriate contractual requirements and receipt of a correct and valid invoice; and

#### a term which requires the sub-contractor to impose substantially the same terms as set those out in this Clause 5.6.5 in any sub-contracts with its own sub-contractors where such sub-contractors are engaged in the supply of services necessary for the Supplier to provide the Services.

### Not used.

# PAYMENT AND TAXES

## **Payment**

### The Customer shall pay the Supplier the Charges, in accordance with Attachment 6 to the Order Form.

### Not Used.

### Not Used.

### Not used.

### The Supplier shall submit invoices in accordance with the invoicing procedure specified in Attachment 6 to the Order Form and payment shall be made within 30 days of receipt of a correct and valid invoice in accordance with Attachment 6 to the Order Form.

### For the avoidance of doubt, an invoice shall not become valid until any criteria for payment specified in Attachment 6 to the Order Form has been achieved or any due date for payment specified in Attachment 6 to the Order Form has passed. Receipt of an invoice shall not be measured from a date earlier than the achievement of such payment criteria or due date as appropriate.

### Notwithstanding anything to the contrary contained within this Contract (including for the avoidance of doubt, Attachment 6 to the Order Form),all payments under this Contract shall be made within 30 days of receipt of a valid and undisputed invoice.

### Upon receipt of an invoice the receiving Party shall consider and verify the validity of the invoice in a timely fashion.

### The Supplier shall ensure that payment terms no less stringent than those set out sub-Clauses 6.1.7 and 6.1.8 shall be set out in any sub-contracts it awards under this Contract and shall procure that its sub-contractors include the same provisions within any further sub-contracts awarded by such sub-contractors.

## **Value added tax**

The Customer shall pay to the Supplier, in addition to the Charges a sum equal to the value added tax chargeable on the value of goods supplied and services performed under the Contract at the date of invoice. The Supplier shall, upon request, provide such information as may be reasonably required by the Customer regarding the amount of value added tax charged on invoices submitted.

## **Recovery of sums due**

## Whenever, under the Contract, any sum of money shall be recoverable from or payable by the Supplier, including any over-payments, the same may be deducted from any sum then due or which at any time may become due to the Supplier under this Contract or any other contract with the Customer, subject to prior written notice to the Supplier. The Parties agree the Supplier shall have no right to suspend the Services for any reason during the Term, including but not limited to for any delayed or non-payment by the Customer.

## **IR35**

### This Contract constitutes a contract for the provision of goods and/or services. Where the Supplier (or its Sub-contractors) have included one or more people that are non-permanent members of staff that are not on the Supplier’s (or its Sub-contractors) payroll to fulfil its service obligations under this Contract, the Supplier shall be fully responsible for and shall indemnify the Customer for:

#### any proceedings, claims or demands by any third party (including specifically, but without limitation, HMRC and any successor, equivalent or related body pursuant to the IR35 legislation and/or any of the provisions of Income Tax Regulations);

#### 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 either the performance of the services or any payment or benefit received by the Contractor in respect of the services, where such recovery is not prohibited by law; and

#### all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Customer in connection with or in consequence of any such liability, deduction, contribution, assessment or claim.

### The Customer may at its option satisfy such indemnity (in whole or in part) by way of deduction from payments due to the Supplier.

### The Supplier warrants that it is not, nor will it prior to the cessation of this Contract, become a managed service company, within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003.

# REMEDIES; INDEMNITIES

## **Limitation of liability**

### Injury to Persons, fraudulent misrepresentation, breach of confidentiality and data protection and intellectual property rights infringement

Neither Party excludes or limits liability to the other Party for death or personal injury caused by the negligence of either Party, fraudulent misrepresentation, any breach of the obligations of confidentiality and/or those which relate to data protection in this Contract or for any infringement of the intellectual property rights of the other Party or any third party.

### **Financial limits**

Subject to sub-Clause 7.1.1 the liability of either Party for Defaults shall be limited as stated below:

#### the liability of either Party under the Contract for any one Default resulting in direct loss of or damage to tangible property of the other Party, or any series of connected Defaults resulting in or contributing to the loss of or damage to the tangible property of the other Party, shall not exceed the figure set out in Attachment 6 to the Order Form;

#### the aggregate liability of either Party under the Contract for all Defaults, in respect of the implementation of the Services, other than those governed by Paragraph 7.1.2(a) above, shall not exceed the amount stated in Attachment 6 to the Order Form to be the limit of such liability;

#### the aggregate liability of either Party under the Contract for all Defaults arising in any twelve-month contract period, other than those governed by Paragraphs 7.1.2(a) and (b) above shall not exceed the amount stated in Attachment 6 to the Order Form to be the limit of such liabilities for that twelve-month contract period. For this purpose, such amount specified in Attachment 6 to the Order Form shall be expressed as a percentage of the Charges applicable to the same period and twelve-month contract periods shall be measured from the date of commencement of Services and anniversaries thereof.

### **Exclusions**

#### Without prejudice to the generality of sub-Clause 7.1.1 (and subject to sub-Clause 7.1.3(b) below)) neither Party shall be liable to the other for:

##### loss of profits, or of business, or of revenue, or of goodwill, or of anticipated savings; and/or

##### indirect or consequential loss or damage; and/or

##### specific performance of the Contract unless expressly agreed by the Parties to be applicable in Attachment 6 to the Order Form.

#### The provisions of sub-Clause 7.1.3(a) shall not be taken as excluding or limiting the Customer's right under the Contract to claim for any of the following which results from a Default by the Supplier provided that the Customer has made reasonable efforts to mitigate such results:

##### costs and expenses which would not otherwise have been incurred by the Customer including, without limiting the generality of the foregoing, costs relating to the time spent by the Customer’s executives, contractors and employees in dealing with the consequences of the Default, additional costs of replacement Services for the remainder of the term of the Contract and any re-procurement costs;

##### expenditure or charges paid by the Customer which would not otherwise have been incurred or would have ceased or would not have recurred;

##### costs, expenses and charges resulting from the loss or corruption of data or Software and the Supplier agrees that it shall take all such actions as may be necessary to re-constitute such data or Software and return it to a fully operational state insofar as it is inherently capable of being re-constituted (the Supplier agreeing that, as part of the Services, it shall be responsible, having all due regard to the nature of the data and/or Software, for taking regular back-ups of the same, storing the same off-site and running regular tests to ensure that it is able to quickly and fully restore the same).

##### 

### Any liability of the Supplier resulting from a claim under sub-Clause 7.1.3(b) shall be subject to limitation in accordance with sub-Clause 7.1.2 (provided in the case of 7.1.3(b)(iii) the Supplier has complied with all of the obligations specified therein).

# INTELLECTUAL PROPERTY

## **Allocation of title to IPR**

### Save as expressly granted elsewhere under this Contract:

#### the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including:

##### in the Supplier Software;

##### the Supplier Background IPR;

##### in the Third Party Software;

##### the Third Party IPR;

##### in the Specially Written Software; and

##### the Project Specific IPR.

#### the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors, including the:

##### Customer Software;

##### Customer Background IPR; and

##### Customer Data.

### Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 8.1.1 above, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

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

## **Supplier Software Licence**

### The Supplier hereby grants to the Customer for the term of the Contract, royalty-free, irrevocable, non- exclusive right to use:

#### the Supplier Software and the Documentation for any purpose relating to the exercise of the Customer’s business or function including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display);

#### the Supplier Background IPR for any purpose relating to the Services (or substantially equivalent services);

#### Not used;

#### Not used; and

#### the Project Specific IPR including but not limited to the right to copy, adapt, publish (including on the Operating Environment) and distribute such Project Specific IPR,

the “**Supplier Software Licence**”.

### The Supplier Software Licence shall be perpetual or renewable at the option of the Customer and as set out in the Order Form and shall not be cancelled, withdrawn, or rescinded by the Supplier unless:

#### terminated in accordance with Clause 11.2.1(a) or 11.2.1(b); or

#### on the expiry of the term of a licence, which is stated in the Order Form to be granted for a fixed term, the Customer has failed to exercise its right to renew such licence; or

#### terminated by the Customer on the expiry of agreed notice in writing.

### The Customer's right to use applicable Software shall be restricted as set out in the Order Form.

### The Parties agree:

#### In the event that malfunction of Hardware specified in the Order Form renders Software inoperable, the Customer may use applicable Software on a temporary basis on other Hardware;

#### The Customer shall not, without the express approval of the Supplier, make copies of or make or permit access to Software other than permitted by Use.

#### The Customer shall not allow, without the express approval of the Supplier, any reverse engineering, reverse assembly or decompilation of Software other than that permitted under the Software Directive.

#### The Supplier shall have the right to terminate Contract and / or any licence granted under sub-Clause 8.2.1 on written notice and in the event that:

##### the Customer commits a material breach of Clause 8.1 or this Clause 8.2, subject to order of precedence in accordance with Clause 6 of Schedule 1 of the Framework Agreement, applicable Supplier's or third party's Software licence conditions contained in the Order Form which is not capable of remedy or, if capable of remedy, has not been remedied within a reasonable period of time (agreed between the Parties at the time); or

##### the Customer infringes any Intellectual Property in respect of Software and further infringement cannot or has not been avoided within a reasonable period of time (agreed between the Parties at the time); or

##### the Customer has not paid relevant periodic Support Charges in respect of Software within sixty (60) days of payment of such Support Charges becoming due in accordance with the provisions of the Framework Agreement;

#### In the event of termination by the Supplier in accordance with sub-Clause 8.2.4(d) above, the Customer shall discontinue Use of Software forthwith and shall confirm to the Supplier in writing within a reasonable time (agreed between the Parties at the time) that it has done so and has returned or destroyed any copies of such Software and associated Documentation.

#### The Customer shall be permitted to use any generally available upgrades and new releases of Software, which are not separately licensed, on payment of generally applicable, additional fees. The Supplier shall grant to or procure for the Customer a licence to use any upgrades and new releases to Software which are separately licensed under comparable conditions to those contained in this Clause 8.2 on payment of generally applicable, additional fees. If payable, additional fees shall be agreed prior to the commencement of Use of such upgrades or new releases but such additional fees shall not be greater than those generally payable by the Supplier's other customers for equivalent Use.

#### If so requested, the Supplier shall grant to or procure for the Customer additional licences to use the Software on other Hardware owned or used by the Customer or for additional licensed users, where applicable, under conditions comparable to those contained in this sub-Clause 8.2.4. Any additional licence fees payable shall be agreed prior to the grant of such additional licences but shall not be greater than those generally applicable to the Supplier's other customers for equivalent Use.

### **Licence for internal code**

The Supplier shall grant to the Customer a continuous, non-exclusive licence, at no additional cost to the Customer, to use applicable internal code on the Hardware so designated in the Order Form under the Supplier's or third party's standard terms and conditions for such code contained in the Order Form, subject to the Customer's rights under the Software Directive.

### The Customer shall be entitled, free of charge, to sub licence the Supplier Software to any contractor and/or Subcontractor of the Customer who is working towards and/or is providing services to the Customer, provided that:

#### the sub-licence is on terms no broader than those granted to the Customer; and

#### the sub-licence only authorises the third party to use the rights licensed in Clause 8.2.1 for purposes relating to the services it is providing the Customer.

### The Supplier shall ensure that the Customer shall be entitled to assign or novate all or any of the Supplier Software licences free of charge to any central government entity, by giving the licensor prior written notice.

### The Supplier shall notify the Customer in advance if any Supplier Software or service permits the Supplier or any third party remote access to the Customer Software or Customer Systems.

### Where the Supplier is responsible for the calculation of the appropriate number of users for Software, and it is later shown there is a shortfall of licences, the Supplier shall be responsible for all costs of the Customer.

### **Assignment of IPR in Deliverables.** The Supplier hereby assigns to the Customer all existing and future Intellectual Property Rights in the Deliverables. To the extent that the assigned IPRs do not vest automatically in the Customer by operation of Law or under this Contract, the Supplier holds the legal title in such IPRs on trust for the Customer.

## Third Party IPR and Third Party Software

### The Supplier shall procure that the owners or the authorised licensors of any Third Party IPR and any Third Party Software which is not commercial off-the-shelf software grant a direct licence to the Customer on terms at least equivalent to those set out in Clause 8.2.1. If the Supplier cannot obtain for the Customer a licence materially in accordance with the licence terms set out in Clause 8.2.1 in respect of any such Third Party IPR and/or Third Party Software, the Supplier shall:

#### notify the Customer in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use; and

#### only use such Third Party IPR and/or Third Party Software if the Customer Approves the terms of the licence from the relevant third party.

### The Supplier shall procure that the owners or the authorised licensors of any Third Party Software which is commercial off-the-shelf software grants a direct licence to the Customer on terms no less favourable that such software is usually made available.

### Not used.

## **Ownership and Licence of Materials**

### Any Intellectual Property in the Supplier Materials shall remain vested in the Supplier and any Intellectual Property in the Third Party Materials shall remain vested in the Third Party Supplier as applicable and no title shall pass to the Customer.

### The Supplier grants a perpetual, irrevocable, royalty-free, non-exclusive licence to the Customer to:

#### use, correct, reproduce, modify, adapt, and enhance the Supplier Materials for its own use;

#### hold a copy of any Source Code and/or other original form of the Supplier Materials (which shall be provided by the Supplier on request) insofar as the provision of such original form of the Supplier Materials does not infringe any applicable licence conditions,

and shall procure that each Third Party Supplier shall grant a licence to the Customer for the Third Party Materials on substantially the same terms as set out in this Clause 8.4.

### The Parties agree that any modification, adaptation, or enhancement to the Supplier Materials that is carried out by or on behalf of the Customer by a third party during any applicable warranty period that is set out in the Order Form shall invalidate such warranty unless such modification, adaptation, or enhancement is authorised by the Supplier in writing.

## **Supplier's IPR indemnity**

### Subject always to the Customer's proper observance of its obligations under this Clause 8, the Supplier shall fully indemnify the Customer against all claims, demands, actions, costs, expenses (including but not limited to full legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including but not limited to the defence of such alleged infringement) of any Intellectual Property enforceable in the United Kingdom by the Use or possession of the Services and/or Deliverables by the Customer or in connection with any Task.

### The Customer shall forthwith notify the Supplier if any claim or demand is made or action brought against the Customer for infringement or alleged infringement of any Intellectual Property by reason of the Use or possession of Services and/or Deliverables by the Customer or in connection with any Task. The Supplier shall at its own expense conduct any litigation arising therefrom and all the negotiations in connection therewith and the Customer hereby agrees to grant the Supplier exclusive control of any such litigation or such negotiations, except to the extent that if the circumstances described in sub-Clause 8.5.10 shall arise, the Customer may act in accordance with the provisions specified therein.

### The Supplier shall forthwith notify the Customer if any claim or demand is made or action brought against the Supplier for infringement or alleged infringement of any Intellectual Property which may affect the Use or possession of Services and/or Deliverables by the Customer or which may affect any Task.

### The Customer shall at the request of the Supplier afford all reasonable assistance for the purpose of contesting any such claim, demand or action and shall be repaid all costs and expenses incurred in so doing.

### The Customer shall not make admissions, which may be prejudicial to the defence of such claim or demand or action.

### If a claim, demand or action for the infringement or alleged infringement of any Intellectual Property is made in respect of any Deliverables, Services or Task, or in the reasonable opinion of the Supplier is likely to be made, the Supplier may at its own expense:

#### modify or replace such infringing or likely infringing Deliverables, Services or Task without reducing the performance or functionality of the System or any Sub-system, so as to avoid the infringement or the alleged infringement and the terms herein shall apply mutatis mutandis to such modified Deliverables, Services or Task; or

#### procure a right to use for the Supplier to provide Deliverables or Services and/or perform any affected Task on terms which are acceptable to the Customer.

### The foregoing provisions of this sub-Clause 8.5 shall not apply insofar as any such claim or demand or action is in respect of:

#### any Use by or on behalf of the Customer of anything supplied by the Supplier under the Contract in combination with any item not so supplied, where such combined Use directly gives rise to the claim, demand or action; or

#### any modification carried out by or on behalf of the Customer to any item supplied by the Supplier under the Contract if such modification has not been authorised by the Supplier in writing; or

#### any Use of the System not reasonably to be inferred from the Supplier

Undertakings; or

#### the Customer's unreasonable refusal to use modified System, Sub-system, or Deliverables provided pursuant to sub-Clause 8.5.6; or

#### any infringement or alleged infringement of any Intellectual Property arising only by reason of the Supplier's compliance with the express instructions of the Customer issued in writing after the date hereof; or

#### Use by the Customer in breach of the Contract where such use has resulted in a claim demand, or action for breach of IPR

### If the Supplier has availed itself of its rights under Clause 8.5.6 and such exercise of the said rights has avoided any claim, demand or action for the infringement or alleged infringement, then the Supplier shall have no further liability thereafter under this sub-Clause 8.5 in respect of the said claim, demand or action.

### If the Supplier is unable to exercise its rights under Clause 8.5.6, the Supplier shall be liable for the full value of the costs incurred in procuring and implementing a replacement System, Sub-system, Services, Deliverables or work under a Task as applicable, together with associated costs incurred in implementing such replacement.

### In the event that, due to a claim, demand or action arising from or by reason of infringement or alleged infringement of any Intellectual Property, the quiet enjoyment by the Customer of the System is disrupted or impaired and the Supplier:

#### has not within seven (7) days of the commencement of such disruption or impairment commenced all appropriate and effective actions to restore to the Customer the quiet enjoyment of the System, any Sub-system, Services, Deliverables or the results of any Task by exercising its rights in accordance with sub-Clause 8.5.1; and thereafter

#### does not use all reasonable efforts to pursue such actions to restore to the Customer the quiet enjoyment of the System, any Sub-system, Deliverables, Services or the results of any Task,

the Customer may conduct negotiations and make a settlement necessary to enable the Customer to continue to use the System, any Sub-system, or Deliverables or Services. Such negotiations and settlement shall relate solely to the continued use of the System, any Sub-system, or Deliverables or Services and any settlement made by the Customer shall be expressed to be without prejudice to the conduct by the Supplier under the provisions of sub-Clause 8.5.2 of any litigation arising from, or settlement of, such claim, action or demand.

### Where any claim, action or demand, to which this sub-Clause 8.5 applies, is settled as a result of negotiations by the Customer under the provisions of sub-Clause 8.5.10 and compensation resulting from such settlement is paid to a third party other than by the Supplier or its insurers, the Supplier shall not be required to pay by way of indemnity any sum greater than that which would be reasonably payable in settlement having regard to the circumstances of the case and in particular to the damages which might be recoverable by law.

### The foregoing provisions of sub-Clause 8.5 states the entire liability of the Supplier with regard to the infringement of any Intellectual Property by the Use or possession of Services and/or Deliverables or connection with any Task.

## **Waiver**

### The failure of the Supplier or the Customer to insist upon strict performance of any term, condition or provision of the Contract or to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by the Contract.

### A waiver of any Default shall not constitute a waiver of any other Default.

### No waiver of any of the terms, conditions or provisions of the Contract shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with Clause 5.1.

## **Statutory invalidity**

The Parties expressly agree that should any limitation or provision contained in this Clause 8 be held to be invalid under any particular statute or law, or any rule, regulation or bye-law having the force of law, it shall to that extent be deemed to be omitted but, if any Party thereby becomes liable for loss or damage which would have otherwise been excluded, such liability shall be subject to the other limitations and provisions set out herein.

## **Remedies cumulative**

Except as otherwise expressly provided by the Contract, all remedies available to the Supplier or the Customer for breach of the Contract are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

# DELAYS

## If the Supplier fails to meet any Contractual Date specified in the Timetable, as required under the provisions of Clause 4.1, it shall be liable either:

### to pay to the Customer, as liquidated damages, a sum of money or percentage of the Charges as specified in Attachment 6 to the Order Form for each day of delay up to the number of days there specified or until the Contract is terminated whichever is sooner (the liquidated damages period). Such payment shall be in full and final settlement of the Supplier's liability for all such loss incurred by the Customer up to the end of the period in which liquidated damages are payable. If the cause of such delay has not been rectified, at the expiry of the period during which liquidated damages are payable, the Customer shall be entitled to any remedy available to it for all losses, costs, damages or expenses incurred as a result of such delay after the end of the liquidated damages period. The Customer is however entitled, during the liquidated damages period, to serve a notice on the Supplier placing the Supplier on notice that if, at the end of the liquidated damages period, the delay is not remedied, time shall be of the essence;

### if no such sum of money or percentage of the Charges to be paid as liquidated damages is specified in Attachment 6 to the Order Form or if Attachment 6 to the Order Form contains a statement to the effect that liquidated damages are ‘nil’ or ‘zero’, to reimburse the Customer for all proven losses, costs, damages and expenses incurred by the Customer by reason of such delay.

### **Clarification**

#### The provisions of sub-Clause 9.1.1 or 9.1.2 above shall apply to delay by the Supplier in meeting any Contractual Dates, notwithstanding the previous application of such provisions to delay or failure by the Supplier to meet any other Contractual Dates.

#### Both Parties acknowledge that any liquidated damages specified in Attachment 6 to the Order Form, whether represented as a sum of money or as a percentage of the Charges is a genuine pre-estimate of the loss likely to be suffered by the Customer in the event of delay and that the figures specified therein are reasonable.

#### The Customer acknowledges that the Supplier's ability to meet its obligations under the Contract according to the Timetable may depend on the Customer likewise meeting the Customer Responsibilities. The Supplier shall list each such obligation together with the latest date by which the Customer ought to have met that obligation in order to avoid potentially risking the Supplier to be delayed in meeting its obligations in Attachment 3 of the Order Form as a "Customer Delay Risk". The Customer shall not be liable to the Supplier in respect of any failure to meet the Customer's obligations but, to the extent that the Supplier is prevented from fulfilling any of its obligations as a direct result of an Customer Delay Risk, the Customer agrees that the Supplier shall not be liable to the Customer for such failure and shall be entitled to a reasonable extension of time.

# DISBURSEMENT OF PUBLIC FUNDS

## The Customer has a duty to account for the disbursement of public funds. The Supplier shall keep comprehensive and accurate records in respect of the Charges due to it under the Contract. The Supplier shall allow inspection of such records at all reasonable times by the Customer's duly authorised representatives for the sole purpose of verifying the Supplier's fulfilment of its obligations under the Contract and amounts due to the Supplier therefor. The Supplier shall make available such facilities and give such assistance, including the provision of copies or extracts of such records as the Customer may reasonably request in connection with the performance of such audit and shall afford the Customer's authorised representatives all reasonable access to all other information, reports, documents, records and data, whether in human or machine readable form, solely relevant to the performance of its obligations.

## Representatives of the Customer who are authorised to perform such inspection shall:

### have other auditing responsibilities to the Customer in addition to those related to this Clause 10;

### be acceptable, on all reasonable grounds, to the Supplier.

## The Supplier shall use its reasonable endeavours to obtain and maintain access to its sub-contractors records in all sub-contracts entered into in relation to the Contract in order to ensure access by the Customer, where appropriate, to information of such sub-contractors required in accordance with sub-Clause 10.1.

# TERMINATION

## **Customer’s right of termination**

The Customer may at any time by notice in writing to the Supplier terminate the Contract as from the date of service of such notice if:

### there is a change of control of the Supplier, as defined by section 450 of the Corporation Tax Act 2010, where it may be reasonably anticipated that it will have a material effect on the Supplier's ability to perform its obligations under the Contract, save that the Customer shall only be permitted to exercise the foregoing right of termination for six (6) months after the later of the occurrence of each such change of control or becoming aware of each such change of control (the Supplier being under an obligation to so notify the Customer) and shall not be permitted to exercise such right where the Customer has agreed in advance to the particular change of control and such change of control takes place as proposed; or

### the Supplier, being an individual, shall become bankrupt; or

### the Supplier, being a company, shall resolve, or have an order made against it for it to be wound up other than for the purposes of reconstruction or amalgamation, or the same shall be the case for a Related Company of the Supplier; or

### the Supplier, being a firm, shall:

#### have an individual member or partner to which sub-Clause 11.1.2 applies; or

#### have a corporate member to which sub-Clause 11.1.3 applies; or

### the Supplier, being an individual, a company or a firm, shall:

#### have a receiver, manager or administrative receiver appointed, or a receiving order or administration order is made for the benefit or on behalf of a creditor in respect of its business, assets or property or any part thereof; or

#### make any arrangement or composition, including a voluntary arrangement under the Insolvency Act 1986, with or for the benefit of a creditor; or

#### become unable to pay or have no reasonable prospect of being able to pay its debts or have a distress levied against it; or

#### fail to satisfy a statutory demand served on it under section 123 (1) (a), section 268 (1) (a) or section 222 of the Insolvency Act 1986, as appropriate; or

#### call or cause to be called, apply or have application made for, a meeting of its creditors or any class of creditor; or

### the Supplier, being an individual, a company or a firm, experience circumstances similar to those specified in Paragraphs 11.1.1, 11.1.2, 11.1.3, 11.1.4, or 11.1.5 above in relation to it or its business in any country other than England, where it would reasonably be expected to affect the Supplier’s ability to perform under the Contract;

## **Termination on breach of contract**

### Either the Customer or the Supplier may at any time by notice in writing to the other Party terminate all or any part of the Contract as from the date of service of such notice whenever any of the following events occurs:

#### there is a breach by the other Party of any provision hereof or Default which this Contract expressly states entitles the non-breaching Party to terminate the Contract;

#### the other Party commits a material breach of any of its obligations hereunder which is not capable of remedy or, if capable of remedy, is not remedied within such period as has been specified in a Remediation Plan or, where there is no agreed Remediation Plan, has not been remedied by the Termination Trigger Period, after receipt of written notice from the non-breaching Party of its intention to terminate;

#### upon a Critical Service Failure, as defined in the "Service Levels" section of Attachment 1 to the Order Form;

## **Termination under the Public Contracts Regulations 2015**

### The Customer shall be entitled to terminate on immediate written notice if:

#### this Contract and/or the Framework Agreement is modified or amended to an extent which, in the Customer’s opinion, renders it substantially or materially different in character from the Contract or Framework Agreement as it was initially concluded by the Parties and such modifications or amendments would have:

##### allowed for the admission of other candidates that those initially selected during the procurement procedure;

##### allowed for the acceptance of a tender other than that submitted by the Supplier and accepted by the Customer; or

##### attracted additional participants within the procurement procedure;

#### the Customer becomes aware that, at the time of award of this Contract and/or the Framework Agreement, the Supplier ought to have been excluded from the procurement procedure under Regulation 57 of the Public Contracts Regulations 2015; or

#### the Customer becomes aware that this Contract, and/or the Framework Agreement should not have been awarded to the Supplier due to a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of TFEU.

## Not used.

## **Customer's optional rights on termination**

In the event the Customer is entitled to and terminates the Services in accordance with the terms herein, or following expiry of the Contract, the Customer may, at its discretion and on reasonable written notice at the time of such termination or expiry, exercise any of the options specified in the Supplier Undertakings or such options as may have been subsequently agreed between the Parties in accordance with the change control procedures contained in Schedule B (Procedures Specified Under the Contract). Such options as the Customer shall decide to exercise shall be implemented as soon as practicable after termination or expiry.

## **Re-Tendering**

If, at any time during the term of this Contract, the Customer wishes to conduct a competition with a view to entering into an agreement for the provision of services following any expiry or termination of all or any part of the Services, the Supplier shall co-operate with the Customer's reasonable requirements in relation to such competition process by (i) promptly providing any information which the Customer may reasonably require from time to time in order to conduct such competition, but, to avoid doubt, information which is commercially sensitive to the Supplier shall not be provided (and, for these purposes "commercially sensitive" shall mean information which would if disclosed to a competitor of the Supplier give that competitor a material competitive advantage over the Supplier and thereby prejudice the business of the Supplier), and (ii) assisting the Customer by promptly providing all (or any) participants in such competition process with such access to the Sites, Supplier Premises, Facilities and all other assets, as is reasonably requested by the Customer. In any event, regardless of whether the Customer wishes to conduct a competition or wishes to bring the Services in-house or otherwise, the Supplier agrees that it shall, at any time upon reasonable written request of the Customer from time to time and no later than 14 days following receipt of such request, provide to the Customer all such personnel-related information (including full employment terms and conditions, salary, pensions and benefits-related information) as is reasonably requested by the Customer including but not limited to the same information as the Supplier (or any subcontractor) would be obliged to disclose under Regulation 11 of TUPE.

## **Survival of obligations**

Rights and obligations of the Parties, which have accrued or shall accrue shall survive termination of the Contract insofar as survival shall be construed from the relevant Clauses in the context of such termination.

## **Termination Assistance.** On termination or expiry of the Contract for any reason the Supplier shall comply with its obligations set out at Schedule J (Termination Assistance).

# CONFIDENTIALITY

## In respect of any Confidential Information it may receive from the other Party (“the Discloser”) and subject always to the remainder of this Clause 12.1, each Party (“the 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:

### the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of the Contract;

### the provisions of this Clause 12 shall not apply to any Confidential Information which:

#### is in or enters the public domain other than by breach of the Contract or other act or omissions of the Recipient;

#### is obtained by a third party who is lawfully authorised to disclose such information; or

#### is authorised for release by the prior written consent of the Discloser; or

#### the disclosure of which is required to ensure the compliance of the Customer with the Freedom of Information Act 2000 (the FOIA).

## Nothing in this Clause 12 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 or, where the Supplier is the Recipient, to the Supplier's immediate or ultimate holding company provided that the Supplier procures that such holding company complies with this Clause 12 as if any reference to the Supplier in this Clause 12 were a reference to such holding company.

## The Supplier authorises the Customer to disclose the Confidential Information to such person(s) as may be notified to the Supplier in writing by the Customer from time to time to the extent only as is necessary for the purposes of conducting a Benchmark Review in accordance with Schedule F (Benchmarking). The Customer shall use all reasonable endeavours to ensure that such person(s) keeps the Confidential Information confidential and does not make use of the Confidential Information except for the purpose for which the disclosure is made. The Customer shall not without good reason claim that the lowest price available in the market is the realistic market price.

## The Supplier acknowledges that the Customer is or may be subject to the FOIA. The Supplier notes and acknowledges the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) and the Environmental Information Regulations 2004 as may be amended, updated or replaced from time to time. The Supplier will act in accordance with the FOIA, these Codes of Practice and these Regulations (and any other applicable codes of practice or guidance notified to the Supplier from time to time) to the extent that they apply to the Supplier's performance under the Contract.

## The Supplier agrees that:

### Without prejudice to the generality of Clause 12.1.1, the provisions of this Clause 12.5 are subject to the respective obligations and commitments of the Customer under the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) and the Environmental Information Regulations 2004;

### the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for the Customer;

### where the Customer is managing a request as referred to in Clause 12.5.2, the Supplier shall co-operate with the Customer and shall respond within five (5) working days of any request by it for assistance in determining how to respond to a request for disclosure.

## The Supplier shall and shall procure that its sub-contractors shall:

### transfer any request for information, as defined under section 8 of the FOIA, to the Customer as soon as practicable after receipt and in any event within five (5) working days of receiving a request for information;

### provide the Customer with a copy of all information in its possession or power in the form that the Customer requires within five (5) working days (or such other period as the Customer or a Beneficiary may specify) of the Customer or a Beneficiary requesting that Information; and

### provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to a request for information within the time for compliance set out in section 10 of the FOIA.

## The Customer may consult the Supplier in relation to any request for disclosure of the Supplier's Confidential Information in accordance with all applicable guidance.

## This Clause 12 shall remain in force without limit in time in respect of Confidential Information which comprises Personal Data or which relates to a patient, his or her treatment and/or medical records. Save as aforesaid and unless otherwise expressly set out in the Contract, this Clause 12 shall remain in force for a period of 3 years after the termination or expiry of this Contract.

## In the event that the Supplier fails to comply with this Clause 12, the Customer reserves the right to terminate the Contract by notice in writing with immediate effect.

## Nothing in this Contract shall prevent the Customer from disclosing the Supplier's Confidential Information to any Crown Body or to NHS Supply Chain. All Crown Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or NHS Supply Chain;

### to any consultant, Supplier or other person engaged by the Customer or any person conducting an Office of Government Commerce gateway review;

### for the purpose of the examination and certification of the Customer's accounts; or

### for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.

## The Customer shall use all reasonable endeavours to ensure that any government department, Crown Body, employee, third party or Sub-Supplier to whom the Supplier's Confidential Information is disclosed pursuant to Clause 12.1 is made aware of the Customer's obligations of confidentiality.

## **Disclosure to Health bodies**

Notwithstanding the provisions of Clause 12.1 above, the Customer may disclose any information provided by the Supplier to other health bodies, provided that the Customer shall take all reasonable steps to ensure that if such information is confidential it is treated as confidential by other health bodies and their employees or agents.

## **Know-how**

Nothing herein shall be so construed as to prevent either Party from using data processing techniques, ideas, know‑how and the like gained during the performance of the Contract in the furtherance of its normal business, to the extent that this does not result in a disclosure of confidential information or infringement of any valid Intellectual Property Rights of either Party or the unauthorised processing of any Personal Data.

## **Publicity**

Except with the written consent of the other Party, which shall not be unreasonably withheld or delayed, neither Party shall make any press announcements or publicise the Contract in any way. The provisions of this Clause shall not apply to information regarding the Contract made available by the Customer to any other health bodies under the provision of Clause 12.1.2.

# PERSONAL DATA AND MEDICAL RECORDS

**Customer Data**

## The Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.

## The Supplier shall not store, copy, disclose, or use the Customer Data except as set out in Schedule E (Security Requirements) and as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly authorised in writing by the Customer.

## To the extent that Customer Data is held and/or processed by the Supplier, the Supplier shall supply that Customer Data to the Customer as requested by the Customer in the format specified by the Customer.

## The Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data

## The Supplier shall perform secure back-ups of all Customer Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the BCDR Plan. The Supplier shall ensure that such back-ups are available to the Customer at all times upon request and are delivered to the Customer no less frequently than as specified in the Order Form.

## The Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that complies with the Security Policy.

## If the Customer Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Customer may:

### require the Supplier (at the Supplier’s expense) to restore or procure the restoration of Customer Data to the extent and in accordance with the requirements specified in Schedule H (Business Continuity and Disaster Recovery Provisions) and the Supplier shall do so as soon as practicable but not later than the time period set out in the Order Form; and/or

### itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule H (Business Continuity and Disaster Recovery Provisions).

## If at any time the Supplier suspects or has reason to believe that Customer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.

## **Audits**

### Except where an audit is imposed on the Customer by a Regulatory Body the Customer may, not more than twice in any year and for a period of 12 months following the expiry or termination of this Contract, conduct an audit for the following purposes:

#### to review the integrity, confidentiality and security of the Customer Data; and

#### to review the Supplier's compliance with the Data Protection Legislation, the Freedom of Information Act 2000 and any other legislation applicable to the provision of the Supplier Undertakings.

### The Customer shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Supplier Undertakings.

### Subject to the Customer's obligations of confidentiality, the Supplier shall on demand provide the Customer (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

#### all information requested by the Customer within the permitted scope of the audit;

#### reasonable access to any Locations controlled by the Supplier and to any equipment used (whether exclusively or non-exclusively) in the performance of the Supplier Undertakings;

#### access to the Supplier System; and

#### access to Supplier Personnel.

### The Customer shall endeavour to (but is not obliged to) provide at least 30 Working Days’ notice of its intention to conduct an audit.

### The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Customer for all the Customer's reasonable costs incurred in the course of the audit.

### If an audit identifies that:

#### the Supplier has failed to perform its obligations under this Contract in any material manner, the Parties shall agree and implement a remedial plan. If the Supplier's failure relates to a failure to provide any information to the Customer about the Charges, or the Supplier's costs, then the remedial plan shall include a requirement for the provision of all such information;

#### the Customer has overpaid any of the Charges, the Supplier shall pay to the Customer the amount overpaid within 30 Working Days. The Customer may deduct the relevant amount from the Charges if the Supplier fails to make this payment; and

#### the Customer has underpaid any of the Charges, the Customer shall pay to the Supplier the amount of the under-payment less the cost of audit incurred by the Customer if this was due to a Default by the Supplier in relation to invoicing within 30 Working Days.

# SECURITY

## **On-site regulations**

### The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. The Supplier shall comply with all reasonable security requirements of the Customer while on its premises and shall procure that all its employees, agents and sub-contractors shall likewise comply with such requirements. The Supplier confirms that, prior to signature of the Contract it has received copies of all the Customer's written security procedures listed in Schedule E (Security Requirements) and has been afforded an opportunity to inspect the Customer's physical security arrangements. The Supplier also acknowledges that, with the exception of any notified to the Customer prior to signature of the Contract, it accepts and will abide by such procedures and arrangements listed in Schedule E (Security Requirements).

## **Supplier's property; risk of loss**

### All Supplier's property held on the premises of the Customer, including property to be used in the performance of the Contract shall be so held at the sole risk and responsibility of the Supplier, except that the Customer shall be liable for loss of such Supplier's property which is due to the Default or wilful act of the Customer. In the event of any loss of Supplier's property held on the Customer's premises for the purpose of the Contract, due to whatever cause, the Supplier shall replace such property as soon as reasonably possible and shall, notwithstanding such loss, make all reasonable efforts to fulfil its obligations hereunder in accordance with the Timetable.

## **Warranty**

### The Supplier warrants, represents and undertakes for the duration of the term of this Contract that all personnel used to provide the Supplier Undertakings will be vetted in accordance with good industry practice, the Security Policy and any standards that the Parties agree apply to the Supplier Undertakings.

## **General Security Requirements**

### The Supplier shall comply, and shall procure the compliance of the Supplier Personnel, with the requirements and obligations set out in Schedule E (Security Requirements) and the Supplier shall ensure that the Security Plan produced by the Supplier fully complies with the Security Policy.

### Until and/or unless a change to the Charges is agreed by the Customer pursuant to the Change Control Procedure the Supplier shall continue to perform the Supplier Undertakings in accordance with its existing obligations.

# PERSONNEL

## **Staffing Security**

### The Supplier shall comply with the Staff Vetting Procedures in respect of all Supplier Personnel employed or engaged in the provision of the Supplier Undertakings. The Supplier confirms that all Supplier Personnel employed or engaged by the Supplier at the date of the Order Form were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.

### The Supplier shall provide training on a continuing basis for all Supplier Personnel employed or engaged in the provision of the Services in compliance with the Security Policy and Security Plan.

## **Supplier's personnel**

### The Customer reserves the right to refuse to admit to, or remove from, any premises occupied by or on behalf of it any Person employed by the Supplier or by its sub-contractors whose admission or presence would, in the reasonable opinion of the Customer, be undesirable. The reasonable exclusion of any such individual from the premises of the Customer under the provisions of this sub-Clause 15.2.1 shall not relieve the Supplier from the performance of its obligations under the Contract nor provide grounds for an extension of time under Clause 4.2 . However, the Customer will indemnify the Supplier for failure to carry out its obligations if such refusal by the Customer is unreasonable.

### If and when directed by the Customer, the Supplier shall provide a list of the names and business addresses of all Persons, who may require admission in connection with the performance of the Contract to premises occupied by or on behalf of the Customer, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Customer may reasonably require.

### Failure by the Supplier to comply with the provisions of sub-Clause 15.2.2 within a reasonable time of written notice to do so will entitle the Customer to refuse admission to its premises to any Person who has not been notified to the Customer in accordance therewith.

## **Employment offers**

### The Customer and the Supplier agree that during the period from the signature of the Contract to twelve months after the date of expiry or termination of the Contract they shall not offer employment to any of the other Party's staff who have been associated with the performance of the Contract without the other Party's prior agreement in writing.

### The above provision shall not however apply to offers of employment resulting from general recruitment advertising.

## **Key personnel and Authorised Officers**

### Each Party acknowledges that any individuals named as key personnel in the Order Form are essential to the fulfilment of its obligations under the Contract and undertakes to use all reasonable endeavours to ensure that such key personnel are not removed or replaced, to the detriment of its performance of the Contract. However, in the event that any of its own key personnel will become unavailable for any reason each Party shall have the right, upon giving reasonable notice in writing to the other Party, to replace such individual with another individual whose abilities and qualifications closely approximate those of the individual so replaced.

### Either Party may change its Authorised Officer by giving thirty (30) days’ written notice to the other Party or such other notice as may be agreed as practicable and amending Paragraphs 5 and 6 of the Order Form accordingly.

# INSURANCE

## The Supplier shall at all relevant times being not less than the term of the Contract maintain Insurance of a cover which is no less than the cover required under Attachment 6 to the Order Form and shall take all reasonable steps to procure that any sub-contractor or agent shall likewise be similarly insured. The Supplier agrees to comply with the provisions of Attachment 6 to the Order Form in respect of such Insurance. At any time, on reasonable notice, the Supplier shall, if requested by the Customer, provide reasonable confirmation, (for instance a broker's certificate), that such Insurance continues to be valid.

## In respect of this Clause 16, insurance cover in respect of damage to tangible property shall not be less than the Supplier's limit of liability for such damage in accordance with sub-Clause 7.1.2(a).

# RESPONSIBILITIES IN RESPECT OF THE LOCATION

## Compliance with statutory and other regulations

### The Supplier shall in all matters arising from the performance of the Contract and at its own cost conform with all relevant Acts of Parliament and in particular the Health and Safety at Work Act 1974 and with all orders, regulations and bye‑laws made with statutory authority by Government Departments or by local or other authorities that shall be applicable to the Contract, including legislation on equal opportunities and discrimination in employment. The Supplier shall also observe through its personnel any rules applicable to the Sites. The Customer shall provide to the Supplier without undue delay following the signing of the Contract and from time-to-time thereafter as may be necessary during the term of the Contract, written information as to current local conditions. Such information shall include:

#### Site regulations;

#### location of any toxic hazards the existence of which the Customer should reasonably be expected to know; and

#### relevant procedures to be followed and precautions to be taken in relation to such hazards.

The Supplier shall not in the performance of the Contract in any manner endanger the safety or unlawfully interfere with the convenience of the public and shall procure that its employees, agents and sub-contractors shall conform to such regulations, procedures and precautions provided by the Customer as may be appropriate.

### The Supplier shall give the Customer such prior written notice as the Customer may require of the delivery under the Contract of any goods having a toxic hazard or other hazard to the safety or health of persons or property, the existence of which the Supplier should reasonably be expected to know, identifying those hazards and giving full details of any precautions to be taken by the Customer on the delivery of such goods and their subsequent storage or handling.

### The Supplier shall ensure that all such goods are suitably packed and identified at the time of delivery with reference to the hazards attaching to them.

## **Environment**

### The Customer shall, unless stated otherwise in the Supplier Undertakings, provide and maintain physical conditions at the Location appropriate to the provision of the Services including any recommended by the manufacturer of Facilities installed thereat. The Supplier shall maintain appropriate physical conditions at the Supplier Premises.

## **Inspection of the Location**

### The Supplier acknowledges that it has had the opportunity to inspect the Location and has satisfied itself that there is no aspect of the Location or matter related thereto, (other than any which has been notified to the Customer before commencement of the Contract and for which the Customer is responsible in accordance with Clause17.2 ), which shall cause the Location to be unsuitable for the performance of the services specified in the Supplier Undertakings or preclude the Supplier from conformance with any Service Levels specified therein for the performance of such Services.

### During the term of the Contract, the Customer shall notify the Supplier in writing of changes to any aspect of the Location or matter related thereto which it makes or of which it becomes aware.

### The Supplier shall notify the Customer of any aspect of the Location or matter related thereto which arises during the performance of the Contract, which affects its ability to perform the Services or meet any Service Levels specified in respect thereof.

### The Customer acknowledges that if the Supplier has not received reasonable notice, in accordance with sub-Clause 17.3.2 , of any change to any aspect of the Location or matter related thereto made by the Customer or of which the Customer is or could reasonably be expected to be aware and as a result the Supplier fails to perform the Services or meet any Service Levels specified in respect thereof, the Supplier shall not be liable for such failure.

### The Supplier acknowledges that it is not entitled to recover any additional costs from the Customer which arise from, or be relieved from any of its obligations as a result of, any aspect of the Location or matter related thereto, of which the Supplier is or could reasonably be expected to be aware, which affects its ability to perform the Services or meet any Service Levels specified in respect thereof insofar as such aspect or matter has not been notified to the Customer as provided by sub-Clause 17.3.3.

# TRANSITION

## **Implementation of Services**

### A Transition Project for the implementation of the Services shall be specified in the Supplier Undertakings in accordance with which:

#### the Supplier shall carry out its responsibilities as specified therein; and

#### the Customer shall carry out its responsibilities as identified therein and specified in the Order Form.

### Within any period specified in the Timetable for such purpose or if no such period is stated in the Timetable within thirty (30) days of the date of commencement of the Contract under the provisions of Clause 2.1, the Supplier shall prepare a detailed plan for the completion of a Transition Project incorporating the timetable dates contained in the Timetable and obtain agreement to such plan by the Customer, such agreement not to be unreasonably withheld or delayed.

### Not Used.

## **Discontinuance of Services**

### In the event that the Customer is entitled to and discontinues the Services or any part thereof, the Supplier shall, if requested by the Customer, provide assistance in the execution of a Transition Project to the extent reasonable and necessary for an orderly implementation of an alternative to the Services by the Customer or its third party supplier.

### The Customer shall reimburse the Supplier for such assistance at the rates set out in Attachment 6 to the Order Form (**"Day Rates"**).

# DELIVERY AND ACCEPTANCE

## No deliveries shall be made to any Delivery Point without prior permission of an authorised representative of the Customer. The Supplier shall notify an authorised representative of the Customer of its intention to deliver, such notice to be reasonable given the nature of the deliveries to be made.

## Unless otherwise stated in the Order Form, the Supplier shall be responsible for delivery to the Delivery Point, off-loading and putting in place at the Location of all Deliverables, including the provision of all necessary labour and equipment. Deliveries shall be made in accordance with the agreed Implementation Plan.

## The Supplier shall install all Hardware at the Location in accordance with the Timetable unless otherwise stated in the Order Form.

## The Supplier undertakes to:

### supply the necessary information in respect of the Customer's preparation of the Location in accordance with sub-Clause 19.5 below including information relating to delivery and installation of the Hardware, at no additional cost to the Customer, such information to be made available according to the agreed Implementation Plan;

### perform any part of the Location preparation or cabling for the Hardware specifically identified as a Task to be performed by the Supplier in the Supplier's Undertakings.

## The Customer undertakes to prepare the Location and make ready for the delivery and installation of the Hardware in accordance with the information provided by the Supplier under the provisions of sub-Clause 19.4.1 and with agreed Implementation Plan. Unless otherwise identified as the responsibility of the Supplier as a Task in the Supplier's Undertakings, the Customer's responsibilities will include the following activities:

### carry out all building work at the Location including the provision of heating and lighting;

### provide all power supplies for the Hardware;

### provide air-conditioning and any other special environmental controls specified for the Hardware;

### provide all connections between the Hardware and any existing equipment of the Customer and any other cabling specified in the Customer Obligations;

### provide accommodation for the Supplier's installation personnel as specified in the Customer Obligations;

### provide any other services related to the preparation of the Location specified in the Customer Obligations, which are required by the Supplier for the performance of its responsibilities under the Contract.

## **Installation of Software**

The Supplier shall install the Software in accordance with the Timetable unless otherwise stated in the Customer Obligations.

## **Acceptance process**

### The System, any Sub-system, any Task and any Deliverable shall be required to meet Acceptance Criteria before being accepted by the Customer. The Customer shall notify the Supplier in writing of acceptance, such notification not to be unreasonably withheld or delayed, with the date on which such criteria were met in all material respects. Such date shall be the Acceptance Date in respect of the System, Sub-system, Task or Deliverable as applicable. Acceptance of the System, Sub-system, Task or Deliverable may be completed in stages as indicated in the Timetable. Such date(s) shall be the Acceptance Date(s) in respect of the System, Sub-system, Task and/or Deliverable.

### Not Used.

### The Customer shall conduct Acceptance Tests and other acceptance procedures and the respective responsibilities of the Parties in the performance of such tests and procedures shall be as specified in the Order Form.

## **Acceptance Tests**

### Following implementation of Hardware, Software, the System or any Sub-system, the Supplier shall prepare for Acceptance Tests and notify the Customer when ready. On being so notified, the Customer shall conduct the relevant Acceptance Tests by the appropriate Planned Acceptance Date and if the relevant Acceptance Criteria are met in all material respects, the Customer shall notify the Supplier of acceptance, as specified in sub-Clause 19.7.1 above.

### If Acceptance Tests show that any of the Hardware, Software, System, or Sub-system do not meet the relevant Acceptance Criteria in all material respects, the Customer shall notify the Supplier of such failure without undue delay. The Supplier shall thereupon undertake all necessary steps to rectify such failure at no additional cost to the Customer which shall include but not be limited to the supply of additional or substitute of the failing item or part with new Hardware and/or Software as applicable, and re-submit such item or part for re-testing. If the relevant Acceptance Criteria are met in all material respects, the Customer shall notify the Supplier of acceptance, as specified in sub-Clause 19.7.1 above.

### The Timetable has been constructed to allow for potentially two cycles of Acceptance Tests to be run before each Planned Acceptance Date.

## **Acceptance (Other Deliverables and Tasks)**

### Following installation of any Deliverable (other than Hardware or Software) or performance of any Task which is specified in the Order Form to be subject to acceptance procedures contained therein, the Supplier shall prepare for such procedures to be carried out and notify the Customer when ready. On being so notified, the Customer shall conduct such procedures by the appropriate Planned Acceptance Date and if the Acceptance Criteria are met in all material respects, the Customer shall notify the Supplier of acceptance, as specified in sub-Clause 19.7.1 above.

### If the installation of any Deliverable or the completion of any Task which is subject to acceptance procedures in accordance with Clause 19.9.1 above does not meet the relevant Acceptance Criteria in all material respects, the Customer shall notify the Supplier of such failure without undue delay. The Supplier shall thereupon undertake all necessary steps to rectify such failure at no additional cost to the Customer and re-submit the failing Deliverable or Task to such procedures. If the acceptance criteria specified in the Order Form are met in all material respects, the Customer shall notify the Supplier of acceptance, as specified in sub-Clause 19.7.1 above.

## **Failure to gain acceptance**

### If the System, any Sub-system, Deliverable or Task has failed to meet the required Acceptance Criteria in all material respects by the Acceptance Completion Date specified in relation to them, unless the provisions of Clause 4.2 apply, the Supplier shall be deemed to be in default, thereon, without prejudice to any other remedies available to the Customer, it shall be entitled in respect of and as appropriate to such failure, to:

#### grant further periods of time during which the Supplier shall be required to submit or re-submit the System, Sub-system, Deliverable or Task to the relevant Acceptance Tests in accordance with Clause 19.8 as applicable; or

#### accept such System, any Sub-system, Deliverable or Task and pay such amended Charges as shall be agreed upon and the resulting changes to the Contract shall be subject to the Change Control Procedure;

#### reject any failing Deliverable or the results of any failing Task, reduce the Charges by a sum of money equivalent to the part of the Charges to be paid therefor and have a third party replace such Deliverable or perform such Task. Such remedy shall only be applied where subsequent achievement by the Contractor of acceptance of the System or any Sub-system is not rendered impracticable by such action; or

#### terminate the Contract unless:

##### the Order Form expressly limits or excludes such right of termination to the extent and in the circumstances specified therein; and

##### such circumstances shall have arisen.

## If the Customer grants a further period of time under the provisions of sub-Clause 19.10.1(a) and the Supplier has failed to meet the relevant acceptance criteria before expiry of such period, the Customer shall be entitled, at that time, to exercise any of remedies to which it is entitled under sub-Clause 19.10.1.

## A grant of additional time under the provisions of sub-Clause 19.10.1(a) shall not imply any change in the Timetable or be interpreted to mean that the Planned Acceptance Date or Acceptance Completion Date have been or shall be changed and the provisions of sub-Clause 19.7.1 above shall continue in full force and effect.

## If, despite the Supplier having used all reasonable endeavours to mitigate the effects of the same, the Supplier's failure to meet the Acceptance Completion Date is due to a Customer Delay Risk, the provisions of sub-Clause 4.2 shall apply and the Acceptance Completion Date may be rescheduled as a Change.

## Acceptance by default

The System or any Sub-system or any Deliverable which is, or the results of any Task which are, Employed by the Customer shall be deemed to have been accepted and the date upon which the System, any Sub-system or any item so accepted commences to be Employed shall be its Acceptance Date.

# WARRANTIES

## **Intellectual Property**

### The Supplier warrants that it has authority to grant to the Customer any rights to be granted hereunder and owns or has obtained valid licences to any Intellectual Property necessary for the fulfilment of all its obligations under the Contract.

## **Standards**

The Supplier warrants that in performance of the Contract it shall meet and the System, any Sub-system, Deliverable and Task shall meet all relevant standards listed in the Order Form.

## **Virus Warranty**

The Supplier warrants that it has taken all practical steps, in accordance with good industry practice, to prevent the introduction of any Virus into data or Software owned by or under the control of the Customer including Customer Software.

## **Virus Obligations**

### The Supplier shall, as an enduring obligation throughout the term of this Contract, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Viruses from the Customer System;

### Notwithstanding Clause 20.4.1 if Viruses are found, the Parties shall co-operate to reduce the effect of the Viruses and, particularly if Viruses cause loss of operational efficiency or loss or corruption of Customer Data, assist each other to mitigate any losses and to restore the System or any Sub-System to their desired operating efficiency.

### Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 20.4.2 shall be borne by the Parties as follows:

#### by the Supplier where the Viruses originate from any software proprietary to the Supplier, including software which is or will be used by the Supplier for the purposes of providing the Services, (“Supplier Software”) or the Customer Data (whilst the Customer Data was under the control of the Supplier); and

#### by the Customer if the Viruses originate from any software owned by or licensed to the Customer (including software which is or will be used by the Supplier for the purposes of providing the Services but excluding any Supplier Software) or the Customer Data (whilst the Customer Data was under the control of the Customer).

## **System and Sub-Systems**

### Unless otherwise stated in the Supplier's Undertakings, the Supplier warrants that at the date upon which it commences to be Employed or at the Acceptance Date of the System, whichever is sooner, and for a period thereafter, as specified in the Order Form (or if no such period is specified in the Order Form, for a period of one (1) year):

#### the System shall meet the Supplier Undertakings in all material respects; and

#### any Sub-system shall meet, in all material respects, that part of the Supplier Undertakings specified in the Supplier's Undertakings as being associated with it.

## **Products**

### The Supplier warrants that at the date upon which it commences to be Employed or at the Acceptance Date of the System, whichever is sooner, and for a period thereafter, as specified in the Order Form (or if no such period is specified in the Order Form, for a period of one (1) year):

#### Hardware shall meet its Published Specification in all material respects;

#### Software shall meet its Published Specification in all material respects;

#### Deliverables, other than those referred to in (a) and (b) above shall meet their Published Specifications and, where pertinent, meet the Supplier Undertakings in all material respects.

## **Services**

### The Supplier warrants to the Customer that the Services will:

#### be performed promptly (and in any event within any timescale as may be set out in the Timetable);

#### be performed accurately and without interruption;

#### be performed by appropriately qualified, experienced and trained personnel in a professional and courteous manner, with a high standard of skill, care and diligence, in accordance with this Contract and to such a high standard of quality as is reasonable for the Customer to expect in all of the circumstances;

#### be performed strictly in accordance with the Specification;

#### comply with Good Industry Practice and in compliance with all required consents (including the giving of notices and the obtaining of any such consents) and so as not to prejudice the renewal of any such consents.

# ESCROW

## For all Supplier Software identified in the Order Form as escrow programs, where the Supplier is the owner, the Supplier shall deposit, within thirty (30) days of acceptance of the Services by the Customer, with the escrow agent specified in the Order Form and under the terms and conditions of the escrow agreement contained in Schedule K (Agreements Specified Under The Contract), a copy of such Software in Source Code form on appropriate media. Where the Supplier is not the owner of such escrow programs, it will procure under the terms and conditions of the relevant sub-Contract with the owner to deposit a copy of escrow programs as stated above.

## If no escrow agent is named in the Order Form and / or no escrow agreement is contained therein, or if the Parties are unable to reach agreement within a reasonable time after the commencement of the Contract on an escrow agent to be appointed and / or an escrow agreement to be applied, then the National Computing Centre, Oxford House, Oxford Road, Manchester, M1 7ED shall be appointed as escrow agent and the terms and conditions of its then current, multi-licensee escrow agreement shall be applied by reference to sub-Clause 21.1 .

## The Parties agree that any escrow agreement entered into between the Parties to the Contract and attached to Schedule K (Agreements Specified Under The Contract) in terms of sub-Clause 21.1 shall contain Clauses equivalent to those terms used in the latest escrow agreement used by the National Computing Centre.

## The Supplier shall for the term of the Contract maintain, and comply with, the terms of any escrow agreement established under the provisions of this Clause 21.

# SUPPORT SERVICES

## **Support Services to be provided**

The Supplier shall provide the Support Services specified in the Supplier Undertakings .

## **Measurement of Supplier's performance**

## The Supplier's performance of Support Services shall be measured in accordance with the methods and procedures set out in the Supplier Undertakings.

## **Facilities Required for the Support Services**

### The Supplier shall specify in the Supplier Undertakings:

#### any hardware, software, or other facilities, the use of which is critical to the Supplier’s ability to fulfil its obligations for the provision of Support Services and to which rights are not generally or commercially available; and

#### any items specified under Clause 22.3.1(a) above, the use of or access to which the Supplier or any of its sub-contractors has the right to grant to the Customer or its nominated third party Support Services provider;

#### any Third Party Software where:

##### maintenance and support is provided by its third party owner in accordance with the Customer's licence to use such Software and / or such third party's standard software support conditions attached to the Order Form; and

##### the extent to which such maintenance and support is required to the Supplier's ability to fulfil its obligations under this Contract; and

#### the agreed limitations in or exclusions from the provision of Support Services which result directly from the maintenance and support of third party Software identified in accordance with Clause (c) above.

## The Supplier shall grant and shall procure that its sub-contractors grant, any such rights for use or access set out in the Supplier Undertakings pursuant to Clauses 22.3.1(a) and (b) above, to the Customer or its nominated third party Support Services provider in the event that the Supplier ceases to provide the Support Services;

## **Service Levels**

The Supplier's performance of the Support Services shall be required to meet any Service Levels specified in the Order Form from the commencement of Support Services in accordance with Clause 2.1.

## **Achievement of Service Levels**

The Supplier's achievement of the Service Levels specified in accordance with Clause 22.5 shall be determined in accordance with the procedures set out in the Supplier Undertakings.

## Calculation of Charges

The amount of Charges earned by the Supplier shall be calculated as set out in Attachment 6 to the Order Form using any formula or process specified therein for such purpose. Such calculation shall relate any Charges associated with the provision of Support Services in Attachment 6 to the Order Form to the achievement of Service Levels as determined under the provisions of Clause 22.6.

## **Failure to meet Service Levels**

### If the Supplier fails to achieve any Service Levels, as determined under the provisions of Clause 22.5, the Supplier shall carry out a programme of corrective actions as set out in the Order Form which shall include but not be limited to performance remedies, or, if not specified, as agreed at the time between the Parties, such agreement not to be delayed or withheld unreasonably. Without prejudice to Clause 22.8.2 below, a Critical Service Failure (as defined in Attachment 1 to the Order Form) shall entitle the Customer to immediately terminate the Contract for breach and, in certain circumstances, the Customer may require that corrective actions required of the Supplier are reflected in a written Remediation Plan; failure to comply with which, shall also entitle the Customer to immediately terminate the Contract for breach.

### If, notwithstanding any corrective actions taken in accordance with sub-Clause 22.8.1, the Supplier persistently fails in any material respect, to achieve any Service Level, such failure shall be considered to be a material breach of its obligations and shall entitle the Customer to terminate the Contract provided that neither Party shall be prevented from determining that any other breach of the Contract constitutes a material breach. For the purposes of this sub-Clause 22.8.2 persistent failure to meet a Service Level shall be defined in the Supplier Undertakings.

### For the avoidance of doubt, the Supplier shall be liable for failure to meet any Service Levels due to the occurrence of any event of Force Majeure Event above if such failure is due to the lack of or improper performance of the procedures or services specified in the BCDR Plan.

## **Rights and remedies unaffected**

### The provisions of this Clause 22 shall apply without prejudice to any other rights or remedies available to the Customer.

### If Charges earned by the Supplier differ from the relevant Charges for the same period, the amount of such difference shall be excluded from any aggregation for the purposes of establishing either Party's liability for Defaults.

## **Rights of Step-In**

### Without prejudice to the Customer's other rights and remedies under this Contract and at law, if a Step-in Event occurs, the Customer shall have the right to issue a written step-in notice, which shall include the following information (Step-in Notice):

#### that the Customer, or a third party appointed by it, or the Customer jointly with that third party (**Step-in Party**) intends to perform or manage the performance of part or all of the Services (**Affected Services**), provided that any third party appointed by the Customer shall be subject to the same confidentiality obligations as the Customer under Clause 12 (Confidentiality);

#### the details of the Step-in Event that has triggered the exercise of the Step-in Notice;

#### details of the Affected Services;

#### the actions that the Step-in Party intends to take in order to rectify the Affected Services (Step-in Actions);

#### the estimated dates on which the Step-in Actions will commence and end (Step-in Period);

#### in the Customer's reasonable opinion, the extent that the Customer anticipates the Step-in Actions will have on the Supplier's obligation to provide the remaining Services that are not the Affected Services; and

#### any other information that the Customer is reasonably able to provide in relation to how the Step-in Party intends to perform the Step-in Actions.

### On receipt of the Step-in Notice, the Supplier shall, subject to Clause 1.3 and at no additional cost, provide, enable or procure access for the Step-in Party to:

#### any of the Supplier's premises and facilities that the Customer so requests;

#### any equipment and software that are used in the administration, management and provision of the Affected Services;

#### the Supplier's Personnel that are involved with the Affected Services; and

#### any know-how or knowledge relating to the Affected Services,

for the sole purpose of enabling the Step-in Party to perform the Step-in Actions during the Step-in Period only.

### The Customer shall use all reasonable endeavours to ensure that the Step-in Party's personnel and representatives that have the access as provided for under 22.10.2:

#### comply with all relevant health and safety requirements for any of the Supplier's premises, such requirements as notified by the Supplier;

#### only use the facilities, equipment or software on the Supplier's instructions and exercise reasonable care when using those items so as not to cause damage; and

#### do not disrupt or interfere with the Supplier's obligations to deliver the Services that are not the Affected Services.

### Within ten Business Days of receipt of the Step-in Notice, the Supplier shall submit to the Customer a written plan setting out the measures the Supplier intends to take after the Step-in Period in order to restore the Affected Services to satisfy the requirements of the agreement (Step-out Plan).

### The Customer is not liable to pay the charges relating to the Affected Services, and the Charges shall be reduced accordingly so as not to include those relating to the Affected Services.

### During the Step-in Period, the Supplier shall:

#### be relieved of its obligations to provide the Affected Services;

#### continue to provide the Services that are not the Affected Services, and shall inform the Customer if the Affected Services will impact on its ability to deliver those other Services;

#### fully cooperate and provide all reasonable assistance at no additional charge to the Step-in Party for the sole purpose of enabling the Step-in Party to perform the Step-in Actions; and

#### use best endeavours to ensure that the relevant Supplier's Personnel promptly follows the reasonable and lawful instructions of the Step-in Party in pursuance of the Step-in Actions.

### If the Customer is satisfied that the circumstances leading to the Step-in Event are no longer present and the Supplier has demonstrated in the Step-out Plan that it can resume responsibility for the Affected Services, the Customer will issue a written notice to the Supplier that:

#### requires the Supplier to resume performance of the Affected Services;

#### specifies the date on which the Supplier shall resume such performance; and

#### sets out the Step-in Actions that the Step-in Party actually took during the Step-in Period.

### The Supplier shall be liable to the Customer for all direct costs and expenses that are reasonable and necessarily incurred by Step-in Party in taking the Step-in Actions, and the Customer shall use reasonable endeavours to mitigate any such costs and expenses.

## The Parties shall comply with their respective obligations set out in Schedule C (Governance).

## The Supplier shall keep and maintain for seven (7) years after the termination or expiry of this Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Call Off Contract including the Services provided under it, any Sub-Contracts and the amounts paid by the Customer.

## The Supplier shall keep the records and accounts referred to in Clause 22.12 in accordance with good industry practice and Applicable Law.

## **Change Control**

### Subject to the provisions of this Clause 22.14 either Party may request a variation to this Contract provided that such variation does not amount to a material change of this Contract within the meaning of the Public Contracts Regulations 2015 and the Law. Such a change once implemented is hereinafter called a **"Change**".

### A Party may request a Change by following the Change Control Procedure.

# ATTACHMENTS AND CONSUMABLES

## **Attachments**

### The Customer shall have the right, at its sole risk (including possible invalidation of any warranties), to attach to the Hardware, without additional charge to the Customer, any equipment not supplied by the Supplier or use any Software not supplied by the Supplier on the Hardware.

### The Supplier reserves the right to charge for any additional work requested by the Customer as a result of a malfunction caused directly by the attachment of any equipment or the Use of any Software not supplied by the Supplier.

## **Consumables**

### The Customer reserves the right to procure magnetic media and any other consumable supplies to be used on and suitable for the Hardware or Software from the Supplier or such other source as the Customer may deem appropriate. Such procurement from a source other than the Supplier may invalidate any warranty under the Contract in the event that such consumables are shown to cause a breach of such warranty. The Supplier reserves the right to charge for any additional maintenance or support required as a result of a malfunction caused directly by the Use of non-Supplier media not supplied by the Supplier.

# DISPUTE RESOLUTION

## **Escalation procedure negotiation**

If any dispute arises out of the Contract the Parties will attempt to settle it by negotiation by escalating the dispute in accordance with Schedule C (Governance). In the event of any dispute, difference or question of interpretation arising between the Parties, neither shall take recourse to any other resolution (whether by reference to mediation as set out in this Clause 24, or by litigation), until the escalation procedure included in Schedule B (Procedures Specified Under the Contract) has been fully exercised.

## **Mediation**

If the Parties are unable to settle any dispute in accordance with Clause 24.1 within 21 days, the Parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (“CEDR”) Model Mediation Procedure.

## **Initiating the mediation**

To initiate a mediation, a Party by its Authorised Officer must give notice in writing (“ADR Notice”) to the other Party (addressed to its Authorised Officer) requesting a mediation in accordance with Clause 24.2. A copy of the request should be sent to CEDR.

## **Disagreements on mediation**

If there is any point on the conduct of the mediation (including as to the nomination of the mediator) upon which the Parties cannot agree within 14 days from the date of the ADR Notice, CEDR will, at the request of any Party, decide that point for the Parties, having consulted with them.

## **Timing of mediation**

The mediation will start not later than 28 days after the date of the ADR Notice.

## **Mediation in parallel**

Any Party which commences court proceedings or an arbitration, must institute a mediation or serve an ADR Notice on the other Party to the court proceedings or arbitration within 21 days.

## **Mediation before litigation**

No may commence any court proceeding or arbitration in relation to any dispute arising out of the Contract until they have attempted to settle it by mediation and that mediation has terminated.

## **Jurisdiction of courts**

Disputes, differences or questions of interpretation shall, subject to the foregoing provisions of this Clause 24, be subject to the exclusive jurisdiction of the English courts.

## **Continued Performance of Services**

Notwithstanding any dispute between the Parties (including the giving of any notice of Default or notice of termination by either Party) until such time as the dispute has been determined in accordance with this Clause 24 or the Contract has been terminated, the Services will continue to be provided in accordance with the Contract.

# TRANSFER OF UNDERTAKINGS

## Any provisions relating to the transfer of personnel which results from the transition of responsibility for the operation of the Facilities, and to which TUPE shall apply, shall be specified in Schedule I (TUPE Provisions).

# WORKFORCE MATTERS

## The Supplier is committed to complying with and undertakes to comply with the principles and detail of the "Principles of Good Employment Practice: a statement of principles that reflect good employment practice for Government, Contracting Authorities and Suppliers” 2010 ("the Principles"), the Cabinet Office Statement: Staff Transfers in the Public Sector 2000 (the Statement) and the Annex to the Statement entitled A Fair Deal for Pensions (the Annex) as well as any obligations relating to any updates and amendments to each of the same, including but not limited to the arrangements known as "New Fair Deal".

## The Supplier hereby indemnifies and shall keep indemnified the Customer against all losses, costs, demands, claims, awards, expenses, damages, compensation and any other liabilities arising from or connected with any failure by the Supplier to comply with and or fully implement the matters described in sub-Clause 26.1.

## The Customer shall monitor the Supplier’s compliance with sub-Clause 26.1.

## In order to enable the Customer to undertake the monitoring and to assist the Customer in such monitoring the Supplier shall immediately upon request by the Customer, such request to be in writing, provide to the Customer all information requested which is necessary to allow the Customer effectively to monitor the Supplier’s compliance.

## The information provided pursuant to Clause 26.4 shall, if appropriate be anonymised or, if the Customer considers it necessary to receive information which will or may amount to personal data or sensitive personal data within the meaning of the Data Protection Legislation, the Supplier shall ensure that it obtains appropriate and necessary consent from its employees to disclose such information for the purpose of the monitoring and the Customer agrees to respect the confidentiality of the information so provided.

## The Supplier shall warrant the accuracy of the information provided to the Customer under sub-Clause 26.4 and hereby indemnifies and shall keep indemnified the Customer from against all losses, costs, demands, claims, awards, expenses, damages, compensation and any other liabilities arising from or connected with any claim arising from any inaccurate or misleading information provided by the Supplier to and used by the Customer.

## If the Customer considers that the Supplier has failed to comply with or may fail to comply with sub-Clause 26.1 then:

### it will raise any concerns it has with the Supplier in the first instance and seek an explanation for the actual or potential failure;

### if the Customer is not satisfied with the Supplier’s explanation it will require, in writing, the Supplier to remedy the fault and the Supplier undertakes and agrees to do so as soon as is reasonably practicable;

### if for any reason the Supplier fails to remedy or fails within a reasonable time to remedy the fault it will be in breach of this Contract and such Default will entitle the Customer to enforce the terms of this Contract against the Supplier.

# THIRD PARTY RIGHTS

## A Person who is not a Party to this Contract shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 (*the Third Parties Rights Act*) to enforce any term of this Contract. Any right or remedy of a third party, which exists or is available apart from the Third Parties Rights Act is not affected.

# ENVIRONMENTAL CONSIDERATIONS

## The Supplier shall comply in all material respects with applicable environmental laws and regulations in force from time to time in relation to the products/services the subject of the Contract. Where the provisions of any such legislation are implemented by the use of voluntary agreements or codes of practice, the Supplier shall comply with such agreements or codes of practice as if they were incorporated into English law subject to those voluntary agreements being cited in the tender documentation. Without prejudice to the generality of the foregoing, the Supplier shall:-

### comply with all reasonable stipulations of the Customer aimed at minimising the packaging in which the products the subject of the Contract, or any products supplied by the Supplier to the Customer as part of performance of the services, are supplied;

### promptly provide such data as may reasonably be requested by the Customer from time to time regarding the weight and type of packaging according to material type used in relation to all products supplied to the Customer under or pursuant to the Contract;

### comply with all obligations imposed on it in relation to the products/services the subject of the Contract by the Producer Responsibility Obligations (Packaging Waste) Regulations 2005 (or any other equivalent legislation giving effect in any part of the European Economic Area to the Packaging and Packaging Waste Directive 94/62/EC);

### label all products supplied to the Customer under the Contract, and the packaging of those products, to highlight environmental and safety information as required by applicable UK and EU legislation;

### unless otherwise agreed with the Customer, insofar as any products supplied under the Contract comprise or include electrical or electronic equipment, manage the said equipment and associated consumables at end of life to Facilitate recovery, treatment and recycling and provide any information which the Customer may reasonably require from time to time regarding the costs of such activity;

### promptly provide all such information regarding the environmental impact of any products supplied or used under the Contract as may reasonably be required by the Customer to permit informed choices by end users; and

### where goods are imported into the United Kingdom then for the purposes of the Producer Responsibility Obligations (Packaging Waste) Regulations 2005 the Supplier shall assume the rolled-up obligations for all the activities performed outside the United Kingdom in relation to the goods and the packaging which is used for the containment, protection, handling, delivery and presentation of the goods in addition to any other obligations he may have pursuant to the said Regulations.

## The Supplier shall meet all reasonable requests by the Customer for information evidencing the Supplier's compliance with the provisions of this Clause 28.

# EQUALITY AND NON-DISCRIMINATION

## The Supplier shall not discriminate directly or indirectly or by way of victimisation or harassment against any person on racial grounds within the meaning of the Equality Act 2010.

## The Supplier shall notify the Customer immediately of any investigation of or proceedings against the Supplier under the Equality Act 2010 and shall cooperate fully and promptly with any requests of the person or body conducting such investigation or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested.

## The Supplier shall indemnify the Customer against all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by the Customer arising out of or in connection with any investigation conducted or any proceedings brought under the Equality Act 2010 due directly or indirectly to any act or omission by the Supplier, its agents, employees or sub-contractors.

## The Supplier shall impose on any sub-contractor obligations substantially similar to those imposed on the Supplier by this Clause 29.

## In addition to its obligations under this Clause 29 relating to race equality, the Supplier shall:

### ensure that it complies with all current employment legislation and in particular, does not unlawfully discriminate on any of the prohibited grounds within the meaning of the Equality Act 2010, the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, or any other relevant legislation relating to discrimination in the employment of employees for the purpose of providing the Services. The Supplier shall take all reasonable steps (at its own expense) to ensure that any employees employed in the provision of the Services do not unlawfully discriminate within the meaning of this Clause 29.5 and shall impose on any sub-contractor obligations substantially similar to those imposed on the Supplier by this Clause 29.5; and

### in the management of its affairs and the development of its equality and diversity policies, the Supplier shall co-operate with the Customer in light of the Customer’s obligations to comply with statutory equality duties. The Supplier shall take such steps as the Customer 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 in the provision of the Services.

# MODERN SLAVERY

## The Supplier represents and warrants that at the Commencement Date of this Call-Off Contract neither the Supplier, nor any of its officers and employees:

### have been convicted of any offence involving slavery and human trafficking; and

### having made reasonable enquiries, so far as it is aware, have been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

## The Supplier shall implement due diligence procedures for its Subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

## The Supplier shall prepare and deliver to the Customer each year, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.

# CORPORATE SOCIAL RESPONSIBILITY CONDUCT AND COMPLIANCE

## The Customer conducts its activity based on corporate and social responsibility values which are consistent with government policy regarding social responsibility, environmental responsibility, and ethical and human rights.

## The Supplier represents and warrants that it:

### complies with all CSR Laws;

### requires its Subcontractors and any person under its control, to comply with all CSR Laws; and

### has adopted a written corporate and social responsibility policy that sets out its values for activity and behaviour (including, without limitation, employees, clients, stakeholders, communities and the environment impacted by the Supplier’s business activities).

## The Supplier shall notify the Customer in the event that its corporate and social responsibility policies conflict with, or do not cover the same subject matter in an equivalent level of detail as is in, the CSR Laws.

# PREVENTION OF BRIBERY AND CORRUPTION

## The Supplier shall:

### comply with all Anti-Bribery Laws;

### not commit any Prohibited Act;

### have and shall maintain for the Term its own policies and procedures to ensure compliance with the Anti-Bribery Laws;

### notify the Customer (in writing) if it becomes aware of any breach of or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with the performance of this Contract;

### immediately notify the Customer (in writing) if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier and the Supplier warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of this Contract); and

### ensure that any person associated with the Supplier who is performing services in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this Clause 32. The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Customer for any breach by such persons of any of the Relevant Terms.

## Breach of this Clause 32 shall be considered a material breach of this Contract.

# LEGISLATIVE CHANGE

## If following the Commencement Date of this Contract the UK ceases to be a Member State of the European Union, then any changes required shall be agreed by the Parties in accordance with the Change Control Procedure and the Supplier shall not be entitled to reduce the functionality or performance of the Services, or increase the Charges, or amend the timescales in relation to any Changes so required.

# GENERAL

## 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.

## 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.

## 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.

## 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.

## 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.

## 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.

## The rights and remedies provided in this Contract are cumulative and not exclusive of any rights or remedies provided by general law, or by any other contract or document.

## No persons other than the Parties to this Contract and shall have the right to enforce the terms of this Contract which confer a benefit on such person or be entitled to object to or be required to consent to any amendment to the provisions of this Contract.

## This Contract, any variation in writing signed by an authorised representative of each Party and any document referred to explicitly in this Contract or any variation to this Contract, contain the entire understanding between the Supplier and the Customer relating to the operation of this Contract 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.

## 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.

## 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.

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

**SCHEDULE A**

**FACILITIES**

All facilities to be managed by the Supplier are listed within Appendix 2 to Attachment 1 – Solution Design Document.

# Sites and Supplier Premises

|  |  |
| --- | --- |
| **Site** | **Address** |
| Agfa HealthCare IT UK Ltd | 1 Hawthorn Park, Coal Road, Leeds, LS14 1PQ |

**APPENDICES TO SCHEDULE A**

a. The license granted under this Agreement, with respect to certain software programs within the Software, may be granted under authority granted to Company by Oracle Corporation, Microsoft Corporation, Agfa HealthCare Inc., Agfa HealthCare N.V., Agfa-Gevaert HealthCare GmbH, or one or more other third party licensors. With respect to software products developed by such third party licensors and licensed by Customer under this Agreement, each such third party licensor is, to the fullest extent permitted by law, an intended third party beneficiary of this Agreement, including without limitation, with respect to the provisions concerning confidentiality, warranty disclaimers and limitations of liability. To the extent permitted by applicable law, Company hereby disclaims all warranties by such third party licensors and disclaims each such third party licensors’ liability for any damages, whether direct, indirect, incidental, or consequential, arising from the use or installation of such third party software products.

b. The Microsoft software products (the “Microsoft Products”), if any, included in the System that Customer procures under this Agreement have been integrated or pre-installed as part of the System. Each Microsoft Product is subject to its respective Microsoft End User License Agreement contained in such software and may differ from a non-integrated Microsoft software product. The rights and restrictions set forth in this Agreement that apply to the Software shall apply in the same manner to the Microsoft Products. Any issues concerning the functionality or performance of the Microsoft Products should be directed to Company and not to Microsoft. In addition, there is a no high risk use requirement that the Customer may not use the Microsoft Products in any application or situation where the Microsoft Product(s)’ failure could lead to death or serious bodily injury of any person, or to severe physical or environmental damage ("High Risk Use"). Examples of High Risk Use include, but are not limited to: aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles, or weaponry systems. High Risk Use does not include utilization of the Microsoft Products for administrative purposes, to store configuration data, engineering and/or configuration tools, or other non-control applications, the failure of which would not result in death, personal injury, or severe physical or environmental damage. These non-controlling applications may communicate with the applications that perform the control, but must not be directly or indirectly responsible for the control function. Customer consents to the disclosure by Company to Microsoft of information about the Customer for the purpose of reporting to Microsoft that Customer has licensed a product containing the Microsoft Products from Company. Customer represents and warrants that (i) it is not licensing Microsoft Products separate and apart from the applicable Agfa product, (ii) that the copies of the Microsoft Products that it receives from Company do not entitle Customer to maintain on its computer systems any more copies of the Microsoft Products than it previously licensed from Company or Microsoft, and (iii) it possesses and will maintain sufficient quantities of fully valid Microsoft licenses to support the maximum number of users and devices that may access or use the applicable Agfa product under the terms of this Agreement. For purposes of the Microsoft Products, Microsoft Corporation shall be an intended third party beneficiary of this Agreement with the right to enforce warranties and any other provisions of the Agreement and to verify the compliance of Customer with the same.

c. Oracle Database Software, Oracle Hardware, and Oracle Java Software Components.

i. Oracle Database Software.

1. When Oracle Database Software that is licensed to Customer by Company under this Agreement is identified as being of an ASFU (Application Specific Full Use) license type, then such Oracle Database Software is subject to the terms contained in the End User License Agreement for Oracle Programs (ASFU).

2. When Oracle Database Software that is licensed to Customer under this Agreement is identified as of an ESL (Embedded Software License) license type, then such Oracle Database Software is subject to a restricted license and can only be used in conjunction with the Agfa-Developed Software with which the license(s) to the Oracle Programs were purchased by Customer. At the termination of the license for such Agfa-Developed Software, further use of the Oracle Programs is prohibited, and the Oracle Programs will be uninstalled or removed by Company.

3. When Oracle Database Software that is provided to Customer under this Agreement is identified as of a “PAH” (Proprietary Application Hosting) type, Customer is not buying a license to the Oracle Database Software, but instead is using a service that includes the Oracle Database Software, and such Oracle Database Software is subject to the terms contained in the Terms of Use for Oracle Programs (PAH).

ii. Oracle Hardware. Use of the operating system delivered with hardware manufactured by Oracle (the “Oracle Hardware”) is restricted to the terms of the license delivered by Oracle with such Oracle Hardware and only as incorporated in, and as part, of such Oracle Hardware. Oracle Hardware, if purchased, includes Oracle Corporation’s (“Oracle”) hardware warranty in effect at the time the hardware is purchased and Oracle's hardware warranty can be accessed at http://www.oracle.com/support/policies.html. Customer’s Oracle Hardware warranty will start on the earlier of (a) the date Company ships the Oracle Hardware to Customer, or (b) 90 days after the date the Oracle Hardware is shipped to Company by Oracle. The Oracle Hardware is not specifically designed, manufactured, or intended for use as parts, components, or assemblies for the planning, construction, maintenance, or operation of a nuclear facility, and Customer is prohibited from using the Oracle Hardware for these purposes. Oracle or its licensor(s) retain all ownership and intellectual property rights to the Oracle programs, operating system and integrated software in the Oracle Hardware. Title to the Oracle Hardware’s operating system and/or integrated software is prohibited to pass to Customer or any other party. The Oracle Hardware may not be used by Customer for rental, leasing, timesharing, subscription service, hosting, or outsourcing. Customer may not remove or modify any Oracle Hardware markings or any notice of Oracle's or its licensors' proprietary rights. Third party technology that may be appropriate or necessary for use with some Oracle Hardware is specified in the Oracle Hardware’s user documentation, readme files, notice files, and/or installation documentation, and such third party technology is licensed to Customer under the terms of the third party technology license agreement specified in Oracle’s user documentation, readme files, notice files, and/or installation documentation, and not under the terms of this Agreement. Company has the right to audit Customer’s use of the Oracle Hardware and require that Customer provides at Customer’s costs reasonable assistance and access to information in the course of the audit and permit to report the audit results to Oracle or to assign its right to audit Customer’s use of the Oracle Hardware to Oracle. Where Company assigns its right to audit to Oracle, then Oracle, and not Company, shall be responsible for any of Customer’s costs incurred in cooperating with the audit.

iii. Oracle Java software programs. The following end user license terms apply to Java software contained in Agfa-Developed Software: Customer is prohibited from creating, modifying, or changing the behavior of classes, interfaces, or subpackages that are in any way identified as "Java", "Javax", "Sun" or similar convention as specified by Oracle in any naming convention designation. Customer acknowledges that Oracle owns the Java trademark and all Java-related trademarks, logos and icons including the Coffee Cup and Duke ("Java Marks") and agrees to: (a) comply with the Java Trademark Guidelines at http://www.oracle.com/us/legal/third-party­trademarks/index.html; (b) not do anything harmful to or inconsistent with Oracle's rights in the Java Marks; and (c) assist Oracle in protecting those rights, including assigning to Oracle any rights acquired by Customer in any Java Mark. The Oracle Java software programs may contain source code that is provided solely for reference purposes. Additional copyright notices and license terms applicable to portions of the Oracle Java software programs are set forth in the THIRDPARTYLICENSEREADME.txt file of the Java software program. Use of the Commercial Features not expressly included in the licensed Oracle Java software program for any commercial or production purpose requires a separate license from Oracle. "Commercial Features" means those features identified in Table 1-1 (Commercial Features In Java SE Product Editions) of the Program Documentation accessible at http://www.oracle.com/technetwork/java/javase/documentation/index.html.

d. Some Software products utilize Adobe® Reader®, Flash® Player, and Shockwave® Player under license from Adobe Systems Incorporated. Adobe® Flash® Player Copyright © 1996-2017 and Adobe® Shockwave® Player Copyright © 1996-2010. Adobe Systems Incorporated. All Rights Reserved. Adobe, Reader, Flash and Shockwave are either trademarks or registered trademarks in the United States and/or other countries. The Adobe products are provided “as is” without any liability to Adobe Systems Incorporated.

e. Rhapsody Software that is licensed to Customer by Company under this Agreement is subject to the additional Orion Health terms and conditions listed below, attached hereto and incorporated herein.



**SCHEDULE B**

**PROCEDURES SPECIFIED UNDER THE CONTRACT**

# Change control principles and procedure

## Principles

### Where the Customer or the Supplier, during the term of the Contract, see the need for Change to the functions or performance of the Services, the environment in which the Services are performed or the Transition Project, or to any details of the Contract, the Customer or the Supplier may at any time request such change and propose an amendment to the Contract in accordance with the Change Control Procedure as set out in Paragraph 1.2 below.

### Neither the Customer nor the Supplier shall unreasonably withhold its agreement to any change.

### Unless the Customer and the Supplier otherwise agree in writing there shall be no presumption that the obligations undertaken by either Party in connection with the Contract are in any way changed until an amendment to the Contract has been effected in accordance with the Change Control Procedure.

### No amendments to the Contract shall be valid unless they have been agreed in writing on behalf of the Customer and the Supplier by or on behalf of their respective Authorised Officers.

## Procedures

### The Customer and the Supplier shall discuss changes requested by either Party and such discussion shall result in :

#### agreement not to proceed further; or

#### rejection of the request by the non-requesting party; or

#### agreement to proceed in principle.

### Where it is agreed in principle to proceed with a requested change:

#### if the request was initiated by the Customer, the Customer shall submit a written request for change, which describes the requirements in detail;

#### if the request was initiated by the Supplier or the Supplier has received a written request in accordance with Paragraph 1.2.2(a), the Supplier shall submit a change control note (hereinafter referred to as a CCN) to the Customer within a reasonable time, (agreed between the Parties at the time). The CCN may be complete (“Complete CCN”) or in the case of Changes which propose to vary the Services, partially complete (“Partially Complete CCN”).

### Each Complete CCN shall contain:

#### the title of the change;

#### the originator and the date of the request for the change;

#### the reason for the change;

#### full details of the change including any specifications and user Facilities;

#### the price, if any, for implementing the change;

#### any changes to the Charges and a revised payment schedule, if appropriate;

#### an implementation timetable

#### the impact, if any, of the change on other aspects of the Contract including but not limited to:

##### the Timetable;

##### the Charges;

##### the overall payment schedule contained in the Order Form;

##### the Services;

##### other relevant issues in the Supplier Undertakings;

##### resources; and

##### Contractual issues;

#### the date of expiry of the CCN; and

#### provision for signature by the Customer and the Supplier.

### For each Complete CCN submitted the Customer shall, within the period of validity of the CCN:

#### allocate a sequential number to the Complete CCN, if it has not already been numbered in accordance with Paragraph 1.2.8 below;

#### evaluate the Complete CCN and as appropriate either:

##### request further information; or

##### approve the CCN; or

##### notify the Supplier of rejection of the CCN;

#### arrange for two (2) copies of an approved CCN to be signed on behalf of the Customer and the Supplier, one copy signed by both Parties to be provided to the Supplier, the other copy to be retained by the Customer.

### Receipt by the Supplier of a copy of any CCN signed by both the Customer and the Supplier shall advise the Supplier of the acceptance of such CCN and shall constitute a formal amendment to the Contract.

### Submission of a Partially Complete CCN

### In the event that, having received a written request for a change from the Customer and the requested change is for a variation of the Services, the Supplier cannot complete a CCN without information obtained from further investigations into the viability of such variation or from testing its impact on the Services and / or without incurring significance costs in obtaining such information, it may submit a Partially Complete CCN.

### A Partially Complete CCN shall contain, as far as it is available, the information specified in Paragraph 1.2.3 and, in addition, the Supplier shall submit details of such investigations and testing as may be required to obtain information necessary to complete the CCN with the costs, if any, associated therewith.

### For each Partially Complete CCN submitted to it, the Customer shall, within a period agreed at the time:

#### allocate a sequential number to the CCN; and

#### evaluate the CCN and as appropriate either:

##### request further information or modification of details of the

##### CCN or any other information submitted; or

##### give approval for the Supplier to complete the CCN by undertaking the investigation and / or testing specified in relation to it; or

##### notify the Supplier of rejection of the CCN;

#### If the change control procedure does not result in agreement to a requested variation of Services, whether due to rejection of such a request by one party or non-acceptance by the Customer of a response or a lack of response to such a request, the Parties shall seek agreement through the escalation procedure specified in Paragraph 1.2.8(d) and Paragraph 2 below before recourse to any other resolution.

#### If, after fully exercising the escalation procedure in accordance with Paragraph 1.2.8(c) the Parties have not reached agreement, either Party may, by notice in writing to the other, refer the proposed variation and response thereto for assessment to a Person, acting as an expert, agreed by the Parties, (hereinafter referred to as the assessor). Failing agreement on an assessor within fourteen (14) days of the date of such notice, an assessor shall be appointed at the request of either Party by the president of the British Computer Society or his nominee.

# Reference to an assessor

## The terms of reference of an assessor shall be set out in an agreement to be signed by the Parties and the assessor and shall include that:

### the assessor shall establish procedures for the assessment after his appointment;

### the assessor shall consider information submitted by each Party and may request, and the Parties shall provide, any additional information required to enable him to understand the issues to be assessed and the Parties' positions thereon. The assessor may, at his discretion and with regard to its confidentiality, make any such information available to the other Party;

### the assessor may consider information from any other source that he deems to be relevant;

### the assessor shall, on the basis of his own opinion and information available to him, assess the reasonableness of the Parties' positions on the relevant issues and submit such assessments, with recommendations for the resolution of such issues, to the Parties in writing. The Parties shall not unreasonably reject the recommendations;

### the assessor shall undertake not to disclose any information in respect of the reference to any Person other than the Parties without their permission and further, not to disclose any information submitted to him by the Parties which is designated as confidential, to any Person, including the other Party, without the consent of the owning party;

## Applicable fees and expenses shall be specified in the agreement of the terms of reference, to be paid by the Parties in equal shares. The assessor shall be entitled to fees in respect of time spent on the assessment and reasonable expenses, irrespective of whether the Parties reach agreement.

## The Parties shall treat as confidential, in accordance with the provisions of Clause 11, any information obtained in relation to the reference and the assessments and recommendations resulting from it.

# Fault reporting procedure

Please see paragraph 2.14 of Attachment 1

# Escalation Procedure

Complaint escalation begins when the local team requires additional resources to resolve a Customer issue and ends when the Customer confirms satisfaction or when all options have been exhausted and communicated to the Customer. Issues in need of resolution shall be referred to the Authorised Officers in the first instance. In the event of an issue remaining unresolved more than five (5) days after the referral either of the Authorised Officers may refer the issue for resolution by way of escalation to the following: for the periods stated

Supplier:

1. Service Manager (5 working days)

2. UKI Region Service Manager (another 5 working days after 1. above)

3. UKI General Manager (another 5 working days after 2. above)

Customer:

1. PACS Systems Manager / IT Service Desk (5 working days)

2. Clinical Services Manager / Production Support Manager (another 5 working days after 1. above)

3. Director of Informatics / Associate Director Service Delivery / Associate Director Technology Delivery (another 5 working days after 2. above)

If, following the Escalation Procedure, the parties have failed to rectify the issue, the Dispute Resolution Procedure found at clause 24 of the Framework Agreement may be applied.

# Warning Notices Procedure

The procedure found in clause 5.1 of these terms and conditions shall be used where any warning notices are required.

**SCHEDULE C**

**GOVERNANCE**

# Introduction

## This Schedule C (Governance):

### describes the governance structure for the Term; and

### describes the reports that will be provided by the Supplier,

### with the purpose of providing the Customer with oversight of the Supplier's provision of the Services.

## The objective of the governance structure set out in this Schedule is to ensure:

### that a successful working relationship between the Parties is maintained;

### ongoing development of the Services; and

### monitoring of performance of the Services and the Parties' other obligations under this Contract.

## The Parties shall establish and convene the governing bodies as further described in Paragraph 3 (Governance Bodies) of this Schedule C (Governance).

## Each Party’s Authorised Representative shall be responsible for ensuring that the provisions of this Contract are upheld and for coordination of their delivery and to maintain the effectiveness of the relationship between the Service provider and the Customer.

## The Supplier shall ensure that it makes available appropriate resource on a regular basis such that the aims, objectives and specific provisions of this Schedule C (Governance) are met.

## Without prejudice to Paragraph 1.5 above, where the Customer so requires, the Parties shall convene regular meetings of relevant personnel to focus on specific issues arising from delivery of the Services.

# Key Principles

## The key principles set out in this Paragraph 2 shall apply to the meetings and operation of the governance bodies described in Paragraph 3 (Governance Bodies) of this Schedule C (Governance) ("**Governance Bodies**").

## Each Party's attendees at each of the Governance Bodies shall be sufficiently empowered to take actions and decisions on behalf of their respective organisations within the authority levels and terms of reference of the governance body in question.

## The Governance Bodies will be chaired by the Customer members, supported by their Supplier counterparts. The Customer chairperson shall have overarching and overruling discretion to determine any matter arising in any Governance Body.

## The Governance Bodies shall include representation of the Customer IT and business teams as appropriate.

## The Supplier with the Customer's reasonable assistance shall have administrative responsibilities for the organisation of meetings of the Governance Bodies. These responsibilities shall include:

### circulating meeting logistics, objectives and agenda, any minutes/outstanding actions from the previous meeting and other relevant information to all attendees at least three (3) Business Days prior to the scheduled meeting;

### ensuring agreed decisions, actions and next steps are captured during the meeting;

### circulating minutes, together with a summary of the meeting's decisions, actions and next steps, to all attendees and other agreed stakeholders within five (5) Business Days of the meeting; and

### maintaining an up-to-date action log.

## The Supplier shall ensure that effective representation is provided for all meetings of the Governance Bodies. The level of representation will be determined by the specific agenda and objectives of the meeting in question. Agents of the Customer or Third Party Suppliers may also attend meetings of Governance Bodies as the Customer in its sole discretion may determine.

## The Parties shall ensure, as far as reasonably practicable, that all Governance Bodies shall, as soon as reasonably practicable, resolve the issues and achieve the objectives placed before them.

# Governance Bodies

## The Governance Bodies as set out in Attachment 8 to the Order Form shall be created by the Parties.

# Contract management mechanisms

## The Supplier shall pro-actively manage any risks attributed to it under this Contract.

## The Supplier shall develop, operate, maintain and amend, as agreed with the Customer, processes for:

### identification and management of risks;

### identification and management of issues;

### monitoring and controlling project plans and dependencies; and

### document control and management.

## Any amendments agreed by the Parties at a meeting of a Governance Body shall be managed and implemented, in accordance with the Change Control Procedure.

# Annual Review

## An annual review meeting shall be held, on a date to be agreed between the Parties, throughout the Term in order to review:

### the Supplier’s overall performance under this Contract; and

### the effectiveness of the governance model set out in this Schedule C (Governance).

## The annual review meetings will be attended by the Authorised Representatives of the Parties and any other persons considered by Customer necessary for the review.

## At least ten (10) Business Days in advance of each annual review meeting, the Supplier shall prepare and circulate an annual report, setting out an objective assessment of its overall performance under this Contract since the last annual review meeting and since the Commencement Date. The report shall address:

### Service performance;

### Charges against baseline, explaining variances;

### Service improvements and innovation delivered; and

### recommendations to address issues and to deliver improvement.

**SCHEDULE D**

**ACCEPTANCE CRITERIA AND PROCEDURES**

# acceptance tests

The Customer and the Supplier have agreed that the following testing process shall apply and that this has been constructed relative to the Contractual Date known as the Acceptance Completion Date for planned go live:

**General**

## Acceptance of the implementation of the Services will be dependent upon certain Test Success Criteria being met in respect of agreed Milestones including Planned Acceptance Dates and the Acceptance Completion Date.

## The Customer will issue a Milestone Achievement Certificate when the Acceptance Tests relating to a Milestone have been Achieved.

## Any disputes between the Customer and the Supplier regarding approval of Acceptance Test Plans and/or Acceptance Testing shall be referred as quickly as possible to the Representatives of each Party for resolution.

**Acceptance Test Plan and test scripts**

### The Customer shall conduct Acceptance Testing in accordance with an agreed Acceptance Test Plan.

### The Supplier shall develop an Acceptance Test Plan and associated test scripts for the approval of the Customer as soon as practicable but in any case no later than 14 Working Days prior to the start date for the relevant Acceptance Testing which shall:

### specify the proposed method of testing the Milestone deliverable which is required to satisfy the Test Success Criteria;

### describes the responsibilities of each of the Parties in conducting the Acceptance Testing;

### clearly and unambiguously identifies any Customer Delay Risks; and

### describe how the test results will be submitted to both of the Parties for assessment.

## The Customer shall not unreasonably withhold or delay its approval of the Acceptance Test Plan where the same conforms to the Test Success Criteria.

**Acceptance Test Reports**

## Following completion of the Acceptance Testing the Customer will provide the Supplier with an Acceptance Test Report. Each Acceptance Test Report shall provide a full report on the Acceptance Testing conducted in respect of the relevant Milestone deliverables, including:

### an overview of the Acceptance Testing conducted;

### identification of the relevant Test Success Criteria that have been satisfied;

### identification of the relevant Test Success Criteria that have, in the reasonable opinion of the Customer, not been satisfied together with the Customer's explanation of why it considers that those criteria have not been me; and

### details of any Acceptance Tests that were not completed together with the Customer's explanation of why those Acceptance Tests were not completed;

("Acceptance Test Issues").

## In the event that the Customer establishes that the Milestone deliverable does not meet the relevant Test Success Criteria due to Default of the Supplier, the Supplier will be given an opportunity to remedy the same and to resubmit the Milestone deliverable for further Acceptance Testing.

## The process described above will then be repeated. If the Test Success Criteria are still not met then:

## The Customer may at its discretion (without waiving any of its other rights and remedies) choose to:

### Issue a Milestone Acceptance Certificate conditional on the remediation of the Acceptance Test Issues, in accordance with the following categorisation of issues and remedial requirements:

### to fix a new date for carrying out further Acceptance Tests on the same terms and conditions and determine the remediation of the Acceptance Test Issues, in accordance with an agreed Correction Plan (without prejudice to delay deductions applicable to original agreed milestone dates) [i.e. no go-live unless and until Services are fully acceptable]; or

### terminate this Contract for breach (i.e. without any further remedy period being allowed pursuant to Clause 11.2.1(a)).

**SCHEDULE E**

**SECURITY REQUIREMENTS**

In this Schedule, the following definitions shall apply:

|  |  |
| --- | --- |
| **"Customer Information"** | shall mean all Customer Data, Confidential Information, Intellectual Property Rights and other data or information, however it is conveyed or received, that (without prejudice to the foregoing) belongs to, is licensed to and/or relates to the customers, business affairs, development, trade secrets, business plans, know-how, personnel or suppliers of the Customer together with any information derived from any of the above; |
| "Customer Records" | shall mean any record of Customer Information in any format or media which provides evidence of business activity; |
| "Customer Security and Cyber Policies and Rules" | shall mean all policies, standards and rules encompassed within the policy framework owned by the Customer; |
| **"Cyber Attack"** | shall mean any unauthorised attempt to gain unauthorised control, disrupt or cause a denial of service in relation to the Customer Information and / or the Customer System; |
| **"DDoS Attack"** | shall mean a distributed and non distributed denial of service attempt or attempts to make an online service unavailable by overwhelming it with Traffic or connections from multiple sources; |
| "Good Industry Practice" | shall mean in relation to any undertaking and any circumstances and in particular the provision of services to UK Government bodies or organisation of similar standing, the exercise of that degree of professionalism, skill, diligence, prudence, care, efficiency, timeliness, judgement and foresight which would reasonably and ordinarily be expected from a leading and expert internationally recognised company engaged in the same type of activity under the same or similar circumstance seeking to comply with its contractual obligations in full and complying with applicable Laws; |
| "IT Disaster Recovery and Business Continuity Policy" | shall mean the Customer's policy relating to IT disaster recovery and business continuity in place from time to time; |
| "Malicious Traffic" | shall mean Traffic, including any unauthorised communication data that contains Malware which is being or is likely to be being transmitted solely for the purposes of a Cyber Attack; |
| "Malware" | shall mean any software, computer program, code or programming instructions intentionally constructed with the ability to damage, adversely alter, adversely interfere with or otherwise adversely affect, computer programs, data files, equipment, software or operation of computer systems, including Customer System or Supplier System or any other computer program code typically designated to be a ‘virus’, ‘worm’, ‘trojan,’ ‘time or logic bomb’, ‘disabling code’, ‘authorisation key’, ‘licence control utility’ or ‘software lock’ or ‘routine key-logger’, ‘sniffer’, ‘backdoor’ or similar; |
| **"Records Policy"** | shall mean as defined in Paragraph 7.4; |
| **"Recovery Point Objective" or "RPO"** | shall mean the acceptable amount of data loss measured in time following the failure of a system; |
| **"Recovery Time Objective" or "RTO"** | shall mean the time required to switch from the primary system to a disaster recovery system from the point of recovery invocation; |
| **"Required DDoS Filtering Capacity"** | shall mean 150% of the capacity required to prevent the largest DDoS Attack at any time publicly reported or known; |
| **"Security and Cyber Incident"** | shall mean as defined in Paragraph 4.1.7; |
| **"Security Incident Management Procedures"** | shall mean as defined in Paragraph 4.1; |
| **"Security and Cyber Policy"** | shall mean as defined in Paragraph 2.1; |
| **"Security Audits"** | shall mean as defined in Paragraph 9.1; |
| **"Security and Cyber Standards"** | shall mean any standards reasonably applicable given the Supplier's expertise and the Services provided, and which shall always include:   1. ISO/IEC 27000 series of Information Security Management standards; 2. ‘10 Steps to Cyber Security’ guidance, as amended from time to time and currently available at: <https://www.ncsc.gov.uk/guidance/10-steps-cyber-security>; 3. National Data Guardian data security report/standards/recommendations; 4. NCSC – Cloud Security principles; and 5. ISO 15489 (unless otherwise specified in the Order Form); 6. ISO 20000 (unless otherwise specified in the Order Form); and 7. any other applicable standards specified by the Customer in the Order Form. |
| **"Social Media Incident"** | shall mean a post or series of posts that expose Customer Information including information about the Customer's clients or colleagues to unauthorised individuals and/or damages the reputation of the Customer; |
| **"Supplier Group"** | the Supplier and any of its subsidiaries, with subsidiaries having the meaning defined by section 1159 of the Companies Act 2006 (or any statutory modification or re-enactment of that Act) but for the purposes of section 1159(1) Companies Act 2006 a company shall be treated as a member of another if any shares in that other company are registered in the name of (i) a person by way of security (where the company has provided the security); or (ii) a person as nominee for the company; |
| **"Traffic"** | shall mean internet traffic or other communication; |
| **"Traffic Capture"** | shall mean the action that may be undertaken during a DDoS Attack to use devices on the relevant network to assist the Parties to analyse and investigate that event and thereby assist in informing the Customer of the appropriate countermeasures to undertake; |
| **"User ID"** | shall mean as defined in Paragraph 6.3.1; |

# General Security Obligations

## Except as strictly required to provide the Services in accordance with the terms of this Call-Off Contract, the Supplier shall not:

### make use of Customer Information or Customer System or Customer Records for any other purpose;

### purport to sell, let for hire, assign rights in, declare a trust of or otherwise dispose of or commercially exploit any Customer Information;

### make any Customer Information or Customer Records available to any third party; or

### intercept, analyse or otherwise monitor the traffic which passes through the Customer System.

# security policy requirements

## The Supplier will, prior to the commencement of the Services, develop, implement, maintain, and provide to the Customer, a security and cyber policy/policies (“**Security and Cyber Policy**”) which:

### sets out the security and cyber procedures related to the Supplier’s (and its sub-contractors’) performance of the Services; and

### is substantially in the form set out in Attachment 10 of the Order Form.

## The Supplier’s Security and Cyber Policy shall be designed to protect Customer Information, Customer Records and Customer Systems and shall be periodically updated and audited in accordance with this Schedule. The Security and Cyber Policy will set out the security and cyber measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the delivery of each element of the Services (both physical and logical) and shall at all times comply with and specify security and cyber measures and procedures which are sufficient to ensure that the Supplier and each of its Sub-contractors complies with its obligations in accordance with this Schedule. The Supplier shall submit the Security and Cyber Policy not less than annually to the Customer for review during the Term.

## The Security and Cyber Policy shall include, without limitation, the following security and cyber measures and procedures:

### the security and cyber awareness training provided by the Supplier for Supplier Personnel and its Sub-contractors;

### the controls in place to detect any Security and Cyber Incident;

### details of vetting procedures undertaken by the Supplier on Supplier Personnel and Sub-contractor personnel who have access to Customer Information, the Customer System or Customer Records;

### the procedures to be followed in the event of a breach of the Security and Cyber Policy by Supplier Personnel and/or Sub-contractor Supplier Personnel;

### the risk related countermeasures in place;

### (without prejudice to any right of the Customer to approve or reject the use of Sub-contractors) details of the security and cyber arrangements at any Sub-contractor premises used in the performance of the Supplier’s obligations under this Call-Off Contract.

### the Supplier’s control for preventing any unauthorised use, alteration or destruction of Customer Information and Customer Records by Supplier Personnel, a Sub-contractor or by any other Party;

### the Supplier’s encryption controls for protecting Customer Information, in line with the Security and Cyber Standards;

### physical and logical access, including the following:

#### restricting access to Customer Information in any shared environment such that any person who is not authorised by the Customer to do so, may not gain such access;

#### the logical access controls in place to protect information from unauthorised access including, without limitation, limiting the access assigned to users to control their capabilities, and providing access only where authorised;

#### ensure that any Customer Information stored on the Supplier’s systems are logically separated from the Supplier's own data and the data of any other Party;

### the Supplier’s preventative, detective and remediation requirements to safeguard the Customer System from vulnerabilities and Malware introduced by Supplier Personnel, a Sub-contractor or by any other Party;

### the Supplier’s anti-virus software, other security and cyber software controls (such as firewalls, anti-Malware, intrusion detection);

### the security and cyber testing policy for web sites hosted by the Supplier;

### the Supplier’s controls for testing and applying security patches; and

### the Supplier’s system development and testing controls.

## Supplier acknowledges that:

### any Traffic Capture will be deemed the Customer Information for the purposes of this Schedule; and

### Traffic and any Traffic Capture may contain Personal Data and shall be Processed only in accordance with Schedule G (Data Processing).

## Immediately following a request by the Customer (or as part of a scheduled audit) the Supplier shall provide the Customer with a copy of the Security and Cyber Policy complete with the most recent updates.

### The Supplier must appoint an accountable senior executive to be responsible for the Security and Cyber Policy and ensure it is updated at least annually (or more frequently as it considers it necessary to do so) and must in any event update the Security and Cyber Policy as follows:

### if any change to an applicable Law, the Customer Security and Cyber Policies and Rules or any other Customer policy is introduced and such change necessitates a change to the security and cyber measures and procedures required to provide or receive the Services;

### each time a new call off from a framework Call-Off Contract is signed, the Supplier shall update the Security and Cyber Policy to the extent necessary so that it takes into account any specific security and cyber requirements in relation to the provision of the applicable Services or

### if the Customer reasonably believes that the Security and Cyber Policy is inconsistent with any applicable Law, local or national regulation (for regulated entities), or Good Industry Practice.

## The Supplier shall appoint a member of Supplier Personnel to be responsible for Security and Cyber Policy compliance within the Supplier’s organisation. The responsible member of Supplier Personnel is named in the Order Form and shall ensure that:

### all Supplier Personnel and Sub-contractors understand the process and conditions under which they should, or are required to, invoke and execute the Security Incident Management Procedure; and

### Supplier Personnel are aware of when they should escalate Security and Cyber Incidents to their senior managers so as to promote active communication, even on issues of relatively minor concern.

# Training

## The Supplier must provide security and data protection training and awareness as a part of their employee induction process (key elements on start, full training within eight (8) weeks) and ensure it is repeated annually by all Supplier Personnel.

## Where the Supplier provides staff that are working out of Supplier Group premises for a significant portion of their time, they must also complete any security training prescribed by the Customer.

# Incident Management

## Prior to the commencement of the Services the Supplier shall develop, implement, and maintain (as part of, or separately to, the Security and Cyber Policy) a procedure ("**Security** **Incident Management Procedure**") for identifying, preventing, monitoring, reporting and responding to:

### the introduction and/or presence of any Malware;

### all known and emerging security and cyber incidents including without limitation crime (e.g. theft of property or data); actual or attempted fraud (external and internal employee fraud); unauthorised access to Customer Information, data and / or Customer Systems; Cyber Attacks including DDoS Attacks; physical security breaches and cyber breaches compromising or breaching the security of Customer Information/Data/Systems and/or involving data leakage and/or data corruption; any incidents which risk impacting the provision of Services to the Customer;

### any observed or suspected security and cyber risks or security and cyber incidents in any Supplier System or Supplier network that interconnects with the Customer infrastructure or material Supplier infrastructure (where this is applicable), or that retains Customer Information or Customer Records;

### any observed or suspected security and cyber risks or security and cyber incidents in the Customer infrastructure or material Supplier infrastructure including any that interconnects with any other Supplier System or third party system or network as a result of that interconnectivity (where this is applicable);

### any incident resulting in or potentially resulting in loss of Customer Records or interruption to business or IT continuity;

### any incident that may be indicative of larger, adverse security or cyber related events (for example, DDoS Attacks or Malware penetration) that the Supplier discovers or becomes aware of during the provision of the Services; and

### any actual or attempted unauthorised access to or use of any of the Customer infrastructure or material Supplier infrastructure, Customer Information, Customer Records or any sites, facilities, systems or other premises of the Supplier used to provide the Services to the Customer,

### each of which in Paragraphs 4.1.1 to 4.1.7 (inclusive) is a "**Security and Cyber Incident**".

## The Security and Cyber Incident Management Procedure shall detail the following obligations of the Supplier, all of which shall be invoked upon the Supplier becoming aware of a Security and Cyber Incident, where it relates to any aspects of the Services the Supplier shall:

### take all steps necessary to remedy such Security and Cyber Incident and/or to protect Information, infrastructure and Customer Records against any Security and Cyber Incident within agreed service levels specified within this Call-Off Contract;

### take all steps necessary to prevent a similar Security and Cyber Incident in the future;

### where appropriate, support the recovery process via all reasonable means (whether the incident relates to data or financial loss);

### provide relevant findings from any internal investigations, or take all reasonable steps necessary to provide any assistance to any investigation that the Customer or a third party (appointed by the Customer) requires, including making employees available for interview by the Customer or its appointed third party and supporting any referral to a law enforcement agency or regulator;

### at the Customer’s request, return to the Customer any Customer Information or Customer Records in the Supplier’s or its Sub-contractor’s possession;

### where the Security and Cyber Incident relates to the Customer infrastructure, comply with all reasonable directions of the Customer in connection with the remedy of the breach and/or protection of the Customer infrastructure; and

### provide the Customer in writing with full details of the steps taken to remedy each actual, potential, threatened or attempted Security and Cyber Incident.

# Information and Cyber Security

## The Supplier must protect Customer Information throughout its lifecycle and shall maintain an inventory of Customer Information in the Supplier’s possession in accordance with the data classification and handling requirements as notified to the Supplier by the Customer from time to time. The Supplier relationship manager in the Customer must be notified promptly where the Supplier requires clarification on how to handle Customer Information.

## Where the Supplier is involved in any software development, the Supplier shall follow secure development practices in accordance with Good Industry Practice, including without limitation ensuring that all developers are skilled and trained in relevant secure development practices and integrating appropriate security practices and testing into the software development lifecycle.

## Where a significant change may affect the provision of Services or Customer Information, Records or data, the Supplier shall give the Customer not less than twenty eight (28) days' notice of the proposed changes in order that a security test may be arranged.

## Where a vulnerability is identified in the Supplier’s System that hosts or supports Customer Information and processes it shall be remediated expeditiously by the Supplier and in any event within the timescales specified by the Customer. The Supplier shall amongst other things be liable to the Customer for any losses suffered by the Customer resulting from either an unpatched or an unsupported element of the Supplier System where an update or a patch was not made available at least 5 Working Days prior to the Cyber and Security Incident causing the loss.

## The Supplier shall not introduce or permit the introduction of any Malware or vulnerabilities into, or be the source of any malicious activity against, any of the Customer's infrastructure (for example, Malware, spamming or denial-of-service attack). Where any Malware or vulnerability is identified by the Supplier which may pose an actual or potential threat to the Customer or the Supplier, the Supplier shall promptly notify the Customer of the same and provide details in writing of any such Malware or vulnerabilities to the Customer, including the Supplier’s proposed remediation plan, or actions taken in response.

## If Malware or a vulnerability is introduced on to the Customer System by a member of Supplier Personnel or Sub-contractor, the Supplier shall reimburse the Customer for the costs and expenses that arise as a consequence of the Customer taking all actions required to remediate the vulnerability.

## The Supplier shall not, without the prior written consent of the Customer Representative (authorised to provide such consent under this Call-Off Contract) insert or allow the insertion of any code that would disable, shut down or otherwise materially adversely impact all or any portion of the Customer's infrastructure.

# Data Security and Logical Access Control

## The Supplier shall hold no Customer Information or Customer Records on any portable device in any media (including but not limited to a laptop, CD, USB memory stick and all other similar media). Should the Supplier require use of any portable devices, in any media (including but not limited to a laptop, CD, USB memory stick, back up tapes and all other similar media) in order to deliver the Services to the Customer the Suppliers shall:

### ensure all Customer Information and Customer Records held on any such portable device are encrypted in accordance with Good Industry Practice and in accordance with the Customer’s requirements (which include the Approved Cryptographic Algorithms Good Practice Guideline) as notified to the Supplier from time to time.

### request written approval by the Customer for each type of portable device in any media (including but not limited to a laptop, CD, USB memory stick, back up tapes and all other similar media).

### immediately notify the Customer in the event that any Customer Information or Customer Records have been accessed through an un-encrypted device, in accordance with Paragraph 1.5 of Schedule G (Data Processing).

## Subject to Paragraph 6.1, the Customer hereby gives such consent to the Supplier to hold and process encrypted Customer Information and Customer Records on the Approved Media Devices. The Supplier will immediately notify and request written approval from the Customer in the event of any changes to its encryption process or other security facilities of all such devices, including assessment of these changes and whether they are in accordance with both Good Industry Practice and in accordance with the Customer’s requirements. For the avoidance of doubt the Customer maintains all rights to withdraw any consent, and will provide such notice in writing in the event of the Supplier breaching any data protection or security requirements, as detailed within this Schedule. Should such consent be withdrawn by the Customer the Supplier will immediately remove, destroy, and decommission all the Customer Information and the Customer Records in accordance with this Schedule from any device where such consent has previously been provided.

## T**he Supplier shall not access the Customer infrastructure and/or the Customer Information on the Customer infrastructure and/or access the Customer's assets w**ithout the prior written consent of the Customer, which consent may be withheld in the Customer's absolute discretion. If the Supplier requests such consent and such consent is given, **the** Supplier shall comply with the Customer’s infrastructure security and cyber measures as detailed in the Customer Security and Cyber Policies and Rules to guard against any unauthorised access to, and against any alteration or destruction of, the Customer infrastructure and/or Data stored on such system. At the Commencement Date, these measures require, as a minimum, that:

### all Supplier Personnel and Sub-contractors hold a unique user identification number (“**User ID**”) and strong password (such password shall meet the requirements set out in the approved cryptographic algorithms good practice guideline) prior to gaining access to the Customer infrastructure. The Supplier shall apply to the Customer for User IDs for all Supplier Personnel and Sub-contractors who require access to the Customer infrastructure. Grant of such applications shall be at the sole discretion of the Customer;

### where a Supplier Employee or Sub-contractor has been supplied with a PC, laptop or other device by the Customer all Customer and Supplier Group policies must be complied with, including not transmitting the Customer Information or the Customer Records from the Customer email address to the Supplier’s infrastructure or any other external email accounts without prior written consent of an Customer Representative (authorised to provide such consent under this Call-Off Contract).

### the Supplier complies and observes all parameters that control user access to areas and features of the Customer's infrastructure;

### the Supplier shall ensure that all Supplier Personnel or Sub-contractors are aware that any User IDs (or accounts) issued by the Customer for the performance of the Services, passwords and security tokens, including ID cards, associated with User IDs (or accounts) shall not be disclosed or shared with any other individual (either internally or externally to the Customer or Supplier);

### the Supplier shall have and shall implement robust processes to identify any Supplier Personnel or Sub-contractors who no longer require access to the Customer's infrastructure (due to leaving or being no longer involved in the provision of Services).

# Physical and people security

## **The Supplier must ensure that a general security review of all premises from which the Customer's activity / data storage etc. is conducted should be undertaken at least annually, or whenever there is significant change to the Services provided or premises operated from**, the results of which shall be shared by the Supplier with the Customer on request.

## **The Supplier shall alert the Customer Representative within twenty four (24) hours of the discovery of any identified physical security issues.**

## **The Supplier must implement appropriate risk related countermeasures to:**

### **ensure the Supplier's premises are protected, to an agreed level, against unauthorised access, intrusion, or damage due to a Security and Cyber Incident;**

### **minimise the probability of an interruption to Supplier's business operations and Services provided to the Customer from a Security and Cyber Incident;**

### **minimise the probability of a compromise of, damage to, or loss of, or removal of, the Customer's assets from a criminal, malicious, or negligent act;**

### **protect to agreed levels, the confidentiality, integrity and availability of the Customer Information.**

Records Management

## The Supplier will develop, implement and maintain a records policy containing mandatory requirements to ensure all records, in all formats/media, including electronic and physical in any location (including the Supplier Group records) are managed appropriately by the Supplier throughout their lifecycle. Such records policy (the “Records Policy”) will align to Good Industry Practice as a minimum.

## The Records Policy shall be periodically updated (every twelve (12) months as a minimum) and shall be subject to audit in accordance with the terms of this Contract.

## The Records Policy will ensure that the Supplier and its Sub-contractors comply with their obligations to the Customer.

## The Supplier and its Sub-contractors will ensure that they have sufficient processes, plans and procedures in place to carry out control testing and ongoing monitoring to ensure compliance with their Records Policy and to ensure any records related incidents, risks or breaches are identified, reported and handled promptly and appropriately.

## The Supplier and its Sub-contractors will ensure they have a risk management process that enables the identification and management of records management risks.

## The Supplier and its Sub-contractors will report any material records breaches, incidents or risks to the Customer without undue delay and in any event, within 1 Working Day.

## The Supplier will provide adequate records management training, at least annually, for the Supplier Personnel and its Sub-contractors, with evidence of completion.

## The Supplier will maintain a record inventory for all the Customer Records which are created, received, stored, processed or destroyed by the Supplier and its Sub-contractors. The record inventory will be reviewed regularly (every six (6) months as a minimum) and updated accordingly.

## The Supplier and its Sub-contractors will securely store and protect the Customer Records in accordance with the provisions of this Schedule.

## The Supplier and its Sub-contractors will securely store the Customer Records in an appropriate format and location to ensure the records are reliable, usable and can be read and retrieved over time.

## The Supplier and its Sub-contractors will agree a process to enable the Customer to retrieve any Customer Records within agreed timescales to fulfil legal, regulatory, Customer or business requirements.

## The Supplier and its Sub-contractors will retain all the Customer Records for a specific period of time in line with the Customer Policies, appropriate record retention practices and, where applicable, with Data Protection Legislation.

## The Supplier and its Sub-contractors must ensure they can apply legal holds to prevent destruction of the Customer Records. A process must be agreed with the Customer to apply legal holds to any records (electronic and physical) being managed by the Supplier and its Sub-contractors upon notification from the Customer.

# Social Media

## The Supplier shall ensure that the Supplier Personnel protect the Customer by only disclosing publicly available information about the Customer.

## The Supplier shall ensure that Supplier Personnel shall not:

### make reference to the Customer's business information (including key IT systems and processes) or dealings relating to the Customer's colleagues, customers, clients, partners, or suppliers;

### post opinions on personal social media accounts, which could reasonably be construed as official comment on behalf of the Customer;

### post anything about the Customer, its customers, clients or colleagues containing abusive, obscene or libellous comments; or

### use the NHS logo, associated brands or trademarks on social media channels without the prior written approval of the Customer.

## The Supplier will ensure that:

### Supplier Personnel have undertaken and understood the requirements set out in social media awareness training;

### any exceptions to the ordinary use of social media in relation to this Call-Off Contract are subject to prior written agreement from the Customer; and

### Social Media Incidents are reported to the Customer.

# Security Audits

## The Customer reserves the right to inspect any aspect of the security arrangements and processes relating to the Supplier's and/or its Sub-contractors' provision of the Services and its Processing of Personal Data (including the Supplier’s and/or its Sub-contractors' security environment, arrangements, policies, training arrangements for staff and processes used in the performance of the Services) (“Security Audits”) once in each twelve (12) month period during the Term of the Call-Off Contract, to assess the Supplier’s compliance with the requirements of this Call-Off Contract. Where the Supplier has performed independent reviews of Sub-contractors and is able to share these findings, these will be taken into consideration during the Security Audit. The Customer shall also have the right to conduct additional Security Audits in the following circumstances:

### if the Customer considers it necessary to do so to satisfy applicable Law or local or national regulation;

### following an actual or potential Security and Cyber Incident or Personal Data Breach or becoming aware of any actual or potential threat;

### if a Security Audit reveals a deficiency in the Security and Cyber Policy;

### if the Customer acting reasonably believes that the Supplier has failed to provide the Services in accordance with the security measures and obligations imposed on the Supplier under this Schedule and any solutions provided by the Supplier from time to in accordance with Paragraph 9.2.3; and

## where the provisions of Paragraph 9.1 apply.

### Security Audits may include tests designed to breach the protections set out in the Security and Cyber Policy and associated security measures (including security penetration testing) and shall be conducted with no less than ten (10) days’ prior written notice. Security Audits may also require the Supplier to demonstrate their capability in providing the Services on an uninterrupted or otherwise unaffected basis in the event of Security and Cyber Incidents.

### The Supplier shall make available to the Customer, at the request of the Customer and where the Customer's Information is hosted any Supplier computer systems, Supplier Personnel to assist in any Security Audit and the Supplier will co-operate fully with any investigation relating to their operations.

### If the Customer reasonably believes that the results of a Security Audit identify a weakness in the security measures adopted by the Supplier, the Supplier shall evaluate such weakness and provide a suitable solution to the Customer’s satisfaction within timescales agreed by the Customer. The results of any Security Audit and any solution provided pursuant to this Paragraph shall be without prejudice to the Supplier’s obligations in this Call-Off Contract.

## Following a Security Audit:

### the Customer may conduct an exit conference with the Supplier to confirm material facts identified in the Security Audit; and

### if a Security Audit demonstrates that the Supplier is failing to comply with this Call-Off Contract, the Supplier shall promptly take any steps which the Customer, acting reasonably, determines are necessary for it to comply with this Call-Off Contract within the timescales as required by the Customer.

## Where the Supplier receives notice from a regulator that a regulatory audit or investigation is to be carried out in respect of the Supplier's business or affairs the Supplier shall inform the Customer of such notice as soon as is reasonably practicable.

**SCHEDULE F**

**BENCHMARKING**

**BENCHMARKING**

For the purposes of this Schedule F (Benchmarking) the following words and phrases shall bear the following meanings:

|  |  |
| --- | --- |
| **"Benchmark Report"** | shall bear the same meaning as set out in this Schedule F (Benchmarking); |
| **"Benchmark Review"** | means a review of the Services carried out in accordance with Schedule F (Benchmarking) to determine whether that Services represent Good Value; |
| **"Benchmarked Services"** | means the Services that the Customer elects to include in a Benchmark Review under this Schedule F (Benchmarking); |
| **"Benchmarker"** | means the independent third party appointed under this Schedule F (Benchmarking); |
| **"Comparable Services"** | means services that are identical or materially similar to the Benchmarked Services (including in terms of scope, specification, volume and quality of performance, geography where the Services are received and the geography from where the Services is provided) provided that if no identical or materially similar services exist in the market, the Benchmarker shall propose an approach for developing a comparable service benchmark; |
| **"Comparable Supply"** | means the supply of services to another customer in the UK of the Supplier not being the Customer or any other Customer under the Framework Agreement that are the same as or similar to the Services; |
| **"Comparison Group"** | means a sample group of organisations providing Comparable Services identified by the Benchmarker under Schedule F (Benchmarking) which consists of organisations which are either of similar size to the Supplier or which are similarly structured in terms of their business and their service offering so as to be (in the Benchmarker's professional opinion) fair comparators with the Supplier or which, in the professional opinion of the Benchmarker, are best practice organisations and that are carrying on at least a significant part of their business within the United Kingdom; |
| **"Equivalent Services Data"** | means data derived from an analysis of the Comparable Services provided by the Comparison Group as adjusted in accordance with Schedule F (Benchmarking); |
| **"Good Value"** | means that:  (i) the Contract Price and Contract Charges attributable to a Benchmarked Service are, having taken into account the Service Levels within the Upper Quartile;  and  (ii) any Service Levels attributable to Benchmarked Services are, having taken into account the Contract Price and Contract Charges, equal to or greater than the median service levels for Comparable Services as adjusted using Equivalent Services Data; |
| **"Upper Quartile"** | means that based on an analysis of Equivalent Services Data, the Contract Price and Contract Charges for the Benchmarked Services, as compared to the range of prices for Comparable Services, are within the top 25% in terms of best value for money or the recipients of Comparable Services; |

# Benchmark Review

## The Customer may, by written notice to the Supplier, require a Benchmark Review of any or all of the Services provided under the Contract.

## The Customer shall not be entitled to carry out a Benchmark Review within 12 months after any previous Benchmark Review in respect of any part of the Services provided under the Contract.

# Purpose and Scope of Benchmark Review

## The purpose of a Benchmark Review will be to establish whether a Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.

## The Services that are to be the Benchmarked Services will be identified by the Customer in the written request given under Paragraph 1.1.

# Appointment of Benchmarker

## The Customer shall appoint the Benchmarker to carry out the Benchmark Review.

## The Customer will, at the written request of the Supplier, require the Benchmarker to enter into an appropriate confidentiality undertaking with the Supplier.

## Each Party shall bear its own costs (other than the costs of the Benchmarker) relating to a Benchmark Review. The costs and expenses of the Benchmarker shall be borne by the Customer unless the Benchmark Review finds that the Benchmarked Services are not Good Value in which case they shall be borne by the Supplier.

# Benchmarking Process

## The Customer shall require the Benchmarker to produce, and to send to each Party for approval, a draft plan for the Benchmark Review within 10 days after the date of the appointment of the Benchmarker, or such longer period as the Benchmarker shall reasonably request in all the circumstances. The plan must include:

### a proposed timetable for the Benchmark Review;

### a description of the information that the Benchmarker requires each Party to provide;

### a description of the benchmarking methodology to be used; and

### details of any entities which the Benchmarker proposes to include within the Comparison Group.

## Each Party must give notice in writing to the Benchmarker and to the other Party within 10 days after receiving the draft plan, advising whether it approves the draft plan, or, if it does not approve the draft plan, suggesting amendments to that plan. Neither Party may unreasonably withhold or delay its approval of the draft plan, and any suggested amendments must be reasonable.

## Where a Party suggests amendments to the draft plan under Paragraph 4.2, the Benchmarker must, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph 4.2 shall apply to any amended draft plan.

## Failure by a Party to give notice under Paragraph 4.2 will be treated as approval of the draft plan by that party.

## Once the plan is approved by both Parties, the Benchmarker will carry out the Benchmark Review in accordance with the plan. Each Party shall procure that all the information described in the plan, together with any additional information reasonably required by the Benchmarker is provided to the Benchmarker without undue delay. If the Supplier fails to provide any information requested from it by the Benchmarker and described in the plan such failure shall constitute a material breach for the purposes of the termination provisions in the Framework Agreement Terms.

## Each Party shall co-operate fully with the Benchmarker, including by providing access to records, technical documentation, premises, equipment, systems and personnel at times reasonably requested by the Benchmarker, provided that the Benchmarker shall be instructed to minimise any disruption to the Services.

## Either Party may provide additional material to the Benchmarker to assist the Benchmarker in conducting the Benchmark Review.

## Once it has received the information it requires, the Benchmarker shall:

### finalise a sample of entities constituting the Comparison Group and collect data relating to Comparable Services. The selection of the Comparison Group (both in terms of number and identity of entities) and Comparable Services shall be a matter for the Benchmarker's professional judgment;

### by applying the adjustment factors listed in Paragraph 4.9 and from an analysis of the

### Comparable Services derive the Equivalent Services Data;

### using the Equivalent Services Data calculate the Upper Quartile and/or median Service Levels;

### compare the Charges attributable to the Benchmarked Services (having regard in particular to the Service Levels and Service Credits regime) with the Upper Quartile using the Equivalent Services Data;

### compare the Service Levels attributable to the Benchmarked Services (having regard to the Charges and Service Credits) with the median service levels using the Equivalent Services Data; and

### determine whether or not each Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.

## In carrying out the benchmarking analysis the Benchmarker shall have regard to the following matters when performing a comparative assessment of the Benchmarked Services and the Comparable Services in order to derive Equivalent Services Data:

### the contractual and business environment under which the Services are being provided (including the scope, scale, complexity and geographical spread of the Services including but not limited to the place from where the Services are provided and received);

### any front-end investment and development costs of the Supplier;

### the Supplier's risk profile including the financial, performance or liability risks associated with the provision of the Services as a whole;

### the extent of the Supplier's management and Contract governance responsibilities; and

### any other factors reasonably identified by the Supplier, which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive (such as erroneous costing or over-aggressive pricing).

# Benchmarker's report

## The Benchmarker shall be required to prepare a report ("Benchmarking Report"), at the time specified in the plan approved under Paragraph 4 of this Schedule D (Acceptance Criteria and Procedures), setting out its findings. Those findings shall be required to:

### include a finding as to whether or not each Benchmarked Service is and/or whether the

### Benchmarked Services as a whole are, Good Value;

### include other findings (if any) regarding the quality and competitiveness or otherwise of those Services; and

### if any Benchmarked Service is not Good Value, or the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Charges or Service Levels, that would the required to make that Benchmarked Service or those Benchmarked Service as a whole Good Value.

### The Benchmarker shall act as an expert and not as an arbitrator.

### For the avoidance of doubt, Benchmark Reviews shall not result in any increase to the Charges or any decrease in the performance of any Services or Service Levels.

### If the Benchmarking Report states that any Benchmarked Service is not Good Value, or that the Benchmarked Services as a whole are not Good Value then the Supplier shall within 10 Working Days of the receipt of such Benchmarking Report provide the Benchmarker with reasonable reasons for the adverse report. The Benchmarker shall consider the reasons provided by the Supplier and issue a final form of the Benchmarking Report.

### If such final Benchmarking Report also states that any Benchmarked Service is not Good Value, or that the Benchmarked Services as a whole are not Good Value then the Parties shall discuss the Changes set out in such Benchmarking Report as soon as reasonably practicable. If the Supplier does not agree to implement the Changes then the Customer may terminate this Contract.

**SCHEDULE G**

**DATA PROCESSING**

In this Schedule G (Data Processing) the following definitions shall apply:

|  |  |
| --- | --- |
| **Supplier Personnel**: | means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Processor engaged in the performance of its obligations under this Contract; |
| **Data Protection Impact Assessment**: | means an assessment by the Customer of the impact of the envisaged processing on the protection of Personal Data; |
| **Controller**, **Processor**, **Data Subject**, **Personal Data**, **Personal Data Breach**, **Data Protection Officer** | each have the meaning given in the GDPR; |
| **Data Loss Event**: | means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach; |
| **Data Subject Request**: | means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data; |
| **DPA 2018**: | means the Data Protection Act 2018; |
| **GDPR**: | means the General Data Protection Regulation *(Regulation (EU) 2016/679;* |
| **LED**: | means the Law Enforcement Directive *(Directive (EU) 2016/680)*; |
| **Protective Measures**: | means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Appendix 2 (Security) to this Schedule G (Data Processing). |
| **Sub-processor**: | means any third Party appointed to process Personal Data on behalf of the Supplier related to this Contract. |

# DATA PROTECTION

## The Parties acknowledge that for the purposes of the Data Protection Legislation and this Contract, the Customer is the Controller and the Supplier is the Processor. The only Processing that the Supplier is authorised to do is either:

### listed in Attachment 7 to the Order Form by the Customer; and/or

### in accordance with any written instructions issued by the Customer from time to time,

and may not be determined by the Supplier.

## The Processor shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.

## The Supplier shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Customer, include:

### a systematic description of the envisaged processing operations and the purpose of the processing;

### an assessment of the necessity and proportionality of the processing operations in relation to the performance of the Supplier’s obligations under this Contract;

### an assessment of the risks to the rights and freedoms of Data Subjects; and

### the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

## The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

### process that Personal Data only in accordance with this Schedule G (Data Processing), unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;

### ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Customer may reasonably reject (but failure to reject shall not amount to approval by the Customer of the adequacy of the Protective Measures), having taken account of the:

#### nature of the data to be protected;

#### harm that might result from a Data Loss Event;

#### state of technological development; and

#### cost of implementing any measures;

### ensure that:

#### Supplier Personnel do not process Personal Data except in accordance with this Contract;

#### it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:

##### are aware of and comply with the Supplier’s duties under this Schedule G (Data Processing);

##### are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;

##### are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Contract; and

##### have undergone adequate training in the use, care, protection and handling of Personal Data; and

### not transfer Personal Data outside of the EU or the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

#### the Customer or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;

#### the Data Subject has enforceable rights and effective legal remedies;

#### the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and

#### the Supplier complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data; and

#### at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination or expiry of the Contract unless the Supplier is required by Law to retain the Personal Data.

## Subject to Paragraph 1.6, the Supplier shall notify the Customer immediately if it:

### receives a Data Subject Request (or purported Data Subject Request);

### receives a request to rectify, block or erase any Personal Data;

### receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

### receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;

### receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

### becomes aware of a Data Loss Event.

## A notice given by the Supplier in accordance with Paragraph 1.5.6 above must include as a minimum:

### A description of the nature of the Data Loss Event, the categories and numbers of Data Subjects concerned, and the categories and numbers of Personal Data records concerned;

### the name and contact details of the data protection officer or other relevant contact from whom more information may be obtained;

### a description of the likely consequences of the Data Loss Event; and

### a description of the measures taken or proposed to be taken to address the Data Loss Event.

## The Supplier’s obligation to notify under Paragraph 1.5 shall include the provision of further information to the Customer in phases, as details become available.

## Taking into account the nature of the processing, the Supplier shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Paragraph 1.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:

### the Customer with full details and copies of the complaint, communication or request;

### such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;

### the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;

### assistance as requested by the Customer following any Data Loss Event; and

### assistance as requested by the Customer with respect to any request from the Information Commissioner’s Office, or any consultation by the Customer with the Information Commissioner's Office.

## The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Schedule G (Data Processing) and shall promptly provide copies of the same to the Customer upon request.

## The Supplier shall allow for audits of its Data Processing activity by the Customer or the Customer’s designated auditor.

## Each Party shall designate its own data protection officer if required by the Data Protection Legislation.

## Before allowing any Sub-processor to process any Personal Data related to this Contract, the Supplier must:

### notify the Customer in writing of the intended Sub-processor and processing;

### obtain the written consent of the Customer;

### enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Schedule G (Data Processing), such that they apply to the Sub-processor; and

### provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.

## The Supplier shall remain fully liable for all acts or omissions of any of its Sub-processors.

## The Customer may, at any time on not less than 30 Working Days’ notice, revise this Schedule G (Data Processing) by replacing it with any applicable controller to processor standard Clauses, or similar terms forming part of an applicable certification scheme, as are reasonably necessary to achieve compliance with the applicable certification scheme (and such Clauses shall apply when incorporated by attachment to this Contract).

## The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Customer may on not less than 30 Working Days’ notice to the Supplier amend this Schedule G (Data Processing) to the extent reasonably necessary to ensure that it complies with any guidance issued by the Information Commissioner’s Office.

**SCHEDULE H**

**BUSINESS CONTINUITY AND DISASTER RECOVERY**

# Purpose of this Schedule

## This Schedule sets out the Customer's requirements for ensuring continuity of the business processes and operations supported by the Services in circumstances of Service disruption or failure and for restoring the Services through business continuity and as necessary disaster recovery procedures. It also includes the requirement on the Supplier to develop, review, test, change, and maintain a BCDR Plan in respect of the Services.

## The BCDR Plan shall be divided into three parts:

### Part A which shall set out general principles applicable to the BCDR Plan ("General Principles").

### Part B which shall relate to business continuity ("Business Continuity Plan"); and

### Part C which shall relate to disaster recovery ("Disaster Recovery Plan").

## The BCDR Plan shall detail the processes and arrangements which the Supplier shall follow to ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services and the recovery of the Services in the event of a Disaster.

# Development of the BCDR Plan

## The BCDR Plan shall unless otherwise required by the Customer in writing, be based upon and be consistent with the provisions of Paragraphs 2.2, 4 and 4.1.3 of this Schedule H (Business Continuity and Disaster Recovery).

## The Supplier shall ensure that its Sub-contractors' disaster recovery and business continuity plans are integrated with the BCDR Plan.

# PART A – GENERAL PRINCIPLES AND REQUIREMENTS

## The BCDR Plan shall:

### set out how the business continuity and disaster recovery elements of the Plan link to each other;

### provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the Services and any services provided to the Customer by a Related Supplier;

### contain an obligation upon the Supplier to liaise with the Customer and (at the Customer's request) any Related Supplier with respect to issues concerning business continuity and disaster recovery where applicable;

### detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Customer and any of its other Related Suppliers as notified to the Supplier by the Customer from time to time;

3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Customer;

3.1.6 contain a risk analysis, including:

#### failure or disruption scenarios and assessments and estimates of frequency of occurrence;

#### identification of any single points of failure within the Services and processes for managing the risks arising therefrom;

#### identification of risks arising from the interaction of the Services with the services provided by a Related Supplier; and

#### a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;

#### provide for documentation of processes, including business processes, and procedures;

### set out key contact details (including roles and responsibilities) for the Supplier (and any sub-contractors ) and for the Customer;

### identify the procedures for reverting to "normal service";

### set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption and to preserve data integrity;

### identify the responsibilities (if any) that the Customer has agreed it will assume in the event of the invocation of the BCDR Plan; and

### provide for the provision of technical advice and assistance to key contacts at the Customer as notified by the Customer from time to time to inform decisions in support of the Customer’s business continuity plans.

## The BCDR Plan shall be designed so as to ensure that:

### the Services are provided in accordance with the Contract at all times during and after the invocation of the BCDR Plan;

### the adverse impact of any Disaster, service failure, or disruption on the operations of the Customer is minimal as far as reasonably possible;

### it complies with the relevant provisions of ISO/IEC17799:2000, BS15000 (as amended) and all other industry standards from time to time in force; and

### there is a process for the management of disaster recovery testing detailed in the BCDR Plan.

## The BCDR Plan must be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the Services.

## The Supplier shall not be entitled to any relief from its obligations under the Service Levels or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Contract.

# Part B – Business Continuity Element – Principles and Contents

## The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including but not limited to and unless the Customer expressly states otherwise in writing:

### the alternative processes, (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and

### the steps to be taken by the Supplier upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.

### The Business Continuity Plan shall address the various possible levels of failures of or disruptions to the Services and the services to be provided and the steps to be taken to remedy to the different levels of failure and disruption. The Business Continuity Plan shall also clearly set out the conditions and/or circumstances under which the Disaster Recovery Plan is invoked.

# Part C – Disaster Recovery Element – Principles and Contents

## The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Customer supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.

## The Disaster Recovery Plan shall only be invoked upon the occurrence of a Disaster.

## The Disaster Recovery Plan shall include the following:

### the technical design and build specification of the Disaster Recovery System;

### details of the procedures and processes to be put in place by the Supplier and any Sub-Supplier in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:

#### data centre and disaster recovery site audits;

#### backup methodology and details of the Supplier's approach to data back-up and data verification;

#### identification of all potential disaster scenarios;

#### risk analysis;

#### documentation of processes and procedures;

#### hardware configuration details;

#### network planning including details of all relevant data networks and communication links;

#### invocation rules;

#### Service recovery procedures;

#### steps to be taken upon Service resumption to address any prevailing effect of the Service failure or disruption;

### any applicable service levels with respect to the provision of Disaster Recovery Services and details of any agreed relaxation upon the Service Levels during any period of invocation of the Disaster Recovery Plan;

### details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;

### access controls (to any disaster recovery sites used by the Supplier or any Sub- Supplier in relation to its obligations pursuant to this Schedule); and

### testing and management arrangements.

# Review and Amendment of the BCDR Plan

## The Supplier shall review part or all of the BCDR Plan (and the risk analysis on which it is based):

### on a regular basis and as a minimum once every six calendar months;

### within three calendar month of the BCDR Plan (or any part) having been invoked pursuant to Paragraph 7.1.7 of this Schedule; and

### where the Customer requests any additional reviews (over and above those provided for in Paragraphs 6.1 and 6.1.1 of this Schedule H) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Customer's written requirements. The costs of both Parties for any such additional reviews will be met by the Customer.

### Each review pursuant to Paragraph 6.1.1 of the BCDR Plan shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within the period required by the BCDR Plan or if no such period is required within such period as the Customer shall reasonably require. The Supplier shall, within 20 Working Days of the conclusion of each such review of the BCDR Plan, provide to the Customer a report ("Review Report") setting out:

#### the findings of the review;

#### any changes in the risk profile associated with the Services; and

#### the Supplier's proposals ("Supplier's Proposals") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.

### The Supplier shall as soon as is reasonably practicable after receiving the Customer's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the project’s risk profile.

# Testing of the BCDR Plan

## The Supplier shall test the BCDR Plan on a regular basis (and in any event not less than once in every year). Subject to Paragraph 7.2, the Customer may require the Supplier to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Customer considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.

## If the Customer requires an additional test of the BCDR Plan it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Customer's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Customer unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.

## Following each test, the Supplier shall send to the Customer a written report summarising the results of the test and shall promptly implement any actions or remedial measures which the Customer considers to be necessary as a result of those tests.

## The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with the Customer and shall liaise with the Customer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Customer in this regard. Each test shall be carried out under the supervision of the Customer or its nominee.

## The Supplier shall ensure that any use by it or any Sub-Supplier of "live" data in such testing is first approved with the Customer. Copies of live test data used in any such testing shall be (if so required by the Customer) destroyed or returned to the Customer on completion of the test.

## The Supplier shall, within 20 Working Days of the conclusion of each test, provide to the Customer a report setting out:

### the outcome of the test;

### any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and

### the Supplier's proposals for remedying any such failures.

## Following each test, the Supplier shall take all measures requested by the Customer, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Customer, by the date reasonably required by the Customer and set out in such notice.

## For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan’s procedures) shall not relieve the Supplier of any of its obligations under this Schedule H or otherwise.

## The Supplier shall also perform a test of the BCDR Plan as part of the commissioning of any new project.

# Invocation of the Business Continuity and Disaster Recovery Plan

In the event of a complete loss of service or in the event of a Disaster, the Supplier shall immediately invoke the BCDR Plan (and shall inform the Customer promptly of such invocation). In all other instances the Supplier shall only invoke or test the BCDR Plan with the prior consent of the Customer.

**SCHEDULE I**

**STAFF TRANSFER**

It is not anticipated that TUPE will apply to this Agreement.

In this Schedule I (Staff Transfer), words shall have the meaning set out in the Definitions and as set out in

Annex 1 to this Schedule I (Staff Transfer).

# TUPE ON COMMENCEMENT

## The Parties acknowledge that, in the event that TUPE applies at the commencement of this Contract, the contracts of employment of the Transferring Employees together with any collective agreements relating to the Transferring Employees will have effect from the Transfer Date as if originally made between the Supplier **[**and/or its sub–contractors**]** and the Transferring Employees (or between the Supplier **[**and/or its sub–contractors**]** and the relevant trade union or professional association, as the case may be) except in so far as those contracts and collective agreements relate to benefits for old age, invalidity or survivors under any occupational pension scheme or to any Transferring Employee who objects under Regulation 4(7) of TUPE.

## The Supplier’s **[**and/or its sub-contractors’**]** obligations in relation to pension benefits and premature retirement rights are dealt with in Annex 1 to this Schedule I (Staff Transfer).

## The Supplier shall **[**and shall procure that its sub-contractors shall**]** have regard to the principles of good employment practice as detailed in the Cabinet Office guidance: ‘Principles of Good Employment Practice – A statement of principles that reflect good employment practice for Government, Contracting Authorities and Suppliers”.

# Transfers

## The Customer and the Supplier agree that, depending on the circumstances, Transfers may occur in (but are not limited to) the following circumstances:

### following a re-tendering process in which a New Supplier is appointed to provide the Services or part of the Services;

### in the event that the Customer serves notice on the Supplier that the Services or part of the Services are to be provided directly by the Customer; or

### on Termination.

## The Customer and the Supplier shall comply, and the Supplier shall procure that it’s subcontractor’s shall comply, with its obligations under TUPE (and, where applicable, the Code) in respect of each Transfer on Termination.

## The Supplier shall, and shall procure that any relevant sub-contractor shall, take all reasonable steps, including co-operation with reasonable requests for information, to ensure that any Transfer which takes place during the term of this Contract or on Termination takes place smoothly with the least possible disruption to the Services and to the Supplier Staff.

# Employment Costs

## The Supplier shall be responsible **[**or shall procure that any relevant sub-contractor is responsible**]** for all remuneration, benefits, entitlements and outgoings in respect of the Supplier Staff, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise from the Commencement Date to the Termination Date.

# Indemnities

## The Supplier shall indemnify and keep indemnified in full the Customer or any New Supplier as the case may be (“the Indemnified Party”) against:

### all Direct Losses incurred by the Indemnified Party in connection with or as a result of any claim or demand against the Indemnified Party by:

#### any person who is or has been employed or engaged by the Supplier **[**or any relevant sub-contractor**]** in connection with the provision of any of the Services arising out of his/her employment or engagement by the Supplier in the period before the Transfer Date; or

#### any trade union or staff association or employee representative in respect of any such person,

in either case where such claim arises as a result of any act, fault or omission of the Supplier and/or any sub-contractor.

### Direct Losses incurred by the Indemnified Party in connection with or as a result of any claim by any person, trade union or staff association or employee representative arising from or connected with any failure by the Supplier **[**or relevant sub-contractor**]** to comply with any legal obligation under Regulation 13 and 14 of TUPE and whether any such claim arises or has its origin before or after the date of the Transfer Date.

## The Supplier shall give to the Indemnified Party all such assistance as the Indemnified Party may reasonably request in order to defend, settle or otherwise deal with any complaint and/or claim, including any legal proceedings, made by any of the member of Supplier Staff.

# Employee Information

## Within seven days of service of notice of Termination by either Party or no later than [six] months prior to the Termination Date (whichever is the earlier) the Supplier shall:

### on receiving a written request from the Customer provide in respect of the Supplier Staff full and accurate details regarding the identity, number, age, sex, length of service, job title, amount of time spent in the provision of the Services, grade and terms and conditions of employment of and other matters affecting each member of Supplier Staff (the “Employee Information”); and

### notify the Customer in writing of any material changes to the Employee Information as soon as practicable as and when such changes arise.

## The Supplier authorises the Customer to use or disclose such of the Employee Information to any New Supplier and to such other third parties as the Customer may reasonably consider necessary for the purposes of putting the continued provision of the Services or the relevant part of the Services out to tender and, if requested by the Customer to do so, the Supplier shall liaise with and provide such information directly to any New Supplier or such other third parties as the Customer may direct.

## Nothing in this Paragraph 5 shall require the Supplier or any relevant sub-contractor to disclose information where disclosure would breach the requirements of any applicable data protection legislation.

## At any time during the period of twelve months prior to the Termination Date or at any time after service of notice of earlier Termination the Supplier shall not:

### make any material increase or decrease in the numbers of Supplier Staff other than in the ordinary course of business and with the Customer's prior written consent (such consent not to be unreasonably withheld or delayed);

### make any increase in the remuneration or other material change in the terms and conditions of the Supplier Staff other than in the ordinary course of business and with the Customer's prior written consent (such consent not to be unreasonably withheld or delayed); and

### transfer any of the Supplier Staff to another part of its business or moving other employees from elsewhere in its business who have not previously been Supplier Staff to provide the Service save with the Customer's prior written consent (such consent not be unreasonably withheld or delayed).

## The Supplier shall indemnify and shall keep indemnified in full the Customer and at the Customer's request any New Supplier against all Direct Losses arising from any claim by any Party as a result of the Supplier failing to provide the Customer and/or any New Supplier where requested by the Customer with any Employee Information.

## The Supplier shall **[**and shall procure that the sub–contractors shall**]** comply with their duties to provide employee liability information in accordance with Regulation 11 of TUPE but in addition will provide the information specified in that Regulation no later than thirty (30) days before the Termination Date and shall indemnify the Customer and any New Supplier as the case may be against any Employee Liabilities arising from any breach of this Paragraph. The information shall be complete, accurate and up–to–date and the Supplier shall immediately notify the Customer of any changes to such information prior to the Termination Date.

# Exit Transferring Employees

## At least thirty (30) days prior to the Termination Date the Supplier shall provide to the Customer and any New Supplier a list of the names of all Exit Transferring Employees which shall be complete, accurate and up–to–date and the Supplier shall immediately notify the Customer of:

### any changes to such list prior to the Termination Date;

### any Exit Transferring Employee who has objected to a transfer pursuant to Regulation 4(7) or 4(9) of TUPE prior to the Termination Date; and

### any Exit Transferring Employee who has given or been given notice of termination of his employment prior to the Termination Date.

**ANNEX 1 TO SCHEDULE I**

**PENSIONS AND STAFF TRANSFERS**

# Introduction

## The Parties shall comply with the terms of this Schedule I (Staff Transfer) and its Annexes in respect of future pension provision for each Transferring Employee and the provision for transfer of their pension rights which have accrued in the NHS Scheme.

# Membership of the Supplier's Scheme

## The Supplier undertakes that it will nominate or establish the Supplier's Scheme and shall supply to the Customer and GAD at least twenty-eight days before the Transfer Date full details of such Supplier’s Scheme.

## The Supplier shall procure that each Eligible Employee will be notified of the Supplier’s Scheme and admitted automatically to the Supplier's Scheme with effect from the Transfer Date (other than any Eligible Employee who opts out of membership of the Supplier’s Scheme in writing on or before that date). The Supplier shall procure that such notification will be issued to each Eligible Employee prior to or within seven (7) Business Days after the Transfer Date.

## As soon as practicable after the Transfer Date, the Customer shall use its reasonable endeavours to procure that the Pensions Division shall write to the Supplier Scheme Employees offering those Supplier Scheme Employees the Transfer Option.

## Any Supplier Scheme Employee wishing to exercise the Transfer Option must notify the Pensions Division of his decision in writing on or before the Transfer Option Deadline.

## The Supplier shall comply with the Code and procure that the benefits to be offered in the Supplier's Scheme for each Supplier Scheme Employee in respect of service after the Transfer Date are Broadly Comparable to benefits provided under the NHS Scheme for each Transferring Employee.

## Subject to Paragraph 2.7 below, the Supplier shall procure that the Supplier’s Scheme will provide premature retirement rights for each of the Supplier Scheme Employees and each Transferring Member that are identical to the benefits that they would have received had they remained in service with the Customer and in active membership in the NHS Scheme after the Transfer Date.

## If the Supplier is unable to procure that the Supplier’s Scheme provides the benefits detailed at Paragraph 2.6 above, the Supplier shall compensate the Supplier Scheme Employee or Transferring Member in a manner that is exactly equivalent in cash terms.

# Service credit

## The Supplier shall procure that, subject to prior receipt by the trustees or managers of the Supplier's Scheme of the Transfer Amount in accordance with Paragraph 4.2 of this Annex 1, each Transferring Member will be granted a service credit in respect of his reckonable service completed in the NHS Scheme before the Transfer Date which provides rights under the Supplier's Scheme on a year for year, day for day basis calculated on the bases and with the adjustments set out in the Actuary’s Letter.

# Transfer amount

## As soon as practicable after the Transfer Option Deadline, and after receipt of the final data for the Transferring Member as provided by the Pensions Division, GAD shall calculate the Transfer Amount and supply the Supplier’s Actuary with its calculations and any appropriate underlying methodology, accordingly. The Supplier shall procure that the Supplier’s Actuary verifies such calculation within twenty-one days of it being so supplied. Each Party will promptly provide to any Actuary calculating or verifying the Transfer Amount any documentation and information which such Actuary may reasonably require. In the event that the Supplier’s Actuary is unable or unwilling to verify the calculations within thirty days of receipt, the GAD calculations shall be deemed to be accepted except in the case of manifest error or omission when the Supplier’s Actuary shall notify GAD and use his best endeavours to resolve such error or omission with GAD as soon as possible.

## Subject to:

### the Transfer Option Deadline having expired;

### the issue of a contracting out certificate in respect of the Supplier's Scheme which covers the employment of the Transferring Members;

### the determination of the Transfer Amount under Paragraph 4.1 above; and

### the trustees or managers of the Supplier's Scheme having confirmed in writing (and not having revoked that confirmation) to the Pensions Division that they are ready, willing and able to receive the Transfer Amount,

### the Customer will use reasonable endeavours to procure that the Pensions Division will, on or before the Payment Date, transfer to the Supplier's Scheme the Transfer Amount in cash, together with any cash or other assets which are referable to additional voluntary contributions (if any) paid to the NHS Scheme by a Transferring Member which do not give rise to salary related benefits.

# Supplier’s Further Obligations

## The Supplier shall:

### ensure that the Supplier’s Scheme is, and remains throughout the term of this Contract, a Registered Pension Scheme;

### procure that the Supplier's Scheme is contracted-out on a salary-related basis using the reference scheme test pursuant to section 9(2B) of the Pension Schemes Act 1993; and

### procure that no amendments are made to the provisions of the Supplier's Scheme in respect of any Transferring Member prior to the date on which payment of the Transfer Amount is made to the trustees of the Supplier's Scheme under Paragraph 4.2 above.

# Indemnity Regarding Pension Benefits and Premature Retirement Rights

## The Supplier agrees to indemnify the Customer or any New Customer (as the case may be) on demand against all liabilities, damages, losses, costs and expenses arising out of any claim by any Supplier Scheme Employee and/or Transferring Member that the provision of (or failure to provide) pension benefits and premature retirement rights after the Transfer Date, or the level of such benefit provided are not in accordance with the Supplier’s and/or sub-contractor’s obligations under this Schedule I (Staff Transfer) and/or this Annex 1.

# Pensions on Transfer of Employment on Exit

## This Paragraph sets out the principles for the treatment of employees’ pensions in the orderly transition of the Services from the Supplier to any New Supplier in the event of any termination or expiry of this Contract.

## This Paragraph applies in the event of the cessation of the performance of the Services or any part of the Services by the Supplier under this Contract and the provisions of TUPE may apply to transfer an employee or employees of the Supplier or its sub-contractors to a New Supplier or New Contractors, or the Customer.

## The Supplier shall, and shall use best endeavours to procure that the trustees of the Supplier’s Scheme, do all such acts and things, provide all such information and access to the Transferring Pensionable Employees as may in the reasonable opinion of the Customer be necessary or desirable to enable the Customer, and/or the New Supplier to achieve the objectives set out in this Paragraph 7.

## The objectives are:

### to maintain ongoing pension accrual for Transferring Pensionable Employees in a pension arrangement sponsored by the New Supplier which provides benefits for service on and from the Exit Transfer Date which are Broadly Comparable to those provided for the Transferring Pensionable Employees immediately prior to the Exit Transfer Date;

### not to adversely affect pension rights accrued by the Transferring Pensionable Employees in the period ending on the Exit Transfer Date;

### to comply with all applicable legislation, binding codes of practice and non-binding codes of practice issued by any statutory authority which may be admissible as evidence of legislative compliance at the Exit Transfer Date; and

### to ensure that each Transferring Pensionable Employee is given the opportunity to transfer fully funded pension rights from the Supplier’s Scheme to an occupational pension scheme sponsored by the New Supplier, “fully funded” meaning a basis which is no less favourable than that applied between NHS Scheme and the Supplier’s Scheme under this Annex 1 of Schedule I (Staff Transfer) for Transferring Pensionable Employees who were Transferring Members at the Transfer Date or who became Transferring Members after the Transfer Date.

# Sub-contractors

## In the event that the Supplier enters into a sub-Contract in connection with the Contract it shall impose obligations on its sub-contractors in the same terms as those imposed on the Supplier in relation to pension benefits and premature retirement benefits in this Annex 2 to this Schedule I (Staff Transfer).

## The Supplier shall indemnify, and keep indemnified, the Customer in full against all costs and losses incurred by the Customer or any New Supplier as a result of, or in connection with, any failure by the Supplier to comply with this Annex 2 to this Schedule I (Staff Transfer).

**ANNEX 2 TO SCHEDULE I**

**ACTUARY'S LETTER**

**Not Applicable**

**ANNEX 3 TO SCHEDULE I**

**STAFF TRANSFER DEFINITIONS**

The following words and phrases shall have the following meanings when used in this Schedule I (Staff

Transfer):

|  |  |
| --- | --- |
| **Actuary** | means a Fellow of either the Institute of Actuaries or Faculty of Actuaries; |
| **Actuary’s Letter** | means the letter in the agreed form from GAD to the Supplier’s Actuary, a copy of which is attached to this Schedule I (Staff Transfer) at Annex 2; |
| **Broadly Comparable** | means certified by GAD as satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits; |
| **Code** | means the Cabinet Office Statement of Practice: Staff Transfers in the Public Sector and the annex to it, “A Fair Deal for Staff Pensions"; |
| **Supplier’s Actuary** | means the Actuary appointed from time to time by the Supplier for the purposes of this Schedule I (Staff Transfer); |
| **Supplier's Scheme** | Means the final salary retirement benefits scheme established by the Supplier or nominated by the Supplier; |
| **Supplier Scheme** **Employees** | means the persons employed by the Customer prior to the Transfer Date who are assigned to the provision of services which become the Services and who do not opt-out of membership of the Supplier’s Scheme under Paragraph 2.2 of Annex 1; |
| **Supplier Staff** | means the employees, directors, officers, agents, subcontractors and workmen of the Supplier who are to be engaged in the performance of the Supplier’s obligations under this Contract including Transferring Employees, self employed doctors, locums or contractors; |
| **Direct Losses** | means each Transferring Employee who immediately before the Transfer Date was a member of or was entitled to become a member of or but for the staff transfer from the Customer to the Supplier or sub-contractor would have been entitled to become a member of the NHS Scheme; |
| **Employee Liabilities** | means any costs, claims, demands or expenses (including reasonable legal and other professional expenses) and all losses, damages, compensation and other liabilities including those incurred by or attributed to any New Supplier or sub-contractor of the Customer (which shall include any incurred as a result of an indemnity or warranty given, or to be given, by the Customer to a New Supplier or sub-Supplier); |
| **Employee Liability** **Information** | Such information (excluding sensitive personal data as defined by the DPA) contained in the personnel records of the Transferring Employees (as applicable) which the Transferee shall reasonably require, including but not limited to, copies of their current contracts of employment and all policies and procedures applying to the Transferring Employees at the Transfer Date or the Future Transferring Employees at the Subsequent Transfer Date (as applicable), together with all National Insurance and PAYE records and including any information required to be provided by Regulation 11 of TUPE; |
| **Employee** | means the representatives of a recognised trade union, |
| **Representatives** | Professional association, or elect employee representative; |
| **Existing Supplier** | means a Supplier which exists at or immediately before the Transfer Date and from which Supplier Scheme Employees originate; |
| **Exit Transfer Date** | means the date on which a Supplier Scheme Employee transfers their employment to a New Supplier; |
| **Exit Transferring** **Employees** | means the Supplier Staff who will be the subject of a Transfer on Termination; |
| **GAD** | means the Government Actuary’s Department; |
| **Indirect Losses** | means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature but excluding any of the same that relate to loss of revenue under this Contract; |
| **New Supplier** | means any third party engaged by the Customer to supply any services which are the same as or substantially similar to any or all of the Services and which are purchased by or provided to the Customer following the termination or expiry of all or a part of this Contract to replace Services formerly provided by the Supplier under this Contract; |
| **NHS Scheme** | means the NHS Pension Scheme for England and Wales (as amended from time to time); |
| **Payment Date** | means twenty-eight (28) days after all of the conditions in Paragraph 5.2 of Annex 1 have been satisfied; |
| **Pensions Division** | means the Pensions Division of the NHS Business Services Customer; |
| **Registered Pension** **Scheme** | has the meaning given to it in section 150 of the Finance Act 2004; |
| **Relevant Transfer** | means the transfer of employment from the Customer to the Supplier in circumstances such that the Code applies; |
| **Subsequent Transfer** **Date** | means the date on which the Future Transferring Employees shall transfer to a New Supplier; |
| **Termination** | means termination of this Contract (or any part of it); |
| **Termination Date** | means the date on which Termination takes effect; |
| **Transfer** | means the transfer of an organised grouping of employees providing the Services or part of the Services pursuant to TUPE; |
| **Transfer Amount** | means the amount calculated in accordance with the assumptions, principles and timing adjustment contained in the Actuary’s Letter; |
| **Transfer Date** | means the date on which a Transfer occurs; |
| **Transfer Option** | an option given to each Supplier Scheme Employee to transfer rights accrued before the Transfer Date under the NHS Scheme from the NHS Scheme to the Supplier's Scheme; |
| **Transfer Option** **Deadline** | the first Business Day to fall three months after the notice detailing the Transfer Option has been sent to each Supplier Scheme Employee; |
| **Transferring** **Employees** | means the persons employed by the Customer prior to the Transfer Date in provision of services which become the Services; |
| **Transferring Member** | means a Supplier Scheme Employee who subsequently agrees on or before the Transfer Option Deadline, and does not withdraw such agreement, to transfer his accrued rights under the NHS Scheme to the Supplier's Scheme pursuant to the Transfer Option; |
| **Transferring** **Pensionable Employee** | means each Supplier Scheme Employee who transferred to the Supplier under a Relevant Transfer and who at the Exit Transfer Date either remains an active member of, or is eligible to rejoin, the Supplier’s Scheme; and |
| **TUPE** | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time. |

**SCHEDULE J**

**TERMINATION ASSISTANCE**

# Obligations to Assist on Re-Tendering

## On reasonable notice, the Supplier shall provide to the Customer and/or (subject to the potential Replacement Supplier entering into reasonable written confidentiality undertakings) to its potential Replacement Supplier, the following material and information in order to facilitate the preparation by the Customer of any invitation to tender and/or to facilitate any potential Replacement Supplier undertaking due diligence:

### details of the Services; and

### an inventory of Customer Data in the Supplier's possession or control.

# Termination Obligations

## At the end of the Term:

### the Supplier will free of charge return to the Customer such of the following as is in the Supplier's possession or control:

#### all copies of the Customer Software and any other software licensed by the Customer to the Supplier under this Contract;

#### all materials created by the Supplier under this Contract, the IPRs in which are owned by the Customer; and

#### any items that have been on-charged to the Customer, such as consumables;

### the Supplier will transfer all Customer Data (in complete, uncorrupted form and save where otherwise agreed between the Customer and the Supplier using a standard DICOM transfer) in its possession or control to the Customer free of charge save to the extent (and for the limited period) that such data is required for the purposes of providing any part of the Services to the Customer under this Schedule J (Termination Assistance). The Supplier will return the Customer Data in its then current format (and the Supplier shall not change the format of the data during the Term save where it has first obtained the prior written approval of the Customer using the Change Control Procedure), or in such other format as is notified to it by the Customer (in which event the Customer will reimburse the Supplier’s reasonable data conversion expenses).The Supplier will erase from any computers, storage devices and storage media that are the assets of the Supplier any Customer Data to the extent that this has not been transferred in accordance with this Paragraph 2.1.2. The Supplier will offer all support necessary to the Customer in the export of Customer Data from the Supplier System;

### each Party will return free of charge to the other Party all Confidential Information of the other Party and will certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any part of the Services.

### the Customer shall permit access to the Locations (at such times or dates to be agreed between the Parties) to the Supplier for the purposes of removing any Facilities.

### the Supplier shall remove any Facilities from the Locations as soon as reasonably practicable following the end of the Term causing as little disruption as possible and making good any damage caused to any property of the Customer.

### the Supplier shall render reasonable assistance to the Customer, if requested, to the extent necessary to effect an orderly assumption by a replacement Supplier of the similar deliverables or support services provided preciously by the Supplier hereunder and the Customer shall reimburse the Supplier for such assistance at the rates set out in the Order Form ("Day Rates"). Such assistance shall include but not be limited to assisting in the migration of Customer Data from the Supplier to the Replacement Supplier.

#### the Supplier shall repay forthwith to the Customer any advance payments made by the Customer relating to any Services not performed by the Supplier in accordance with the Contract.

#### the Supplier shall, on or by the date reasonably specified by the Customer, provide to the Customer or a replacement contractor nominated by the Customer any data belonging to the Customer in its possession either (i) (in each case, at the Customer's option and the Supplier's expense) in its then current format (and the Supplier shall not change the format of the data during the term of the Agreement save where it has first obtained the prior written approval of the Customer using the Change Control Procedure) or in the format nominated by the Customer in Attachment 1 to the Order Form or (ii) in such other format as the Customer so requires (in which event the Customer will reimburse the Supplier’s reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Customer;

#### the Supplier shall cease to use the data belonging to the Customer;

#### the Supplier shall, on or by the date reasonably specified by the Customer, provide to the Customer or a replacement contractor nominated by the Customer accurate and up to date copies of all then current solution design documentation and business process manuals relevant to the Services so that the Customer and/or any replacement contractor may then, for so long as they wish, use the same (such right of use to also include the right to modify, develop or create derivations of all or any such works) to continue to provide services which are the same as or similar to the Services to the Customer;

#### each Party shall promptly return all items supplied to it in connection with the Contract by the other Party;

#### the Supplier shall render reasonable assistance to the Customer, if requested, to the extent necessary to effect an orderly assumption by a replacement contractor of the Services performed previously by the Supplier hereunder and the Customer shall (but without prejudice to the provisions of Clause 7.1.3(b)) reimburse the Supplier for such assistance at the rates then prevailing for customers of the Supplier for the same or similar services.

## Upon expiry or an early termination of the Contract for any reason, then at the direction and discretion of the Customer and subject to the express terms of the Exit Plan;

### the Customer shall have the option in respect of all of the matters referred to in the Exit Plan to acquire such items free of charge or if specified in the Exit Plan in consideration of the payment by the Customer of the price specified in respect of such items: or

### the Supplier shall make a legally binding offer to the replacement contractor in respect of all of the matters referred to in the Exit Plan free of charge, or if specified in the Exit Plan in consideration of the payment by the replacement contractor of the payment of the price specified in respect of such items.

## The option set out in sub-Clause 2.2 shall be exercisable by the Customer by service of a notice upon the Supplier as soon as possible following any notice of termination being given and no later than three (3) months prior to the date of termination of the Contract (in the case of the expiry of the Contract).

### The option set out in sub-Clause 2.2 shall take effect either on the termination or expiry of the Contract (whether the exercise of the option takes place prior to termination or expiry) or on the date of the exercise of the option (where the exercise of the option takes place after the termination of the Contract).

### If the Customer exercises the option pursuant to sub-Clause 2.2.1, and the Exit Plan specifies that fair market value is payable in respect of any Facility the Customer shall as appropriate pay the fair market value within thirty (30) days of the determination of such value. If the Supplier makes a legally binding offer to the replacement contractor pursuant to sub-Clause 2.2.2, the Supplier shall as appropriate allow the replacement contractor thirty (30) days to pay the Supplier following the determination of the fair market value.

### For the purpose of this Clause, *fair market value* shall mean a sum equal to the market value thereof at the date of termination between a willing buyer and a willing seller in each case in respect of the *in situ* value of the Facilities. In the event that the Parties, using their best endeavours, are unable to agree the fair market value within such thirty day period the matter shall be referred to an independent valuer, nominated in default of agreement by the president for the time being of the Incorporated Society of Valuers and Auctioneers, whose determination shall be final and binding including as to costs.

# exit plan

## The Supplier agrees that, not less than 12 months before expiry of the Initial Period of the Contract, it shall be responsible (at its own cost) for updating the Exit Plan so that it represents a comprehensive and detailed plan for a managed closedown and, where applicable, transfer of all or any part of the Services to the Authority or any replacement contractor and that, should the Contract be extended, it shall throughout any such period of extension maintain and regularly update such Exit Plan.

## The Supplier agrees that it shall not, any time during the term of the Contract (without having first sought the prior written consent of the Authority, such consent to be in the Authority's sole discretion) create or attempt to create or permit to subsist or arise any security on, over or affecting the Services or the Facilities or any part of them nor shall it dispose of any part of the Services or Facilities or any part of them.

## Data belonging to the Authority shall be returned to the Authority in its then current format or, if the Authority so requires, in an DICOM format export able to be transmitted electronically or placed on such medium as the Authority, in its sole discretion, shall determine at the time.

SCHEDULE K

**AGREEMENTS SPECIFIED UNDER THE CONTRACT**

# Escrow agreement

****

# Deed of Novation

**AGREED FORM DEED OF NOVATION**

**THIS DEED OF NOVATION** is made the …………. day of ……………200[ ]

**BETWEEN**:

1. [ ] NATIONAL HEALTH SERVICE TRUST of [ ] (the **“Authority”**). [The NHS party will depend on which NHS entity was the original contracting party with the contractor ]
2. [ ] LIMITED of [ ](registered under number [ ]) whose registered office is [ ] (the **“Supplier”**);
3. [ ] LIMITED of [ ] (registered under number [ ]) whose registered office is [ ] (the **“New Party”**); and

**WHEREAS:**

1. Pursuant to the provisions of Clause 5.5.2 of the Contract (as defined below), the Authority may novate the rights and obligations of the Authority under the Contract to a third party;

(B) The Authority wishes to novate its rights and obligations to the New Party.

(C) The Parties (as defined below) wish to novate the Authority’s rights and obligations under the Contract as further provided by the terms of this Deed.

**NOW IT IS AGREED** as follows:

1. **Interpretation**

In this Deed, the following terms shall bear the meanings set out opposite them:

|  |  |
| --- | --- |
| “Contract” | means the contract for the provision of services/goods reference [ ] between the Supplier and the Authority dated [ ]; |
| “Deed” | means this deed of novation; |
| "Effective Date" | means [the date of this Deed]; |
| "Event of Insolvency" | means the making of a winding up order or administration order; |
| “Parties” | means the Authority, the Supplier and the New Party. |

1. **Novation**
   1. In respect of the period from the Effective Date to the occurrence of any Event of Insolvency in relation to the New Party (the “**Novation Period**”) but subject to Clause 2.3:
      1. the New Party undertakes to the Supplier and to the Authority to perform, discharge and observe all the obligations and liabilities on the part of the Authority under the Contract as fall to be performed, discharged or observed after the Effective Date as if the New Party were named in the Contract in place of the Authority with effect from the Effective Date;
      2. in consideration of the New Party's undertaking in sub-Clause 2.1.1, the Supplier releases and discharges the Authority from all claims, demands, duties, obligations and liabilities whatsoever in respect of the Contract arising on or after the Effective Date; and
      3. the Supplier undertakes to the New Party to perform, discharge and observe all the obligations and liabilities on the part of the Supplier under the Contract and acknowledges that the New Party shall be entitled to the rights and benefits of the Contract as if the New Party were named in the Contract in place of the Authority with effect from the Effective Date.
   2. The New Party shall notify the Supplier in writing of its address and contact details for the purposes of Clause 5 of the Contract (Contractual Communications and Variations to the Contract). For the Novation Period, the Authority's Authorised Officer under the Contract shall be replaced by the New Party's Authorised Officer and the New Party shall notify the Supplier in writing of the identity of its Authorised Officer.
   3. If an Event of Insolvency occurs in relation to the New Party, the provisions of Clause 2.1 and 2.2 shall cease to apply in respect of the period on and from the date on which the Event of Insolvency occurs (but shall continue to bind the New Party and the Supplier in respect of the period prior to that date) so that the Authority and the Supplier shall, with effect from the date of the Event of Insolvency and in respect only of the period on and from that date, have the same rights and obligations in relation to one another under the Contract as if Clause 2.1 had not had effect.
   4. Save as amended by this Clause 2 of this Deed, the Contract shall continue in full force and effect.
   5. The Authority or its agent shall have the right to require the New Party and the Supplier to novate the Contract from the New Party back to the Authority or to any other party identified by the Authority or its agent from time to time. The Supplier and the New Party agree to enter into a deed of novation of the Contract to any such party on the terms and conditions set out in this Deed (a "**Further Deed of Novation**"). The New Party irrevocably appoints the Authority or its agent as its agent for the purpose of execution of the Further Deed of Novation.
2. **Additional Provisions**
   1. The Parties undertake to promptly execute all further deeds, agreements and documents as may be reasonably necessary in order to effect and/or clarify the relationship between the Parties.
   2. Whole agreement:
      1. This Deed and the documents referred to in it contain the whole agreement between the Parties relating to the transactions contemplated by this Deed and supersede all previous agreements between the Parties relating to those transactions.
      2. Subject to Clause 3.2.3, each Party acknowledges that in entering into this Deed it has not relied on any representation, warranty, collateral contract or other assurance (except those set out in this Deed and the documents referred to in it) made by or on behalf of any other Party before the date of this Deed. Each Party waives all rights and remedies which, but for this Clause 3.2, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.
      3. Nothing in Clause 3.2.2 limits or excludes any liability for fraud.
   3. It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this Deed is not intended to and does not confer on any person who is not a Party to this Deed any rights to enforce any provisions contained in this Deed.
   4. This Deed shall be governed by and construed in accordance with the laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction in relation to the subject matter hereof.

**IN WITNESS WHEREOF** the Parties have executed this Deed on the date set out above.

**THE CORPORATE COMMON SEAL OF** [ ] )

**NATIONAL HEALTH SERVICE TRUST** )

was hereunto executed in the presence of )

……………………………….

Chairman

……………………………….

Signatory Full Name

……………………………….

Chief Executive

……………………………….

Signatory Full Name

Executed as a deed )

by [**CONTRACTOR**] )

acting by [DIRECTOR] ) ………………………………

and [DIRECTOR/SECRETARY] ) ………………………………

Executed as a deed )

by [**SERVICE PROVIDER**] )

acting by [DIRECTOR] ) ………………………………

and [DIRECTOR/SECRETARY] ) ………………………………