

**Manchester University Hospitals NHS Foundation Trust**

**- and -**

**INTERSYSTEMS CORPORATION**

**CONTRACT**

**for the provision Clinical Digital Solutions (CDS) for the Integrated Health Economy Framework**

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## ANNEX A TO THE CONTRACT CLAUSES

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### CONTRACT SCHEDULES

- 2-1. Interpretations
- 2-2. Service Specification
- 2-3. Performance Management
- 2-4. Charges and Invoicing
- 2-5. Implementation Plan
- 2-6. Acceptance Procedures
- 2-7. Contract, Service Management and Reporting
- 2-8. Contract Change Procedure
- 2-9. Sub-Contractors
- 2-10. Dispute Resolution Procedure
- 2-11. Commercially Sensitive Information
- 2-12. Exit and Service Transfer Arrangements
- 2-13. Standards and Regulations
- 2-14. Title and Risk
- 2-15. Liquidated Damages
- 2-16. BCDR Plan
- 2-17. Security Management Plan
- 2-18. Software and Software Licence Terms
- 2-19. Insurances
- 2-20. Staffing
- 2-21. Pensions
- 2-22. Processing, Personal Data and Data Subjects
- 2-23. Extra Call-off Terms and Conditions
- 2-24. Further Customer Obligations
- 2-25. Managed Services – Set-up Services
- 2-26. Managed Services -Benchmarking

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THIS CONTRACT is made on the 1st day of October 2023

### BETWEEN

- (1) Manchester University Hospitals NHS Foundation Trust of Oxford Road, Manchester, M13 9WL (the **Customer**); and
- (2) **InterSystems Corporation**, a company registered in England and Wales under company number FC013706 (UK Branch Registration BR000524) and whose registered office is at Memorial Drive, Cambridge, MA 02142 USA (UK registered office is at One Victoria Street, Windsor, SL4 1HB (the **Service Provider**).

### WHEREAS

- a) Guy's and St Thomas' NHS Foundation Trust, acting on behalf of the Customer (the "**Authority**") selected the Service Provider to the framework as a potential provider of Electronic Health and Care Record Solutions. The Service Provider undertook to provide the Services on the terms set out in a framework agreement dated 1 April 2021 (the **Framework Agreement**).
- b) The Authority established the Framework Agreement in consultation with and for the benefit of the Customers (as defined in the Framework Agreement).
- c) The Authority made a direct award to the Service Provider to supply the Services in accordance with the terms of the Framework Agreement (the **Contract**).
- d) The Authority made a Direct Award for Product Name Licence Renewal, Product Reference LR-010.
- e) Not used
- f) Not used
- g) The Unique Reference Number (URN) for this Contract is **CDS10200** and this must be used on all Purchase Orders and Invoices.

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## IT IS AGREED AS FOLLOWS:

### 1. Key Provisions

#### Standard Key Provisions

#### 1.1 Application of the key provisions:

- 1.1.1 The standard key provisions detailed at Clauses 2 to 38 shall apply to this Contract.
- 1.1.2 The optional provisions detailed at Clauses 39 to 53 shall only apply to this Contract where they have been checked and information completed or relevant Schedules incorporated as applicable.
- 1.1.3 Extra provisions shall only apply to this Contract where such provisions are set out in Schedule 2-23.

### 2. INTERPRETATIONS

#### 2.1 As used in this Contract:

- 2.1.1 the terms and expressions set out in Schedule 2-1 (Interpretations) shall have the meanings ascribed therein;
  - 2.1.2 the masculine includes the feminine and the neuter;
  - 2.1.3 the singular includes the plural and vice versa;
  - 2.1.4 the recitals shall form part of and be incorporated into this Contract; and
  - 2.1.5 the words "include", "includes", "including" "for example", "in particular" and words of similar effect are to be construed as if they were immediately followed by the words "without limitation".
- 2.2 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.
- 2.3 A reference to any document other than as specified in Clause 2.2 shall be construed as a reference to the document as at the Effective Date.
- 2.4 Headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.
- 2.5 References to "Clauses" and "Schedules" are, unless otherwise provided, references to the Clauses of and Schedules to this Contract. References to "paragraphs" are, unless otherwise provided, references to paragraphs of the Schedule in which the references are made.
- 2.6 Terms or expressions contained in this Contract which are capitalised but which do not have an interpretation in Schedule 2-1 (Interpretations) shall be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise they shall be interpreted in accordance with the dictionary meaning.
- 2.7 Without prejudice to Clause 5.2, in the event and to the extent only of any conflict or inconsistency in the provisions of the Clauses of this Contract and the provisions of the Schedules, the following order of precedence shall prevail:
- 2.7.1 the Clauses, including Annex A thereto;

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- 2.7.2 Schedule 2-1 (Interpretations);
- 2.7.3 Schedule 2.23- (Extra Call-Off Terms and Conditions);
- 2.7.4 the remaining Schedules excluding Schedule 2-18 (Software and Software Licence Terms); and
- 2.7.5 Schedule 2-18 (Software and Software Licence Terms).

### 3. THE SERVICES

- 3.1 This Contract governs the overall relationship of the Service Provider and the Customer with respect to the provision of the Services.
- 3.2 Nothing in this Contract shall create an exclusive relationship between the Service Provider and the Customer for the provision of the Services.
- 3.3 The Customer appoints the Service Provider and the Service Provider agrees to provide the Services:
  - 3.3.1 promptly and in any event within any time limits as may be set out in this Contract;
  - 3.3.2 in accordance with all other provisions of this Contract;
  - 3.3.3 with reasonable skill and care and in accordance with any quality assurance standards as set out in this Contract;
  - 3.3.4 in accordance with the Law and with Guidance;
  - 3.3.5 in accordance with Good Industry Practice;
  - 3.3.6 in accordance with the Policies; and
  - 3.3.7 in a professional and courteous manner.
- 3.4 In complying with its obligations under this Contract, the Service Provider shall, and shall procure that all Service Provider Personnel shall, act in accordance with the NHS values as set out in the NHS Constitution from time to time.
- 3.5 The Service Provider shall provide the Services in accordance with the provisions of this Contract including:
  - 3.5.1 any agreed timetable and any Implementation Plan if incorporated; and
  - 3.5.2 the relevant Service Levels at all times throughout the Term of this Contract.
- 3.6 Not used
- 3.7 Not used
- 3.8 The Service Provider acknowledges the critical nature of the Services to the Customer's primary functions and therefore, without prejudice to any rights of the Customer or obligations to the Service Provider, should the Service Provider become aware of any breach in its provision or performance of the Services, the Service Provider shall, where such breach is capable of remedy, use all reasonable endeavours to remedy the same as soon as is reasonably practicable and shall not delay such remedy pending determination of where liability for such remedy lies.

#### **Responsibility for Awards:**

- 3.9 The Service Provider acknowledges that each Customer is independently responsible for the conduct of its award of Contracts under the Framework Agreement and for this Contract and any

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other Contracts it may enter into pursuant to the Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:

- 3.9.1 the conduct of any Customers in relation to the Framework Agreement or any Contract; or
- 3.9.2 the performance or non-performance of any Contracts between the Service Provider and any Customer entered into pursuant to the Framework Agreement.

### 4. DUE DILIGENCE

4.1 The Service Provider acknowledges that it has:

- 4.1.1 made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer;
- 4.1.2 raised all relevant due diligence questions with the Customer before the Effective Date; and
- 4.1.3 entered into this Contract in reliance on its own due diligence alone.

4.2 Where there is an Operating Environment:

- 4.2.1 the Service Provider acknowledges that it has inspected the Operating Environment and has advised the Customer of any aspect of the Operating Environment that is not suitable for the provision of the Services and that the specified actions to remedy the unsuitable aspects of the Operating Environment, together with a timetable for and the costs of those actions, have been specified in the relevant parts of this Contract; and
- 4.2.2 if the Service Provider has either failed to inspect the Operating Environment or failed to notify the Customer of any required remedial actions in accordance with Clause 4.2 then the Service Provider shall not be entitled to recover any additional costs or charges from the Customer relating to any unsuitable aspects of the Operating Environment except in respect of any latent structural defect in the Customer Premises.

The onus shall be on the Service Provider to prove to the Customer that any work to the Customer Premises is required in respect of a latent structural defect and that the additional costs or charges are reasonable and necessary. The Service Provider shall not incur such additional costs or charges without obtaining the Customer's prior written consent.

4.3 Any disputes relating to due diligence shall be resolved in accordance with Clause 20.

### 5. STANDARDS AND REGULATIONS

- 5.1 The Service Provider shall provide the Services and meet its responsibilities and obligations hereunder in material accordance with the Standards and Regulations.
- 5.2 The Service Provider shall discuss with the Customer any conflict that the Service Provider reasonably believes that there is or will be between any of the Standards and Regulations or between any of the Standards and Regulations and any other obligation under this Contract, and shall comply with the Customer's decision on the resolution of that conflict.

### 6. CHARGES

- 6.1 The Service Provider and the Customer shall comply with their respective obligations set out in Schedule 2-4 (Charges and Invoicing).

### 7. CONTRACT MANAGEMENT AND REPORTING

- 7.1 The Service Provider and the Customer shall comply with their respective contract management obligations set out in Schedule 2-7 (Contract, Service Management and Reporting).



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### 8. AMENDMENTS

- 8.1 No amendment to the provisions of this Contract, other than a variation of any Sub-Contractors in accordance with Clause 29.5, shall be effective unless made in accordance with the Contract Change Procedure specified in Schedule 2-8 (Contract Change Procedure).

### 9. COMMUNICATIONS

- 9.1 Except as otherwise expressly provided, no communication from one party to the other shall have any validity under this Contract unless it is signed and made in writing by or on behalf of the party sending such communication.
- 9.2 Except as otherwise expressly provided, any notice or other communication whatsoever which either the Customer or the Service Provider is required or authorised by this Contract to give or make to the other shall be given or made by first class post in a prepaid letter, addressed to the other at the address specified in Clause 9.3. If that letter is not returned as being undelivered, that notice or communication shall be deemed, for the purposes of this Contract, to have been given or made two (2) Working Days after dispatch by the sender.
- 9.3 For the purposes of Clause 9.2 the address of each party shall be:

**For the Customer:**

Karen Flintoft  
Deputy Commercial Director – Informatics  
Finance and Procurement Business Unit  
Trafford General Hospital

Telephone Number: N/A

Email address: karen.flintoft@mft.nhs.uk

**For the Service Provider:**

Andrew Bridges

Senior Contracts Manager

InterSystems, One Victoria Street, Windsor, SL4 1HB

Telephone Number: (01753) 829600

Email address: [andrew.bridges@intersystems.com](mailto:andrew.bridges@intersystems.com) AND [ukcontracts@intersystems.com](mailto:ukcontracts@intersystems.com)

### 10. TERM AND TERMINATION

- 10.1 This Contract shall take effect on the Effective Date and shall, subject to 10.2 below, expire two (2) years after the Effective Date unless terminated earlier pursuant to Clause 10.2.
- 10.2 Unless otherwise terminated as permitted below, this Contract will automatically renew for an additional seven (7) annual terms unless either party provides at least 30 days' notice of cancellation prior to the end of the then current term. The termination for convenience provision in 10.6 below shall also apply during any such renewal period. The Customer may at any time by notice in writing terminate this Contract as from the date of service of such notice, or a later date specified in such notice, in the following circumstances:
- 10.2.1 if the Service Provider is in breach of any material obligation under this Contract provided

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that if the breach is capable of remedy, the Customer may only terminate this Contract under this Clause 10.2.1 if the Service Provider has failed to remedy such breach within thirty (30) Days of receipt of a notice from the Customer to do so;

- 10.2.2 a Persistent Breach has occurred;
  - 10.2.3 if there is an Insolvency Event;
  - 10.2.4 if there is a change of control of the Service Provider within the meaning of Section 1124 of the Corporation Tax Act 2010;
  - 10.2.5 if the Service Provider purports to assign, Sub-contract, novate, create a trust in or otherwise transfer or dispose of this Contract in breach of the requirements of this Contract; or
  - 10.2.6 the Service Provider commits a material breach of its obligation to notify the Customer of any Occasion of Tax Non-Compliance or the Service Provider fails to provide details of proposed mitigating factors as required in the reasonable opinion of the Authority are acceptable.
- 10.3 If the Customer, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Service Provider and/or any third party guaranteeing the obligations of the Service Provider under this Contract and/or any material Sub-Contractor of the Service Provider when compared to any information provided to and/or assessed by the Customer as part of any procurement process or other due diligence leading to the award of this Contract to the Service Provider or the entering into a Sub-contract by the Service Provider, the following process shall apply:
- 10.3.1 the Customer may (but shall not be obliged to) give notice to the Service Provider requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Contract on such reasonable and proportionate terms as the Customer may require within a reasonable time period as specified in such notice; and
  - 10.3.2 a failure or refusal by the Service Provider to provide the financial or other security and/or assurances requested in accordance with Clause 10.3 and in accordance with any reasonable timescales specified in any such notice issued by the Customer shall be deemed a breach of this Contract by the Service Provider and shall be referred to and resolved in accordance with the Dispute Resolution Procedure.
- 10.4 In order that the Customer may act reasonably in exercising its discretion in accordance with Clause 10.3, the Service Provider shall provide the Customer with such reasonable and proportionate up-to-date financial or other information relating to the Service Provider or any relevant third party entity upon request.
- 10.5 The Customer may terminate this Contract by issuing a Notice to terminate to the Service Provider where:
- 10.5.1 the Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure;
  - 10.5.2 the Customer has become aware that the Service Provider should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract;
  - 10.5.3 the Contract should not have been awarded to the Service Provider in view of a serious infringement of obligations under European law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU; or
  - 10.5.4 there has been a failure by the Service Provider and/or one its Sub-Contractors to comply with legal obligations in the fields of environmental, social or labour Law. Where the failure to comply with legal obligations in the fields of environmental, social or labour Law is a failure by one of the Service Provider's Sub-Contractors, the Customer may request the

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replacement of such Sub-Contractor and the Service Provider shall comply with such request as an alternative to the Customer terminating this Contract under this Clause 10.5.4.

- 10.6 If the Customer novates this Contract to any body that is not a Contracting Authority, from the effective date of such novation, the rights of the Customer to terminate this Contract in accordance with Clause 10.5.2 to Clause 10.5.4 shall be deemed mutual termination rights and the Service Provider may terminate this Contract by issuing a Termination Notice to the entity assuming the position of the Customer if any of the circumstances referred to in such Clauses apply to the entity assuming the position of the Customer.

**Termination for convenience ☒ (only applicable to the Contract if this box is checked and the requirements listed)**

- 10.7 The Customer may terminate this Contract forthwith in writing to the Service Provider at any time on six (6) months' written notice. Such notice shall not be served within one (1) year of the Services Commencement Date.
- 10.8
- 10.9 The termination (howsoever arising) or expiry of this Contract pursuant to this Clause 10 shall be without prejudice to any rights of the Customer or the Service Provider that may have accrued before the date of such termination or expiry.
- 10.10 Save as aforesaid, the Service Provider shall not be entitled to any payment from the Customer after the termination (howsoever arising) or expiry of this Contract.
- 10.11 The Service Provider shall not be entitled to suspend the supply of the Services where it is in dispute with the Customer and shall instead follow the procedure set out in Clause 20.

## 11. CONSEQUENCES OF TERMINATION AND EXPIRY

- 11.1 Notwithstanding the service of a notice to terminate this Contract or any part thereof, the Service Provider shall continue to provide the Services until the date of expiry or termination (howsoever arising) of this Contract (or any part thereof) or such other date as required under this Clause 11 and the provisions of Schedule 2-12 (Exit and Service Transfer Arrangements).
- 11.2 The Customer shall require the Service Provider to destroy or return the following within ten (10) Working Days of the earlier of the date of expiry or termination (howsoever arising) of this Contract:
- 11.2.1 any data (including (if any) Customer Data) and Customer Confidential Information in the Service Provider's possession, power or control, (and shall, at the request of the Customer, certify that it does not retain any such Customer Confidential Information) either in its then current format or in a format nominated by the Customer (in which event the Customer will reimburse the Service Provider's pre-agreed and 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, save that the Service Provider may keep one copy of any such data or information for a period of up to twelve (12) months to comply with its obligations under this Contract or such period as is necessary for such compliance;
  - 11.2.2 all Goods owned by the Customer and all Customer Furnished Items in the Service Provider's or any third party's (including Sub-Contractors) possession and/or control; and
  - 11.2.3 any sums prepaid in respect of the Services not provided by the date of expiry or termination (howsoever arising).
- 11.3 Not used
- 11.4 The Customer shall for a period of twelve (12) months following expiry or termination (howsoever arising) of this Contract (or until the date on which the Service Provider fulfils all its duties and

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responsibilities pursuant to the Exit and Service Transfer Arrangements, if later) be entitled to require access to data or information arising from the Services from the Service Provider. The application of this clause in light of the Customer Responsibility to download audit data from the Services prior to any such termination shall be discussed between the parties in a fair and reasonable manner.

### 11.5 The provisions of:

#### 11.5.1 Not used

#### 11.5.2 Schedules 2-1 (Interpretation), 2-10 (Dispute Resolution Procedure), 2-12 (Exit and Service Transfer Arrangements) and schedule 2-22 (Processing, Personal Data and Data Subjects); and

#### 11.5.3 any other Clause or Schedule of this Contract which by its terms is to be performed or observed notwithstanding termination (howsoever arising) or expiry or which is expressed or by implication is to survive termination or expiry,

shall survive the termination (howsoever arising) or expiry of this Contract.

## 12. WARRANTIES

### 12.1 The Service Provider warrants that:

12.1.1 it has full capacity and authority to enter into and to perform each Contract;

12.1.2 this Contract is executed by its authorised representative;

12.1.3 it is a legally valid and existing organisation incorporated in the place it was formed;

12.1.4 there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might affect its ability to perform this Contract;

12.1.5 it maintains all necessary rights, authorisations, licences and consents to perform its obligations under this Contract;

12.1.6 it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform this Contract;

12.1.7 it is not impacted by an Insolvency Event;

12.1.8 all statements made and documents submitted as part of the procurement of the Services are and remain true and accurate;

12.1.9 it has and shall maintain a properly documented system of quality controls and processes covering all aspects of its obligations under this Contract and/or under Law and/or Guidance and shall at all times comply with such quality controls and processes;

12.1.10 Not used

12.1.11 unless otherwise set out in the Specification and/or as otherwise agreed in writing by the Parties, it has and/or shall procure all resources, equipment, consumables and other items and facilities required to provide the Services;

12.1.12 it shall comply with all health and safety processes, requirements safeguards, controls, and training obligations in accordance with its own operational procedures, Law, Guidance, Policies, Good Industry Practice, the requirements of the Specification and any notices or instructions given to the Service Provider by the Customer and/or any competent body, as relevant to the provision of the Services and the Service Provider's access to the Premises and Sites in accordance with this Contract;

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- 12.1.13 without prejudice to any specific notification requirements set out in this Contract, it will promptly notify the Customer of any health and safety hazard which has arisen, or the Service Provider is aware may arise, in connection with the performance of the Services and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;
- 12.1.14 any equipment it uses in the provision of the Services shall comply with all relevant Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification and shall remain the Service Provider's risk and responsibility at all times;
- 12.1.15 unless otherwise confirmed by the Customer in writing (to include, without limitation, as part of the Specification), it will ensure that any products purchased by the Service Provider partially or wholly for the purposes of providing the Services will comply with requirements five (5) to eight (8), as set out at Annex 1 of the Cabinet Office Procurement Policy Note – Implementing Article 6 of the Energy Efficiency Directive (Action Note 07/14 3<sup>rd</sup> June 2014), to the extent such requirements apply to the relevant products being purchased;
- 12.1.16 it shall use Good Industry Practice to ensure that any information and communications technology systems and/or related hardware and/or software it uses are free from corrupt data, viruses, worms and any other computer programs or code which might cause harm or disruption to the Customer's information and communications technology systems;
- 12.1.17 it shall: (i) comply with all relevant Law and Guidance and shall use Good Industry Practice to ensure that there is no slavery or human trafficking in its supply chains; and (ii) notify the Customer immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains;
- 12.1.18 it shall at all times conduct its business in a manner that is consistent with any anti-slavery Policy of the Customer and shall provide to the Authority any reports or other information that the Customer may request as evidence of the Service Provider's compliance with this Clause 12.1.18 and/or as may be requested or otherwise required by the Customer in accordance with its anti-slavery Policy;
- 12.1.19 it will fully and promptly respond to all requests for information and/or requests for answers to questions regarding this Contract, the provision of the Services, any complaints and any Disputes at the frequency, in the timeframes and in the format as requested by the Customer from time to time (acting reasonably);
- 12.1.20 all information included within the Service Provider's responses to any documents issued by the Customer as part of the procurement relating to the award of this Contract (to include, without limitation, as referred to in the Specification and/or Request for Drawdown Services) and all accompanying materials is accurate;
- 12.1.21 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Contract; and
- 12.1.22 it has satisfied itself as to the nature and extent of the risks assumed by it under this Contract and has gathered all information necessary to perform its obligations under this Contract and all other obligations assumed by it.
- 12.2 The warranties in Clause 12.1 are repeated each time the Service Provider provides deliverables under the Contract.
- 12.3 The Service Provider indemnifies the Customer against non-payment by the Service Provider of any tax or National Insurance.
- 12.4 All claims indemnified under this Contract must use Clause 13.
- 12.5 If the Service Provider becomes aware of a warranty that becomes untrue or misleading, it must immediately notify the Customer.

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- 12.6 All third party warranties and indemnities covering the Services and Goods provided pursuant to the Contract must be assigned for the Customer's benefit by the Service Provider.
- 12.7 The Service Provider has reviewed any intended use of the service/solution specified in Schedule 2-2 (Service Specification). The Service Provider represents and warrants that:
- 12.7.1 the service/solution shall materially conform to the purposes described in Schedule 2-2 (Service Specification) and will continue to materially conform to such purposes following any updates to the service/solution;
  - 12.7.2 if the service/solution is a medical device, the Service Provider holds and shall continue to hold all approvals and certificates necessary to enable the service/solution to be placed on the market or put into service in the United Kingdom as a medical device;
  - 12.7.3 not used; and
  - 12.7.4 the service/solution incorporates encryption technology of commercially reasonable and appropriate standards, consistent with such intended use and any other use which is intended by the Service Provider.
- 12.8 For clarity, the Service Provider confirms that except for reasonable accommodations to coordinate a response to changes in Medical Device Laws:
- 12.8.1 the service/solution will materially comply with Medical Devices Laws when used in accordance with any intended use of the service/solution documentation, use instructions, training requirements, and mandatory safety or security updates; and
  - 12.8.2 the intended use of the service/solution described in Schedule 2-2 (Service Specification) is within the scope of the intended use for which the service/solution is authorised as a medical device.
- 12.9 Upon request, the parties (Service Provider and Customer) will provide or agree to provide to each other evidence of each others compliance with the requirements stated in Clauses 12.7 and 12.8.
- 12.10 Except as expressly stated in this Contract, all warranties and conditions, whether express or implied by Statute, common law or otherwise (including fitness for purpose) are hereby excluded to the extent permitted by Law.

## 13. DEALING WITH CLAIMS

- 13.1 The provisions of this Clause 13 shall be subject to any provisions of applicable Law or guidance or directions of any applicable Regulatory Body which are contrary to procedures identified below.
- 13.2 If a Beneficiary is notified of a Claim then it must notify the Indemnifier as soon as reasonably practical and no later than 10 Working Days.
- 13.3 At the Indemnifier's cost the Beneficiary must both:
- 13.3.1 allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim; and
  - 13.3.2 give the Indemnifier reasonable assistance with the claim if requested.
- 13.4 The Beneficiary must not make admissions about the Claim without the prior written consent of the Indemnifier which cannot be unreasonably withheld or delayed.
- 13.5 The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in away that doesn't damage the Beneficiary's reputation.
- 13.6 The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written

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consent which it must not unreasonably withhold or delay.

- 13.7 Each Beneficiary must take all reasonable steps to minimise and mitigate any losses that it suffers because of the Claim.
- 13.8 If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the Claim, the Beneficiary must immediately repay the Indemnifier the lesser of either:
- 13.8.1 the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money; or
  - 13.8.2 the amount the Indemnifier paid the Beneficiary for the Claim.

### 14. LIMITATION OF LIABILITY

- 14.1 Each Party's total aggregate liability in each Contract Year under this Contract (whether in tort, contract or otherwise) is no more than 125% of the Estimated Yearly Charges. Each Party's total aggregate liability under this Contract for Schedule 2-22 (Processing, Personal Data and Data Subjects) is no more than 200% of the Charges paid or payable in the 12 months preceding the claim.
- 14.2 No Party is liable to the other for:
- 14.2.1 any indirect, incidental, punitive, special or consequential Losses; or
  - 14.2.2 loss of profits, turnover, revenue, savings, business, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 14.3 Notwithstanding Clause 14.1 and Clause 14.2 neither Party limits or excludes any of the following:
- 14.3.1 its liability for death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors;
  - 14.3.2 its liability for bribery or fraud or fraudulent misrepresentation by it or its employees; or
  - 14.3.3 any liability that cannot be excluded or limited by Law.
- 14.4 Notwithstanding Clauses 14.1 and 14.2.1, the Service Provider does not limit or exclude its liability for any indemnity given under Clauses 52 (Intellectual Property Rights) 53 (Staffing and TUPE), and Schedules 2-4 (Charges and Invoicing) 2-12 (Exit and Service Transfer), 2-20 (Staffing), 2-21 (Pensions) of this Contract.
- 14.5 Each Party must use all reasonable endeavours to mitigate any Loss or damage which it suffers under or in connection with each Contract, including any indemnities.
- 14.6 When calculating the Service Provider's liability under Clause 14.1 or 14.2 the following items will not be taken into consideration:
- 14.6.1 any items specified in Clause 14.5.
- 14.7 If more than one Service Provider is party to a Contract, each Service Provider is fully responsible for their own liabilities only.
- 14.8 The Customer and the Service Provider expressly agree that should any limitation or provision contained in this Clause 14 be held to be invalid under any Law it shall to that extent be deemed omitted but if either of them thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

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### 15. CHARGES

- 15.1 The Service Provider and the Customer shall comply with their respective obligations set out in Schedule 2-4 (Charges and Invoicing).

### 16. CONTRACT MANAGEMENT AND COOPERATION

- 16.1 The Service Provider and the Customer shall comply with their respective contract management obligations set out in Schedule 2-7 (Contract, Service Management and Reporting).

### 17. CONFIDENTIALITY

- 17.1 Except to the extent set out in this Clause 17 or where disclosure is expressly permitted elsewhere in this Contract, each party shall:
- 17.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and
  - 17.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
- 17.2 Clause 17.1 shall not apply to the extent that:
- 17.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 18;
  - 17.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - 17.2.3 such information was obtained from a third party without obligation of confidentiality;
  - 17.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
  - 17.2.5 it is independently developed without access to the other party's Confidential Information.
- 17.3 The Service Provider may only disclose the Customer Confidential Information to the Service Provider Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Service Provider Personnel are aware of and shall comply with these obligations as to confidentiality.
- 17.4 The Service Provider shall not, and shall procure that the Service Provider Personnel do not, use any of the Customer Confidential Information received otherwise than for the purposes of this Contract.
- 17.5 The Service Provider may only disclose the Customer Confidential Information to the Service Provider Personnel who need to know the information, and shall ensure that such Service Provider Personnel are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any Default, act or omission of any Service Provider Personnel causes or contributes (or could cause or contribute) to the Service Provider breaching its obligations as to confidentiality under or in connection with this Contract, the Service Provider shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases.
- 17.6 To the fullest extent permitted by its own obligations of confidentiality to any Service Provider Personnel, the Service Provider shall provide such evidence to the Customer as the Customer may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the Service Provider is taking appropriate steps to comply with this Clause 17, including copies of any written communications to and/or from Service Provider Personnel and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with



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Service Provider Personnel in connection with obligations as to confidentiality.

- 17.7 At the written request of the Customer, the Service Provider shall procure that those members of the Service Provider Personnel who have access to patient identifiable data sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 17.8 Nothing in this Contract shall prevent the Customer from disclosing the Service Provider Confidential Information in relation to the use or provision of the Services:
- 17.8.1 to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
- 17.8.2 to any consultant, contractor or other person engaged by the Customer;
- 17.8.3 to any third party to the extent the Customer considers it reasonably necessary so as to enable or assist such persons in providing services to the Customer (or bid for the provision of such services) in relation to the Services (including any interoperability with the Services) (provided that Confidential Information shall not to be disclosed pursuant to this sub-clause to a contractor competitor without the prior written consent of the Service Provider such consent not to be unreasonably withheld or delayed);
- 17.8.4 for the purpose of the examination and certification of the Customer's accounts; or
- 17.8.5 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.
- 17.9 The Customer shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Service Provider's Confidential Information is disclosed pursuant to Clause 17.8 is made aware of the Customer's obligations of confidentiality.
- 17.10 Nothing in this Clause 17 shall prevent either party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.
- 17.11 Without prejudice to any Confidential Information, the Customer and the Service Provider acknowledge that any Confidential Information originating from:
- 17.11.1 the Customer, its employees, servants or agents is the property of the Customer; and
- 17.11.2 the Service Provider, its servants, agents or the Service Provider Personnel is the property of the Service Provider.
- 17.12 The Service Provider shall indemnify and keep the Customer indemnified at all times from and against all losses sustained by the Customer in the event of any breach by the Service Provider of this Clause 17.

## 18. FREEDOM OF INFORMATION

- 18.1 The Service Provider acknowledges that the Customer is subject to the requirements of the FOIA and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations.
- 18.2 The Service Provider shall and shall procure that its Sub-Contractors shall:
- 18.2.1 transfer to the Customer all Requests for Information that it receives as soon as reasonably possible and in any event within two (2) Working Days of receiving a Request for

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Information;

- 18.2.2 provide the Customer with a copy of all relevant Information in its possession or power in the form that the Customer requires within three (3) Working Days (or such other period as the Customer may specify) of the Customer's request; and
- 18.2.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA.
- 18.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA. The parties however agree that the Contract as a whole is not confidential in itself. The Service Provider therefore gives his consent for the Customer to publish this Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the Contract, to the general public.
  - 18.3.1 The Customer may consult with the Service Provider to inform its decisions regarding any redactions but the Customer shall have the final decision in its absolute discretion.
  - 18.3.2 The Service Provider shall assist and cooperate with the Customer to enable the Customer to publish this Contract.
- 18.4 In no event shall the Service Provider respond directly to a Request for Information under this Contract unless expressly authorised to do so by the Customer.
- 18.5 The Service Provider acknowledges that (notwithstanding the provisions of this Clause 18) the Customer may be obliged under the FOIA to disclose information concerning the Service Provider or the Services:
  - 18.5.1 in certain circumstances without consulting the Service Provider; or
  - 18.5.2 following consultation with the Service Provider and having taken their views into account, provided always that where Clause 18.5.1 applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.
- 18.6 The Service Provider shall ensure that all Information is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.
- 18.7 The Service Provider acknowledges that the Commercially Sensitive Information listed in Schedule 2-11 (Commercially Sensitive Information) is of indicative value only and that the Customer may be obliged to disclose it in accordance with Clause 18.5.

## 19. PUBLICITY

- 19.1 The Service Provider shall not:
  - 19.1.1 make any press announcements, discuss with any third parties or publicise this Contract or its contents in any way; or
  - 19.1.2 use the Customer's name or brand in any promotion or marketing, without the Customer's prior written consent. The Service Provider shall ensure the observance of the provisions of this Clause 19 by all Service Provider Personnel.
- 19.2 If the Service Provider receives any requests from the media or otherwise regarding this Contract (or its contents) or any related issues, it will refer all such requests to the Customer.

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- 19.3 The Customer shall be entitled to make any press announcements or publicise this Contract in accordance with any legal obligation upon the Customer, including any examination of this Contract by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.
- 19.4 The Service Provider acknowledges to the Customer that nothing in this Contract either expressly or by implication constitutes an endorsement of any goods and/or services of the Service Provider (including the Services) and the Service Provider agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

### 20. DISPUTE RESOLUTION

- 20.1 Subject to the provisions of Clause 20.2 and save for disputes arising:
- 20.1.1 under Clause 26 (which shall be dealt with in accordance with Clause 26; and
  - 20.1.2 under Clause 26.2.3 (which shall be dealt with in accordance with Clause 26.2.3); any dispute arising under, or in connection with this Contract shall be dealt with in accordance with this Clause 20, and neither the Customer nor the Service Provider shall be entitled to commence or pursue any legal proceedings under the jurisdiction of the Courts in connection with any such dispute, until the procedures set out in this Clause 20 have been exhausted and unless agreed otherwise, the parties shall continue to comply with their respective obligations under the Contract regardless of the nature of the dispute.
- 20.2 Clause 20.1 shall be without prejudice to the rights of termination stated in Clause 10 and in addition shall not prevent the Customer or the Service Provider from applying for injunctive relief in the case of:
- 20.2.1 breach or threatened breach of confidentiality;
  - 20.2.2 infringement or threatened infringement of its Intellectual Property Rights; or
  - 20.2.3 infringement or threatened infringement of the Intellectual Property Rights of a third party, where such infringement could expose the Customer or the Service Provider to liability.
- 20.3 All disputes between the Customer and the Service Provider arising out of or relating to this Contract shall first be referred by the Customer's Contract Manager or the Service Provider's Contract Manager to the other for resolution.
- 20.4 If any dispute cannot be resolved by the representatives nominated under Clause 20.3 within a maximum of ten (10) Working Days (or such other period as agreed by the parties) after it has been referred under Clause 20.3, that dispute shall then be referred to Karen Flintoft, Deputy Director Informatics Commercial, or representative, and for the Service Provider Chris Norton, Managing Director, or representative, for resolution.
- 20.5 If any dispute cannot be resolved by the representatives nominated under Clause 20.4 within a maximum of ten (10) Working Days (or such other period as agreed by the parties) after it has been referred under Clause 20.4, that dispute shall:
- 20.5.1 first be further referred to mediation in accordance with the provisions of Schedule 2-10 (Dispute Resolution Procedure); and thereafter
  - 20.5.2 if agreed by the parties, to arbitration in accordance with the provisions of Schedule 2-10 (Dispute Resolution Procedure); or
  - 20.5.3 if arbitration is not agreed to by either party, to litigation in accordance with the provisions of Schedule 2-10 (Dispute Resolution Procedure).

### 21. INSURANCE

- 21.1 During the Term and for a period of six (6) years following expiry or termination (howsoever arising) of this Contract, the Service Provider shall take out and maintain or procure the maintenance of the

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minimum insurances set out in Schedule 2-19 (Insurances).

- 21.2 The Service Provider shall produce to the Customers Contract Manager or their representative, within five (5) Working Days of request, brokers letters for all insurance policies referred to in Clause 21.1 or such other evidence as agreed between the Customer and the Service Provider that will confirm the extent of the cover given by those policies.
- 21.3 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under this Contract. It shall be the responsibility of the Service Provider to ensure that the amount of insurance cover is adequate to enable it to satisfy all its potential liabilities subject to the limit of liability specified in Clause 14.

### 22. RECOVERY OF SUMS DUE

- 22.1 The Customer shall be permitted to deduct and withhold from any sum due to the Service Provider under this Contract any sum of money due from the Service Provider under:

22.1.1 this Contract;

22.1.2 any other agreement between the Service Provider and the Customer; or

22.1.3 any other agreement between the Service Provider and the Customer;

provided that the terms of such other agreement provide for sums of money due from the Service Provider under that agreement to be recovered by way of a deduction from sums of money due to the Service Provider under this Contract (albeit that this Contract may not be referenced specifically under that agreement).

### 23. STATUTORY REQUIREMENTS

- 23.1 The Service Provider shall notify the Customer of all statutory provisions and approved safety standards applicable to the Services and their provision and shall be responsible for obtaining all licences, consents or permits required for the performance of this Contract.
- 23.2 The Service Provider shall, and shall ensure that its Sub-Contractors and the Service Provider Personnel, take all measures necessary to comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other Laws relating to health and safety, which may apply to those involved in the performance of this Contract.
- 23.3 Where the Service Provider is required by Medical Devices Laws to undertake a regulatory action, such as a recall, field safety notice or field safety corrective action, ("Regulatory Requirement") in respect of the service/solution, the Service Provider shall:
- 23.3.1 promptly (taking into consideration the potential impact of the continued use of the service/solution on patients and the Customer) notify the Customer in writing of the Regulatory Requirement together with the circumstances giving rise to the Regulatory Requirement;
- 23.3.2 consult with the Customer as to the most efficient method of executing the Regulatory Requirement in respect of the service/solution and use its best endeavours to minimise the impact on the Customer and patients of the Regulatory Requirement; and
- 23.3.3 not used.

### 24. STATUTORY INVALIDITY

- 24.1 The Customer and the Service Provider expressly agree that should any limitation or provision contained in this Contract be held to be invalid under any particular Law, it shall to that extent be deemed to be omitted and the remainder of the provisions hereof shall continue in full force and effect as if this Contract had been executed with the invalid provision eliminated.

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- 24.2 If either the Customer or the Service Provider becomes liable for loss or damage as a result of the omission in Clause 24.1 (which would have otherwise been excluded) such liability shall be subject to the other limitations and provisions set out herein.

### 25. DISCRIMINATION AND EQUALITY

- 25.1 The Service Provider shall not, and shall procure that the Service Provider Personnel and Sub-Contractors do not, unlawfully discriminate within the meaning and scope of all applicable equality Law and must follow all applicable equality Law when they perform their obligations under the Contract, including:
- 25.1.1 protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and
  - 25.1.2 any other requirements and instructions which the Customer reasonably imposes related to equality Law.
- 25.2 The Service Provider must take all necessary steps, and inform the Customer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on a Contract.

### 26. BRIBERY AND PROHIBITED ACTS

- 26.1 The Service Provider warrants and represents that:
- 26.1.1 it has not committed any offence under the Bribery Act 2010 or done any of the following (**Prohibited Acts**):
    - 26.1.1.1 offered, given or agreed to give any officer or employee of the Customer any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with the Customer or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the Customer; or
    - 26.1.1.2 in connection with this Contract paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Customer; and
    - 26.1.1.3 it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.
- 26.2 If the Service Provider or the Service Provider Personnel (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Service Provider in relation to this or any other agreement with the Customer:
- 26.2.1 the Customer shall be entitled:
    - 26.2.1.1 to terminate this Contract and recover from the Service Provider the amount of any loss resulting from the termination;
    - 26.2.1.2 to recover from the Service Provider the amount or value of any gift, consideration or commission concerned; and
    - 26.2.1.3 to recover from the Service Provider any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;
  - 26.2.2 any termination under Clause 26.2.1 shall be without prejudice to any right or remedy that

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has already accrued, or subsequently accrues, to the Customer; and

26.2.3 notwithstanding Clause 35 any Dispute relating to:

26.2.3.1 the interpretation of this Clause 26; or

26.2.3.2 the amount or value of any gift, consideration or commission,

shall be determined by the Customer, acting reasonably, and the decision shall be final and conclusive.

### 27. CORPORATE SOCIAL RESPONSIBILITY

27.1 The Service Provider acknowledges that the Customer may have additional requirements in relation to corporate social responsibility. The Customer expects that the Service Provider and its Sub-Contractors will comply with such corporate social responsibility requirements as the Customer may notify to the Service Provider from time to time.

### 28. MODERN SLAVERY, CHILD LABOUR AND INHUMANE TREATMENT

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

28.1 The Service Provider:

28.1.1 shall not use, nor allow its Sub-Contractors to use forced, bonded or involuntary prison labour;

28.1.2 shall not require any Service Provider Personnel to lodge deposits or identify papers with the employer and shall be free to leave their employer after reasonable notice;

28.1.3 warrants and represents that it has not been convicted of any slavery or human trafficking offenses anywhere around the world.

28.1.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offenses anywhere around the world.

28.1.5 shall make reasonable enquires to ensure that its officers, employees and Sub-Contractors have not been convicted of slavery or human trafficking offenses anywhere around the world.

28.1.6 shall have and maintain throughout the term of each Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act and include in its contracts with its subcontractors anti-slavery and human trafficking provisions;

28.1.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under a Contract;

28.1.8 shall, on request, provide information published by the Service Provider on 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;

28.1.9 shall not use, nor allow its employees or Sub-Contractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Sub-Contractors;

28.1.10 shall not use or allow child or slave labour to be used by its Sub-Contractors;

28.1.11 shall report the discovery or suspicion of any slavery or trafficking by it or its Sub-Contractors to Customer and Modern Slavery Helpline.

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### 29. TRANSFER AND SUB-CONTRACTING

- 29.1 This Contract is personal to the Service Provider. Subject to the provisions of Clause 29.2, the Service Provider shall not assign, novate, sub-contract or otherwise dispose of this Contract or any part thereof without the previous consent in writing of the Customer.
- 29.2 Notwithstanding the provisions of Clause 29.1, to the extent permitted by Schedule 2-9 (Sub-Contractors) the Service Provider shall be entitled to Sub-Contract its obligations hereunder to the Sub-Contractors listed in Schedule 2-9 (Sub-Contractors), however this shall not affect the Service Provider's obligations to the Customer and any liabilities under this Contract.
- 29.3 In selecting, appointing and managing Sub-Contractors, the Service Provider shall comply with the procedures specified in Schedule 2-9 (Sub-Contractors).
- 29.4 In the event that the Service Provider, in accordance with the terms of this Contract, enters into a Sub-Contract in connection with this Contract, the Service Provider shall ensure that a term is included in the Sub-Contract which requires the Service Provider to pay all sums due thereunder to the Sub-Contractor within a specified period, not to exceed thirty (30) Days, from the date of receipt of a valid invoice as defined by the terms of the Sub-Contract.
- 29.5 In the event that the Service Provider wishes to add any new sub-contractors or remove any Sub-Contractor, the Service Provider shall notify the Customer's Contract Manager in writing, which for the purposes of this notification may be via email, of such proposed additions to or removals. In the case of additions to the list of Sub-Contractors, such notification will contain confirmation that the selection and appointment of the Sub-Contractor is in accordance with the provisions of paragraph 3 of Schedule 2-9 (Sub-Contractors). In the case of removals from the list of Sub-Contractors, such notification will contain information on how the Service Provider proposes to ensure continuity in the provision of the Services. The Service Provider may not use any new sub-contractor or remove any Sub-Contractor until the Customer has confirmed in writing its agreement to such addition or removal. The Contract Change Procedure shall not apply to the addition of any new sub-contractors or removal of any Sub-Contractors unless stated otherwise by the Customer.
- 29.6 The Customer reserves the right to veto or withdraw the approval of the use of any Sub-Contractor or partner in the provision of the Services. Such right shall not be exercised unreasonably, frivolously or vexatiously.
- 29.7 In the event that the Customer exercises its right pursuant to Clause 29.6 the Service Provider shall use all reasonable endeavours to maintain the provision of the Services and the Customer and the Service Provider shall enter into good faith negotiations to agree the impact of the situation on the provisions of this Contract.
- 29.8 The use of Sub-Contractors and any subsequent approval of other sub-contractors by the Customer under this Clause 29 shall not in any way constitute any form of recommendation by the Customer of the Sub-Contractor, whether implied or otherwise.
- 29.9 Subject to the provisions of Clause 29.11, the Customer shall be entitled to:
- 29.9.1 assign, novate or otherwise dispose of any or all of its rights and obligations under this Contract and any associated third party licences to any other Contracting Authority; or
- 29.9.2 novate this Contract and any associated third party licences to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Customer. If this transfer increases the burden of the Service Provider's obligations under this Contract the Service Provider shall be entitled to any additional Charges that are reasonable by way of compensation and which can be agreed through the Contract Change Procedure.
- 29.10 Subject to the provisions of Clause 29.11, any change in the legal status of the Customer such that it ceases to be a Contracting Authority shall not affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the Customer.

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29.11 If this Contract is novated to a body which is not a Contracting Authority pursuant to Clause 29.9.2, or if a successor body which is not a Contracting Authority becomes the Customer pursuant to Clause 29.10 (in the remainder of this Clause 27 both such bodies are referred to as the Transferee):

29.11.1 the rights of termination of the Customer in Clause 10 shall be available, mutatis mutandis, to the Service Provider in the event of the bankruptcy, insolvency, Default or Persistent Breach of the Transferee;

29.11.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof with the previous consent in writing of the Service Provider; and

29.11.3 the following Clauses shall be varied from the date of the novation or the date of the change of status (as appropriate) as set out below as if this Contract had been amended by the Customer and the Service Provider in accordance with Clause 8:

Clause 17.8.1 references to "Crown Body" shall be deleted and in Schedule 2-1, delete the definition of "Crown Body".

29.12 Unless otherwise stated to the contrary, any reference to the Service Provider in this Contract shall include the Sub-Contractor. Notwithstanding any Sub-Contracting permitted hereunder, the Service Provider shall remain primarily responsible for the acts and omissions of its Sub-Contractors as though they were its own.

29.13 The Customer shall not be liable for any payment whatsoever to Sub-Contractors, the burden of which shall be solely with the Service Provider.

### 30. RIGHTS OF THIRD PARTIES

30.1 To the extent that this Contract is expressed to confer rights or benefits on a party who is not a party to this Contract, that party shall by virtue of the Contracts (Rights of Third Parties) Act 1999, be entitled to enforce those rights as if it was a party to this Contract. The consent of any person other than the Customer (or the Service Provider, as the case may be) is not required to vary or terminate this Contract or alter or extinguish any rights created under this Clause 30.1.

30.2 Except as provided in Clause 30.1, a person who is not a party to this Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. This Clause 30.2 does not affect any right or remedy of any person that exists or is available otherwise than pursuant to that Act.

30.3 This Contract shall not create any rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise for any Sub-Contractors.

### 31. ACCESS TO CUSTOMER PREMISES

31.1 Any Customer Premises (including temporary buildings) made available to the Service Provider, its Sub-Contractors and the Service Provider Personnel by the Customer in connection with this Contract shall be made available free of charge solely for the purpose of performing this Contract. The Service Provider shall have the use of the Customer Premises as licensee and shall vacate the same upon the expiry or termination (howsoever arising) of this Contract.

31.2 The Customer shall be responsible for maintaining the internal and external structure of the Customer Premises and the security of the Customer Premises in accordance with its security procedures. The Service Provider shall comply with all health and safety and reasonable security requirements of the Customer while on the Customer Premises and shall procure that all of its Sub-Contractors and the Service Provider Personnel shall likewise comply with such requirements. The Customer shall provide the Service Provider with copies of its security procedures upon request and shall afford the Service Provider an opportunity to inspect its physical security arrangements.

31.3 The Service Provider shall notify the Customer as soon as practicable of any health and safety hazards at the Customer Premises of which it becomes aware. The Service Provider will draw



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these hazards to the attention of the Service Provider Personnel and will instruct those persons in connection with any necessary associated safety measures.

- 31.4 The Customer may refuse admission to any Customer Premises and/or direct the Service Provider to end the involvement in the provision of the Services of any of the Service Provider Personnel whom the Customer believes represents a security risk or does not have the required levels of training and expertise or where the Customer has other grounds for doing so. The decision of the Customer shall be final.

### 32. AUDIT

- 32.1 The Service Provider shall keep and maintain until seven years (7) after the Contract has been completed, or as long a period as may be agreed between the parties, full and accurate records of the Contract including:

32.1.1 all expenditure reimbursed by the Customer; and

32.1.2 all payments made by the Customer.

- 32.2 The Service Provider shall on request afford the Customer or the Customer's representatives such access to those records as may be required in connection with the Contract.

- 32.3 The Customer, acting by itself or through an agent, shall have the right during the Term and for a period of eighteen (18) months thereafter, to assess compliance by the Service Provider and/or its Sub-Contractors for the following purposes:

32.3.1 to verify the accuracy of the Charges and any other amounts payable by the Customer under this Contract

32.3.2 to verify the Service Provider and Sub-Contractor's compliance with this Contract and applicable Law; and

32.3.3 for any other lawful or required purpose.

- 32.4 Except where an audit is imposed on the Customer by a regulatory body, the Law or where the Customer has reasonable grounds for believing that the Service Provider has not complied with its obligations under this Contract, the Customer may not conduct an audit of the Service Provider or of the same Sub-Contractor more than twice in any Year.

### 33. FORCE MAJEURE

- 33.1 Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for four (4) weeks, the party not affected may terminate this Contract by giving 10 Days' written notice to the Affected Party.

### 34. LEGISLATIVE CHANGE

- 34.1 The Service Provider shall bear the cost of ensuring that the Services comply with all Laws and any amendments thereto, except where any such amendment could not reasonably have been foreseen by a reasonably diligent service provider similar to the Service Provider as at the Effective Date.
- 34.2 Where such reasonably unforeseeable amendments are necessary, the Customer and the Service Provider shall use all reasonable endeavours to agree upon reasonable adjustments to the Charges as may be necessary to compensate the Service Provider for such additional costs as are both reasonably and necessarily incurred by the Service Provider in accommodating such amendments.

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### 35. WAIVER AND CUMULATIVE REMEDIES

- 35.1 The failure of the Service Provider or the Customer to insist upon strict performance of any provision of this 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 this Contract.
- 35.2 A waiver of any Default shall not constitute a waiver of any other Default. Any failure to exercise or any delay in exercising a right or remedy by either party shall not constitute a waiver of that right or remedy or of any other rights or remedies.
- 35.3 No waiver of any of the provisions of this Contract shall be effective unless it is expressed to be a waiver communicated by notice, in accordance with the provisions of Clause 9.
- 35.4 The rights and remedies provided by this Contract are cumulative and, unless a right or remedy of the Customer is expressed to be an exclusive right or remedy, the exercise of it by the Customer is without prejudice to the Customer's other rights and remedies provided at law or in equity or otherwise under this Contract.

### 36. LAW AND JURISDICTION

- 36.1 Subject to the provisions of Clause 20, the Customer and the Service Provider accept the exclusive jurisdiction of the English Courts and agree that this Contract is to be governed by and construed according to English law.
- 36.2 Not used
- 36.3 This Contract shall be binding upon the Customer and its successors and assignees and the Service Provider and the Service Provider's successors and permitted assignees.

### 37. ENTIRE AGREEMENT

- 37.1 This Contract, together with the documents referred to in it and attached to it, constitutes the entire agreement and understanding between the Customer and the Service Provider relating to the subject matter hereof and supersedes, cancels and nullifies any previous agreement between the parties to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.
- 37.2 The parties acknowledge that the Solution may have corresponding terms of use which may, amongst other things, set out the purposes for which the Solution may be used (which may be presented to End Users on downloading or otherwise accessing the App) (the "Solution TOU"). To the extent of any conflict or inconsistency between this Contract and the Solution TOU, the terms of this Contract shall prevail. The Solution TOU shall in no event create additional liabilities, restrictions or obligations on the Customer or End Users. This Clause 37.2 shall apply regardless of any statement to the contrary in the Solution TOU.
- 37.3 Each of the parties acknowledge and agree that in entering into this Contract and the documents referred to in it and attached to it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Contract. The only remedy available to either party in respect of any such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Contract.
- 37.4 Nothing in this Clause 37 shall operate to exclude any liability for fraud or fraudulent misrepresentation.

### 38. RELATIONSHIP OF THE PARTIES

- 38.1 Nothing in this Contract is intended to create a partnership, or legal relationship of any kind that would impose liability upon one party for the act or failure to act of the other party, or to authorise either party to act as agent for the other party. Neither party shall have authority to make

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representations, act in the name of, or on behalf of, or to otherwise bind the other party.

### 39. FURTHER CUSTOMER OBLIGATIONS

☒ (only applicable to the Contract if this box is checked and requirements listed)

39.1 The Customer's Obligations are set out in Schedule 2-24.

### 40. GUARANTEE

☐ (only applicable to the Contract if this box is checked)

40.1 Promptly following the execution of this Contract, the Service Provider shall, if it has not already delivered an executed deed of guarantee to the Customer, deliver the executed deed of guarantee to the Customer as required by the procurement process followed by the Customer. Failure to comply with this Clause shall be an irremediable breach of this Contract.

### 41. SERVICE TRANSFER PLAN (STP)

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

41.1 The Service Provider shall prepare and keep updated during the Term a STP for review by the Customer no later than three (3) months prior to the Effective Date and at regular intervals thereafter as specified in Schedule 2-12 (Exit and Service Transfer Arrangements).

### 42. GOODS

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

42.1 The Service Provider shall not replace any parts or components of the Goods used for the provision of the Service with parts or components that are of lower quality or which are unsuitable for use in their designed purpose either by a Customer or a replacement service provider, prior to the expiry or termination (howsoever arising) of this Contract.

42.2 Where there is fault in any Goods which cannot be repaired, the Service Provider shall ensure and procure that any data (including Customer Data) residing in any Goods is removed prior to such Goods being returned to any manufacturer or other third party for disposal.

42.3 The Service Provider hereby grants the Customer, its agents and employees an irrevocable licence at any time (on reasonable notice, escorted by Service Provider Personnel and in normal working hours) to enter any Service Provider premises where any Goods owned by the Customer and/or Customer Furnished Items are kept to inspect or remove them.

42.4 The Service Provider shall store such Goods and Customer Furnished Items separately from all other goods of the Service Provider or any third party and in such a way that they remain readily identifiable as the Customer's property.

42.5 The Service Provider shall ensure and procure that it obtains equivalent rights of inspection and removal where any Goods owned by the Customer and/or Customer Furnished Items are kept at third party (including any Sub-Contractor) premises and that such Goods and Customer Furnished Items are kept separately from all other goods of that third party (including any Sub-Contractor) and in such a way that they remain readily identifiable as the Customer's property.

42.6 If the Customer determines in its sole discretion that any of the termination events specified in Clause 10 have occurred or are likely to occur, the Customer may, following reasonable notice, either itself or via its agent, during working hours and escorted by Service Provider Personnel enter any premises of the Service Provider or any third party (including any Sub-Contractor) where Goods owned by the Customer and/or Customer Furnished Items are kept to remove such Goods and/or Customer Furnished Items.

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### 42.7 Delivery of Goods

- 42.7.1 The Service Provider shall deliver the Goods and provide the Goods at the location(s) at the time(s) and date(s) and to the Customer's delivery requirements as specified to the Service Provider.
- 42.7.2 The point of delivery of the Goods shall be when an authorised agent of the Customer gives written acknowledgement that the Goods have been removed from the transporting vehicle and deposited at the Customer's delivery address.
- 42.7.3 Delivery shall include the unloading, stacking and/or installation of the Goods by the Service Provider Personnel, Sub-Contractors, suppliers or carriers at such place as the Customer or duly authorised person shall reasonably direct, and they shall at all times comply with the reasonable requirements of the Customer's security procedures.
- 42.7.4 Access to the Customer Premises and any labour and equipment that may be provided by the Customer in connection with delivery of the Goods shall be provided without acceptance by the Customer of any liability whatsoever and the Service Provider shall indemnify the Customer against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and disbursements on a solicitor and client basis) and demands which the Customer may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Service Provider Personnel, Sub-Contractors, suppliers or carriers.
- 42.7.5 The Customer shall be under no obligation to accept or pay for any Goods delivered until the date of delivery.

### 42.8 Acceptance

- 42.8.1 The Acceptance Procedures for the Goods are set out in Schedule 2-6 (Acceptance Procedures).

### 42.9 Title and Risk

- 42.9.1 The ownership and passing of title and risk from one party to another is specified in Schedule 2-14 (Title and Risk).

## 43. INSTALLATION WORKS

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

- 43.1 Where the Customer has specified Installation Works in the Request for Drawdown Services (or elsewhere in this Contract) and the Service Provider reasonably believes it has completed the Installation Works it shall notify the Customer in writing. Following receipt of such notice, the Customer shall inspect the Installation Works in accordance with the Acceptance Test Criteria and the provisions of Schedule 2-6.
- 43.2 Throughout the Term, the Service Provider shall have at all times all licences, approvals and consents necessary to enable the Service Provider and the Service Provider Personnel to carry out the Installation Works.

## 44. PROVISION OF CONSUMABLES

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

- 44.1 The Service Provider shall supply all Consumables required for the operation of the Equipment during the Term in accordance with the relevant provisions of the Specification.
- 44.2 The Service Provider shall deliver the Consumables in accordance with any delivery timescales, delivery dates, and delivery instructions (to include, without limitation, as to delivery location and

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delivery times) set out in the Specification or as otherwise agreed with the Customer in writing. Except where installation of the Consumables forms part of the Services, delivery shall be completed when the Consumables have been unloaded at the relevant Premises and such delivery has been received by a duly authorised agent, employee or location representative of the Customer. The Customer shall procure that such duly authorised agent, employee or location representative of the Customer is at the delivery Premises at the agreed delivery date and times in order to accept such delivery. Where the installation of the Consumables forms part of the Services, delivery shall be completed when such Consumables have been installed at the Premises in accordance with any requirements set out in the Specification.

- 44.3 Part deliveries of Consumables and/or deliveries of Consumables outside of the agreed delivery times/dates may be rejected unless the Customer has previously agreed in writing to accept such deliveries.
- 44.4 Unless otherwise set out in the Specification or otherwise agreed with the Customer in writing, the Service Provider shall be responsible for all carriage, insurance, transport, all relevant licences, all related costs, and all other costs associated with the delivery of the Consumables to the delivery Premises and unloading of the Consumables at the Premises. Without limitation to the foregoing provision of this Clause 44.4, unless otherwise stated in the Specification or otherwise agreed with the Customer in writing, the Service Provider shall be responsible for obtaining all export and import licences for the Consumables and shall be responsible for any delays to the delivery time due to such licences not being available when required. In the case of any Consumables supplied from outside the United Kingdom, the Service Provider shall ensure that accurate information is provided to the Customer as to the country of origin of the Consumables and shall be liable to the Customer for any additional duties or taxes for which the Customer may be accountable should the country of origin prove to be different from that advised by the Customer.
- 44.5 All third party carriers engaged to deliver the Consumables shall at no time be an agent of the Customer and accordingly the Service Provider shall be liable to the Customer for the acts and omissions of all third party carriers engaged to deliver the Consumables to the Customer.
- 44.6 Unless otherwise set out in the Specification, risk in the Consumables shall pass to the Customer when the Consumables are delivered as specified in this Contract.
- 44.7 Unless otherwise set out in the Specification, ownership of the Consumables shall pass to the Customer on delivery, payment or part payment, whichever is the first to occur.
- 44.8 Consumables found to be damaged or otherwise not in accordance with the requirements of this Contract may be rejected by the Customer by written notice to the Service Provider within a reasonable period of time of the Customer becoming aware (or should have become aware of the same had it acted reasonably) that the Consumables were damaged or otherwise not in accordance with this Contract ("Rejected Consumables"). Unless otherwise set out in the Specification, the Service Provider shall collect the Rejected Consumables at the Service Provider's risk and expense within five (5) Working Days of issue of written notice from the Customer rejecting the Consumables and, without additional charge, promptly (and in any event within five (5) Working Days or such other time agreed by the Parties in writing acting reasonably) supply replacements for the Rejected Consumables to the Customer. Unless otherwise set out in the Specification, risk and title in respect of any Rejected Consumables shall pass to the Service Provider on the earlier of (i) their collection by the Service Provider in accordance with this Clause 44.8 of this or (ii) the latest date such Rejected Consumables should have been collected by the Service Provider in accordance with this Clause 44.8. The whole of any delivery may be rejected if a reasonable sample of the Consumables taken indiscriminately from that delivery is found not to conform in any material respects to the requirements of the Contract.

## 45. ACCEPTANCE TESTS

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

- 45.1 The Service Provider shall comply with the Acceptance Procedures for the Service as set out in Schedule 2-6 (Acceptance Procedure).

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### 46. PACKAGING, IDENTIFICATION AND END OF USE

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

- 46.1 The Service Provider shall comply with all obligations imposed on it by Law relevant to the Equipment and Consumables in relation to packaging, identification, and obligations following end of use by the Customer.
- 46.2 Unless otherwise specified in the Specification or otherwise agreed with the Customer in writing, the Consumables shall be securely packed in trade packages of a type normally used by the Service Provider for commercial deliveries of the same or similar goods either in retail or in bulk quantities within the United Kingdom.
- 46.3 Unless otherwise (a) specified in the Specification and ; (b) agreed with the Customer in writing; or (c) required to comply with any regulatory requirements, the following details shall be shown on the outside of every package of Consumables:
- 46.3.1 a description of the Consumables which shall include, without limitation, the weight of the Consumables where available and any order number allocated to the Consumables by the Customer and/or the Service Provider;
- 46.3.2 the quantity in the package where available;
- 46.3.3 any special directions for storage;
- 46.3.4 the expiry date of the contents where applicable;
- 46.3.5 the batch number; and
- 46.3.6 the name and address of the manufacturer of the Consumables and the Service Provider.
- 46.4 All service/solution, Equipment and Consumables that customarily bear any mark, tab, brand, label, serial numbers or other device indicating place of origin, inspection by any government or other body or standard of quality must be delivered with all the said marks, tabs, brands, labels, serial numbers or other devices intact. Without prejudice to the generality of the foregoing, the Service Provider shall label all Equipment and Consumables provided to the Customer, and the packaging of such Equipment and Consumables, to highlight environmental and safety information as required by applicable Law.
- 46.5 Unless otherwise set out in the Specification or agreed with the Customer in writing, the Service Provider shall collect without charge any returnable containers (including pallets) within twenty one (21) days of the date of the relevant delivery. Empty containers not so removed may be returned by the Customer at the Service Provider's expense or otherwise disposed of at the Customer's discretion. The Service Provider shall credit the Customer in full for any containers for which the Customer has been charged upon their collection or return.

### 47. SUSTAINABLE DEVELOPMENT

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

- 47.1 The Service Provider shall comply in all material respects with applicable environmental and social Law requirements in force from time to time in relation to the Services, Equipment and Consumables. Where the provisions of any such Law are implemented by the use of voluntary agreements, the Service Provider shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Specification. Without prejudice to the generality of the foregoing, the Service Provider shall:
- 47.1.1 comply with all Policies and/or procedures and requirements set out in the Specification in relation to any stated environmental and social requirements, characteristics and impacts of the Services, Equipment and Consumables and the Service Provider's supply chain;

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47.1.2 maintain relevant policy statements documenting the Service Provider's significant social and environmental aspects as relevant to the Services, Equipment and Consumables being provided and as proportionate to the nature and scale of the Service Provider's business operations; and

47.1.3 maintain plans and procedures that support the commitments made as part of the Service Provider's significant social and environmental policies. The Service Provider shall meet reasonable requests by the Customer for information evidencing the Service Provider's compliance with the provisions of this Clause 47.

### 48. ELECTRONIC SERVICES INFORMATION

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

48.1 Where requested by the Customer, the Service Provider shall provide the Customer the Services Information in such manner and upon such media as agreed between the Service Provider and the Customer from time to time for the sole use by the Customer.

48.2 The Service Provider warrants that the Services Information is complete and accurate as at the date upon which it is delivered to the Customer and that the Services Information shall not contain any data or statement which gives rise to any liability on the part of the Customer following publication of the same in accordance with this Clause 48.

48.3 If the Services Information ceases to be complete and accurate, the Service Provider shall promptly notify the Customer in writing of any modification or addition to or any inaccuracy or omission in the Services Information.

48.4 The Service Provider grants the Customer a perpetual, non-exclusive, royalty free licence to use the Services Information for the purpose of illustrating the range of goods and services (including, the Services) available pursuant to the Customer's contracts from time to time. Subject to Clause 48.5, no obligation to illustrate or advertise the Services Information is imposed on the Customer, as a consequence of the licence conferred by this Clause 48.4.

48.5 The Customer may reproduce for its sole use the Services Information provided by the Service Provider in the Customer's services catalogue from time to time which may be made available on any NHS communications networks in electronic format and/or made available on the Customer's external website and/or made available on other digital media from time to time.

48.6 Before any publication of the Services Information (electronic or otherwise) is made by the Customer, the Customer will submit a copy of the relevant sections of the Customer's services catalogue to the Service Provider for approval, such approval not to be unreasonably withheld or delayed. For the avoidance of doubt the Service Provider shall have no right to compel the Customer to exhibit the Services Information in any services catalogue as a result of the approval given by it pursuant to this Clause 48.6 or otherwise under the terms of this Contract.

48.7 If requested in writing by the Customer, and to the extent not already agreed as part of the Specification, the Service Provider and the Customer shall discuss and seek to agree in good faith arrangements to use any electronic trading system.

### 49. CUSTOMER DATA AND DATA PROTECTION

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

49.1 The provisions of Schedule 2.22 shall apply in respect of Customer Data and Data Protection.

### 50. SECURITY REQUIREMENTS AND SERVICE PROVIDER PERSONNEL VETTING

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

50.1 The Service Provider shall comply, and shall procure the compliance of the Service Provider Personnel, with the Security Policy and the Security Management Plan and the Service Provider

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- shall ensure that the Security Management Plan produced by the Service Provider fully complies with the Security Policy.
- 50.2 The Customer shall notify the Service Provider of any changes or proposed changes to the Security Policy.
- 50.3 The Service Provider shall make reasonable consideration of Customer proposed changes to the Security Policy, and if the Service Provider accepts a proposed change that it believes will have a material and unavoidable cost implication to the Services it may submit a Contract Change Note. In doing so, the Service Provider must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Contract Change Procedure.
- 50.4 Until and/or unless a change to the Charges is agreed by the Customer pursuant to Clause 50.3 the Service Provider shall continue to provide the Services in accordance with its existing obligations.
- 50.5 The Service Provider shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software in the ICT Environment (or as otherwise agreed by the parties).
- 50.6 Notwithstanding Clause 50.5, if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, assist each other to mitigate any losses and to restore the Services to its desired operating efficiency.
- 50.7 Any cost arising out of the actions of the parties taken in compliance with the provisions of Clause 50.6 shall be borne by the parties as follows:
- 50.7.1 by the Service Provider where the Malicious Software originates from the Service Provider Software, the Third Party Software supplied by the Service Provider (except where the Customer has waived the obligation set out in Clause 50.5) or the Customer Data (whilst the Customer Data was under the control of the Service Provider) unless the Service Provider can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Customer when provided to the Service Provider; and
- 50.7.2 by the Customer if the Malicious Software originates from the Customer Software (in respect of which the Customer has waived its obligation set out in Clause 50.5) or the Customer Data (whilst the Customer Data was under the control of the Customer).
- 50.8 The Service Provider shall comply with the Staff Vetting Procedures in respect of all Service Provider Personnel employed or engaged in the provision of the Services.
- 50.9 The Service Provider confirms that all Service Provider Personnel employed or engaged by the Service Provider at the Effective Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- 50.10 The Service Provider shall provide training on a continuing basis for all Service Provider Personnel employed or engaged in the provision of the Services in compliance with the Security Policy and Security Management Plan.

## 51. MAINTENANCE OF THE ICT ENVIRONMENT

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

- 51.1 If specified by the Customer in the Request for Drawdown Services (or elsewhere in this Contract), the Service Provider shall create and maintain a rolling schedule of planned maintenance to the Service Provider System.
- 51.2 The Service Provider shall provide to the Customer a draft Maintenance Schedule for approval



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within such period of time and in accordance with any other instructions of the Customer as specified in the Request for Drawdown Services (or elsewhere in this Contract).

- 51.3 The Service Provider shall only undertake such planned maintenance (which shall be known as Permitted Maintenance) in accordance with the Maintenance Schedule.
- 51.4 The Service Provider shall give as much notice as is reasonably practicable to the Customer prior to carrying out any Emergency Maintenance.
- 51.5 The Service Provider shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the Service Provider System has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the Service Provider System.

## 52. INTELLECTUAL PROPERTY RIGHTS, INDEMNITY AND [ESCROW]

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

### Intellectual Property Rights

- 52.1 Save as granted under this Contract, neither the Customer nor the Service Provider shall acquire any right, title or interest in or to the other's Pre-Existing Intellectual Property Rights. The Service Provider acknowledges that the Customer Data is the property of the Customer and the Customer hereby reserves all Intellectual Property Rights which may subsist in the Customer Data.
- 52.2 The Service Provider shall ensure that no unlicensed software or open source software (other than the Open Source Ordered Software) is interfaced with or embedded within any software which is proprietary to the Customer or which is developed by or on behalf of the Service Provider under this Contract.
- 52.3 The Customer acknowledges that the Open Source Ordered Software is subject to the open source licensing terms set out in Schedule 2-18 (Software and Software Licence Terms) and that the Intellectual Property Rights in the Open Source Ordered Software are owned by a variety of third parties. The Service Provider shall not do or allow to be done any act or omission which would cause the licence terms relating to the Open Source Ordered Software to be breached.
- 52.4 The Service Provider will convey to the Customer the Open Source Ordered Software and associated documentation (including technical specifications, user manuals, operating manuals, process definitions and procedures) on the applicable open source licence terms set out in Annex B of Schedule 2-18 (Software and Software Licence Terms) if required.
- 52.5 Subject to Clause 52.6 and 52.7, all Contract Generated Intellectual Property Rights shall be proprietary to and owned by the Service Provider.
- 52.6 The Service Provider hereby grants, or shall procure the direct grant, to the Customer a perpetual, royalty free, irrevocable, non-exclusive and global licence to use, the Contract Generated Intellectual Property Rights solely to the extent and for the purposes of receiving and using the Services under this Contract.
- 52.7 Where the applicable open sourcing licensing terms set out in Annex B of Schedule 2-18 (Software and Software Licence Terms) require that relevant Contract Generated Intellectual Property Rights shall be subject to licensing on the same terms as set out in such open source licensing terms the Service Provider or the Customer (as applicable) shall take all steps necessary to comply with the licensing terms, including making available the source code of the Contract Generated Intellectual Property Rights where required by the applicable open source licensing terms.
- 52.8 Not used.
- 52.9 The Service Provider:

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- 52.9.1 hereby grants to the Customer a licence to use the Service Provider Software on its standard licence terms (set out in Annex A to Schedule 2-18 (Software and Software Licence Terms));
- 52.9.2 shall procure that the owners or the authorised licensors of any Third Party Software listed in Schedule 2-18 (Software and Software Licence Terms) hereby grant a licence to the Customer or the Service Provider as applicable on the Third Party Software owner's standard licence terms (as set out in Annex B of Schedule 2-18 (Software and Software Licence Terms)); and
- 52.9.3 hereby grants to the Customer a non-exclusive licence to copy the descriptions of the Services, including technical specifications, user manuals, operating manuals, process definitions and procedures, for any purpose that is connected with or otherwise incidental to the exercise of the rights granted to the Customer under this Clause 52.9.
- 52.10 To the extent that the Service Provider creates any materials (in whatever form or media), outside the scope of the open source licensing terms, including training, marketing, promotional or publicity materials, relating to the provision of the Services ("Materials") it shall provide copies of all relevant Materials to the Customer promptly and the Service Provider hereby grants to the Customer a royalty free, irrevocable, non-exclusive licence for such term as the Customer shall require to use all and any Intellectual Property Rights in the Materials for the purposes of receiving and using the Services under this Contract.

### **IPR Indemnity**

- 52.11 The Service Provider shall ensure and procure that the availability, provision and supply of the Services and the performance of the Service Provider's responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.
- 52.12 The Service Provider shall at all times, during and after the Term, indemnify the Customer and keep the Customer indemnified against all claims, demands, actions, costs, expenses (including 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 the defence of such alleged infringement) of any Intellectual Property Right by the:
- 52.12.1 availability, provision or use of the Services (or any parts thereof); and
- 52.12.2 performance of the Service Provider's responsibilities and obligations hereunder.
- 52.13 The Service Provider shall promptly notify the Customer if any claim or demand is made or action brought against the Service Provider for infringement or alleged infringement of any Intellectual Property Right that may affect the availability, provision or use of the Services (or any parts thereof) and/or the performance of the Service Provider's responsibilities and obligations hereunder.
- 52.14 The Customer shall promptly notify the Service Provider if any claim or demand is made or action brought against the Customer to which Clause 52.12 may apply. The Service Provider shall at its own expense conduct any litigation arising therefrom and all negotiations in connection therewith diligently using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute and the Customer hereby agrees to grant to the Service Provider exclusive control of any such litigation and such negotiations but is required to keep the Customer fully informed with respect of any such Intellectual Property Rights claim.
- 52.15 The Customer shall at the request of the Service Provider afford to the Service Provider all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Customer to which Clause 52.12 may apply or any claim or demand made or action brought against the Service Provider to which Clause 52.13 may apply. The Service Provider shall reimburse the Customer for all costs and expenses (including legal costs and disbursements on a solicitor and client basis) incurred in so doing.
- 52.16 Except where required by Law, the Customer shall not make any admissions that may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right to which Clause 52.12 may apply or any claim or demand made

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or action brought against the Service Provider to which Clause 52.13 may apply.

- 52.17 If a claim or demand is made or action brought to which Clause 52.12, 52.13 and/or 52.14 may apply, or in the reasonable opinion of the Service Provider is likely to be made or brought, the Service Provider may at its own expense and within a reasonable time either:
- 52.17.1 modify any or all of the affected Services without reducing the performance and functionality of the same, or substitute alternative goods and/or services of equivalent performance and functionality for any or all of the affected Services, so as to avoid the infringement or the alleged infringement, provided that:
    - 52.17.1.1 the terms herein shall apply mutatis mutandis to such modified or substituted goods and/or services;
    - 52.17.1.2 such substitution shall not increase the burden or costs on the Customer; and
    - 52.17.1.3 such modified or substituted goods and/or services items shall be acceptable to the Customer, such acceptance not to be unreasonably withheld; or
  - 52.17.2 procure a licence to use the Services on terms that are reasonably acceptable to the Customer; and
  - 52.17.3 in relation to the performance of the Service Provider's responsibilities and obligations hereunder, promptly re-perform those responsibilities and obligations.
- 52.18 The provisions of Clauses 52.12 and 52.17 shall not apply insofar as any such claim or demand or action is in respect of any:
- 52.18.1 use by the Customer of the Services in combination with any item, good or service not supplied or approved by the Service Provider (or its Sub-Contractors) where such use of the Services directly gives rise to the claim, demand or action; or
  - 52.18.2 modification carried out by or on behalf of the Customer to the Services provided under this Contract if such modification is not authorised by the Service Provider (or its Sub-Contractors) in writing; or
  - 52.18.3 use by the Customer of the Services in a manner not reasonably to be inferred from the specification or requirements of the Customer.
- 52.19 If the Service Provider elects to modify the Services or to supply substitute goods and/or services pursuant to Clause 52.17.1 or to procure a licence under Clause 52.17.2 and this has not avoided any claim, demand or action for infringement or alleged infringement, then the Customer may terminate this Contract by written notice with immediate effect and, without prejudice to the indemnity in Clause 52.12, the Service Provider shall be liable for the value of the additional costs incurred in implementing and maintaining replacement goods and/or services and shall have no further liability in respect of the said claim, demand or action.
- 52.20 Clauses 52.12 and 52.17 set out the entire financial liability of the Service Provider with regard to the infringement of any Intellectual Property Right by the availability, provision or use of the Services (or any parts thereof) and/or the performance of the Service Provider's responsibilities and obligations hereunder. This shall not affect the Service Provider's financial liability for other Defaults or causes of action that may arise hereunder.
- 52.21 The Customer warrants that the Service Provider's use of any third party item supplied directly by the Customer in accordance with any instructions given by the Customer in connection with the use of such item shall not cause the Service Provider to infringe any third party's Intellectual Property Rights in such item.

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### Escrow

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

#### 52.22 The Service Provider:

52.22.1 shall place the source code of [DN: specify software source code and associated documentation] software in escrow with the [DN: specify escrow agent] within one (1) month from the Effective Day on the basis of the standard agreement or on such other terms as the Customer, the Service Provider and the escrow agent shall agree;

52.22.2 shall ensure that the software placed in escrow shall include material modifications, developments, updates, patches, enhancements or other modifications to the software from time to time;

52.22.3 hereby grants the Customer a perpetual, non-transferable and non-exclusive licence to use, reproduce, modify, adapt and enhance (and to authorise a third party to use, reproduce, modify, adapt and enhance) the source code and object code versions of the software placed in escrow. However, the foregoing licence shall only become effective if the Customer becomes entitled to obtain access to the source code version of that software pursuant to the escrow arrangement referred to in Clause 52.22.1 and the licence shall be subject to any restrictions contained therein in respect of the object code version of the software provided that such restrictions shall not detract from the rights granted under this Clause 52.22; and

52.22.4 the Customer hereby agree that both parties shall each pay their respective fees set out in any escrow agreement entered into pursuant to Clause 52.22.1.

#### 53. STAFFING AND TUPE

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

**[DN: Specific legal advice on all TUPE matters should be taken on a case by case basis and the provisions amended accordingly.]**

##### **Application of TUPE at the commencement of the provision of Services**

53.1 The Parties agree that at the commencement of the provision of Services by the Service Provider TUPE and the Cabinet Office Statement shall not apply so as to transfer the employment of any employees of the Customer or a Third Party to the Service Provider.

53.2 If any person who is an employee of the Customer or a Third Party claims or it is determined that their contract of employment has been transferred from the Customer or third party to the Service Provider or a Sub-Contractor pursuant to TUPE, or claims that their employment would have so transferred had they not resigned, then:

53.2.1 the Service Provider will, within seven (7) days of becoming aware of that fact, give notice in writing to the Customer;

53.2.2 the Customer or Third Party may offer employment to such person within twenty-eight (28) days of the notification by the Service Provider;

53.2.2.1 if such offer of employment is accepted, the Service Provider or a Sub-Contractor shall immediately release the person from their employment;

53.2.2.2 if after that period specified in Clause 53.2.1 has elapsed, no offer of employment has been made by the Customer or Third Party, or such offer has been made by the Customer or Third Party but not accepted within a reasonable time, the Service Provider or Sub-Contractor shall employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person and shall

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(where relevant) be bound to apply Fair Deal for Staff Pensions in respect of any such person in accordance with the requirements of Part D of Schedule 7 of the NHS Terms and Conditions for the Provision of Services (Contract Version) (January 2018).

### **Staff information and the application of TUPE at the end of the Contract**

- 53.3 Upon the day which is no greater than nine (9) months before the expiry of this Contract or as soon as the Service Provider is aware of the proposed termination of the Contract, the Service Provider shall, within twenty eight (28) days of receiving a written request from the Customer and to the extent permitted by Law, supply to the Customer and keep updated all information required by the Customer as to the terms and conditions of employment and employment history of any Service Provider Personnel (including all employee liability information identified in regulation 11 of TUPE) and the Service Provider shall warrant such information is full, complete and accurate.
- 53.4 No later than twenty eight (28) days prior to the Subsequent Transfer Date, the Service Provider shall or shall procure that any Sub-Contractor shall provide a final list to the Successor and/or the Customer, as appropriate, containing the names of all the Subsequent Transferring Employees whom the Service Provider or Sub-Contractor expects will transfer to the Successor or the Customer and all employee liability information identified in regulation 11 of TUPE in relation to the Subsequent Transferring Employees.
- 53.5 If the Service Provider shall, in the reasonable opinion of the Customer, deliberately not comply with its obligations under Clauses 53.3 and 53.4, the Customer may withhold payment under Clause 6 of this Contract.
- 53.6 The Service Provider shall be liable to the Customer for, and shall indemnify and keep the Customer indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any deficiency or inaccuracy in the information which the Service Provider is required to provide under Clauses 53.3 and 53.4 of this Contract.
- 53.7 Subject to Clauses 53.8 and 53.9 of this Contract, during the period of nine (9) months preceding the expiry of this Contract or after notice of termination of this Contract has been served by either Party, the Service Provider shall not, and shall procure that any Sub-Contractor shall not, without the prior written consent of the Customer, such consent not to be unreasonably withheld or delayed:
- 53.7.1 make, propose or permit any material changes to the terms and conditions of employment or other arrangements of any of the Service Provider Personnel;
  - 53.7.2 increase or seek to increase the emoluments (excluding cost of living increases awarded in the ordinary course of business) payable to any of the Service Provider Personnel;
  - 53.7.3 replace any of the Service Provider Personnel or increase the total number of employees providing the Services;
  - 53.7.4 deploy any person other than the Service Provider Personnel to perform the Services;
  - 53.7.5 terminate or give notice to terminate the employment or arrangements of any of the Service Provider Personnel;
  - 53.7.6 increase the proportion of working time spent on the Services by any of the Service Provider Personnel; or
  - 53.7.7 introduce any new contractual term or customary practice concerning the making of any lump sum payment on the termination of employment of any of the Service Provider Personnel.
- 53.8 Clause 53.7 shall not prevent the Service Provider or any Sub-Contractor from taking any of the steps prohibited in that Clause in circumstances where the Service Provider or Sub-Contractor is required to take such a step pursuant to any changes in legislation or pursuant to a collective agreement in force at that time.

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- 53.9 Where the obligations on the Service Provider under Clause 53 are subject to the Data Protection Legislation, the Service Provider will, and shall procure that any Sub-Contractor will, use its best endeavours to seek the consent of the Service Provider Personnel to disclose any information covered under the Data Protection Legislation and utilise any other exemption or provision within the Data Protection Legislation which would allow such disclosure.
- 53.10 Having as appropriate gained permission from any Sub-Contractor, the Service Provider hereby permits the Customer to disclose information about the Service Provider Personnel to any Interested Party provided that the Customer informs the Interested Party in writing of the confidential nature of the information.
- 53.11 The Parties agree that where a Successor or the Customer provides the Services or services which are fundamentally the same as the Services in the immediate or subsequent succession to the Service Provider or Sub-Contractor (in whole or in part) on expiry or early termination of this Contract (howsoever arising) TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions may apply in respect of the subsequent provision of the Services or services which are fundamentally the same as the Services. If TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions apply then Clause 53.13 to Clause 53.16 and (where relevant) the requirements of Clause 1.15 of Part D of Schedule 7 of the NHS Terms and Conditions for the Provision of Services (Contract Version) (December 2016) shall apply.
- 53.12 If on the termination or at the end of the Contract TUPE does not apply, then all Employee Liabilities and any other liabilities in relation to the Service Provider Personnel shall remain with the Service Provider or Sub-Contractor as appropriate. The Service Provider will, and shall procure that any Sub-Contractor shall, indemnify and keep indemnified the Customer in relation to any Employee Liabilities arising out of or in connection with any allegation or claim raised by any Service Provider Personnel.
- 53.13 In accordance with TUPE, and any other policy or arrangement applicable, the Service Provider shall, and will procure that any Sub-Contractor shall, comply with its obligations to inform and consult with the appropriate representatives of any of its employees affected by the subsequent transfer of the Services or services which are fundamentally the same as the Services.
- 53.14 The Service Provider will and shall procure that any Sub-Contractor will on or before any Subsequent Transfer Date:
- 53.14.1 pay all wages, salaries and other benefits of the Subsequent Transferring Employees and discharge all other financial obligations (including reimbursement of any expenses and any contributions to retirement benefit schemes) in respect of the period between the Transfer Date and the Subsequent Transfer Date;
- 53.14.2 account to the proper Customer for all PAYE, tax deductions and national insurance contributions payable in respect of the Subsequent Transferring Employees in the period between the Transfer Date and the Subsequent Transfer Date;
- 53.14.3 pay any Successor or the Customer, as appropriate, the amount which would be payable to each of the Subsequent Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Subsequent Transfer Date;
- 53.14.4 pay any Successor or the Customer, as appropriate, the amount which fairly reflects the progress of each of the Subsequent Transferring Employees towards achieving any commission, bonus, profit share or other incentive payment payable after the Subsequent Transfer Date wholly or partly in respect of a period prior to the Subsequent Transfer Date; and
- 53.14.5 subject to any legal requirement, provide to the Successor or the Customer, as appropriate, all personnel records relating to the Subsequent Transferring Employees including, without prejudice to the generality of the foregoing, all records relating to national insurance, PAYE and income tax. The Service Provider shall for itself and any Sub-Contractor warrant that such records are accurate and up to date.
- 53.15 The Service Provider will and shall procure that any Sub-Contractor will indemnify and keep

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indemnified the Customer and/or a Successor in relation to any Employee Liabilities arising out of or in connection with any claim arising from:

- 53.15.1 the Service Provider's or Sub-Contractor's failure to perform and discharge its obligations under Clause 53.14;
  - 53.15.2 any act or omission by the Service Provider or Sub-Contractor in respect of the Subsequent Transferring Employees occurring on or before the Subsequent Transfer Date;
  - 53.15.3 any allegation or claim by any person who is not a Subsequent Transferring Employee but who alleges that their employment should transfer or has transferred to the Successor or the Customer, as appropriate;
  - 53.15.4 any emoluments payable to a person employed or engaged by the Service Provider or Sub-Contractor (including without limitation all wages, accrued holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and other contributions) payable in respect of any period on or before the Subsequent Transfer Date;
  - 53.15.5 any allegation or claim by any of the Subsequent Transferring Employees on the grounds that the Successor or Customer, as appropriate, has failed to continue a benefit provided by the Service Provider or Sub-Contractor as a term of such Subsequent Transferring Employee's contract as at the Subsequent Transfer Date where it was not reasonably practicable for the Successor or Customer, as appropriate, to provide an identical benefit but where the Successor or Customer, as appropriate, has provided (or offered to provide where such benefit is not accepted by the Subsequent Transferring Employee) an alternative benefit which, taken as a whole, is no less favourable to such Subsequent Transferring Employee; and
  - 53.15.6 any act or omission of the Service Provider or any Sub-Contractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the Successor's or Customer's failure to comply with regulation 13(4) of TUPE.
- 53.16 The Service Provider will, or shall procure that any Sub-Contractor will, on request by the Customer provide a written and legally binding indemnity in the same terms as set out in Clause 53.15 to any Successor in relation to any Employee Liabilities arising up to and including the Subsequent Transfer Date.
- 53.17 The Service Provider will indemnify and keep indemnified the Customer and/or any Successor in respect of any Employee Liabilities arising from any act or omission of the Service Provider or Sub-Contractor in relation to any other Service Provider Personnel who is not a Subsequent Transferring Employee arising during any period whether before, on or after the Subsequent Transfer Date.
- 53.18 If any person who is not a Subsequent Transferring Employee claims or it is determined that their contract of employment has been transferred from the Service Provider or any Sub-Contractor to the Customer or Successor pursuant to TUPE or claims that their employment would have so transferred had they not resigned, then:
- 53.18.1 the Customer will, or shall procure that the Successor will, within seven (7) days of becoming aware of that fact, give notice in writing to the Service Provider;
  - 53.18.2 the Service Provider may offer (or may procure that a Sub-Contractor may offer) employment to such person within twenty eight (28) days of the notification by the Customer or Successor;
  - 53.18.3 if such offer of employment is accepted, the Customer will, or shall procure that the Successor will, immediately release the person from their employment; and
  - 53.18.4 if after the period in Clause 53.18.2 has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the Customer will, or shall procure that the Successor will (whichever is the provider of the Services or services of the same or similar nature to the Services), employ that person in accordance with its obligations and

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duties under TUPE and shall be responsible for all liabilities arising in respect of any such person after the Subsequent Transfer Date.

### 54. MANAGED SERVICES

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

- 54.1 The Service Provider and Customer shall perform the Set-up Services in accordance with the timetable set out in Schedule 2-25.
- 54.2 When the Service Provider considers that the Managed Services are ready for activation it shall so notify the Customer. Within five Working Days of such notification the Customer shall review the operation of the Managed Services to confirm that they function in material conformance with the Managed Services Specification. If the Managed Services fail in any material respect to conform with the Managed Services Specification, the Customer shall give the Service Provider a detailed description of any such non-conformance (**Error**) in writing, within the five Working Day review period.
- 54.3 The Service Provider shall use reasonable endeavours to correct any Error within a reasonable time and, on completion, re-submit the Managed Services to the Customer. The provisions of Clause 54.4 and this Clause 54.3 shall then apply again, up to three additional times. If the Service Provider is unable to correct the Error after three attempts, either party may terminate this Contract with immediate effect by giving written notice to the other party, without further liability to the other in respect of the Error or failure to provide the Managed Services in accordance with this Contract.
- 54.4 If the Managed Services are found to conform with the Managed Services Specification or if the Customer does not provide any written comments within the five Working Day review period described in Clause 54.1, the Managed Services shall be deemed accepted as from the date of the notification or expiry of the five Working Day review period (in each case the Managed Services Acceptance Date).
- 54.5 Not used.

### 55. ASSUMED CONTRACTS AND CUSTOMER FURNISHED ITEMS

- 55.1 With effect from the Managed Services Acceptance Date the Customer shall:
- 55.1.1 transfer the Customer Furnished Items to the Service Provider in accordance with Schedule 2-24; and
- 55.1.2 subject to Clause 55.2, transfer the benefit of the Assumed Contracts to the Service Provider provided, in each such case, that the Service Provider hereby accepts and undertakes the related burden.
- 55.2 The Customer shall use reasonable endeavours to assign, novate or transfer each of the Assumed Contracts to the Service Provider with effect from the Managed Service Acceptance Date. If any consent of any third party is required for the assignment, novation or transfer of an Assumed Contract and has not been obtained at, or before, the Acceptance Date, the Customer and the Service Provider shall each use all reasonable endeavours to obtain that consent as soon as possible after the Managed Service Acceptance Date. Unless or until any Assumed Contract is assigned, novated or transferred, or any necessary consent is obtained, the parties shall work together, in good faith, to agree an alternative solution which may include the Service Provider finding an alternative source of supply and/or the Customer holding the benefit of the relevant Assumed Contract as agent for the Service Provider.

### 56. SERVICE PROVISION

- 56.1 The Service Provider shall provide the Managed Services from the Managed Services Acceptance Date until expiry or termination of this Contract for any reason.
- 56.2 The Service Levels shall apply with effect from the start of the first complete month [commencing]



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[occurring at least [30] days] after the Managed Services Acceptance Date.

- 56.3 The Customer shall not store, distribute or transmit through the Managed Services any material that:
- 56.3.1 is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive;
  - 56.3.2 facilitates illegal activity;
  - 56.3.3 depicts sexually explicit images; and/or
  - 56.3.4 promotes unlawful violence, discrimination based on race, gender, age, disability, sexual orientation, religion, belief or gender reassignment, or any other illegal activity.
- 56.4 The Customer shall remain responsible for the use of the Managed Services under its control, including any use by third parties (whether fraudulent or invited by the Customer).
- 56.5 [The Customer must take reasonable measures to ensure it does not jeopardise services supplied to third parties on the same shared access infrastructure as notified to the Customer by the Service Provider in writing. This includes informing the Service Provider promptly in the case of a denial-of-service attack or distributed denial-of-service attack. In the event of any such incident, the Service Provider shall work with the Customer to alleviate the situation as quickly as possible. The parties shall discuss and agree appropriate action (including suspending the Managed Services).]
- 56.6 The Customer shall not provide the Managed Services directly or indirectly to third parties.
- 56.7 The Service Provider reserves the right to:
- 56.7.1 modify the Service Provider's System, its network, system configurations or routing configuration; or
  - 56.7.2 modify or replace any Hardware or Software in its network or in equipment used to deliver any Service over its network,
- provided that this has no adverse effect on the Service Provider's obligations under this Contract and its provision of the Services or the Service Levels. If such changes will have an adverse effect, the Service Provider shall notify the Customer and the parties shall follow the Contract Change Procedure.

## 57. BENCHMARKING

- 57.1 The Customer may, by written notice, require a Benchmark Review of the Managed Services in accordance with the provisions of Schedule 2-25. The first Benchmark Review may not take place until at least [18] months after the Managed Service Acceptance Date and each subsequent Benchmark Review must be at least [12] months after the previous one.
- 57.2 Subject to Clause 57.4, if any Benchmark Review determines that the Fees do not represent Good Value (as defined in Schedule 2-25), the Service Provider shall, within [three months] of completion of the Benchmark Review, make a proposal for a new solution, with Charges representing Good Value in accordance with the recommendations of the Benchmarking under paragraph 5.10 of Schedule 2-25, and any related modifications to the Specification for Managed Services and the Service Levels.
- 57.3 On receipt of the proposal from the Service Provider under Clause 57.1 the Customer shall have the option to:
- 57.3.1 accept the new proposal in which case the parties shall record the change; or
  - 57.3.2 reject the proposal and elect to continue to receive the Managed Services on the existing basis; or

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57.3.3 [reject the proposal and terminate this Contract on [three months'] notice in writing to the Service Provider without cost other than the Fees up to the date of such termination.]

57.4 If the Service Provider reasonably believes the Benchmark has not complied with the provisions of Schedule 2-25 in any material respect, or that the Benchmark has made a manifest error in determining the results of the Benchmark Review, the Service Provider may dispute the Benchmark Report and the matter shall be dealt with in accordance with the Dispute Resolution Procedure.

### 58. CONTINUOUS IMPROVEMENT

58.1 Not used.

58.2 Not used.

58.2.1 Not used

58.2.2 Not used

For and on behalf of the Customer

Authorised signatory:



Name: Adam Dunlop

Title: Interim Group Chief Informatics Officer

Date: 27 March, 2024

For and on behalf of the Service Provider



Authorised signatory:

Name: Todd Krieger

Title: Senior Counsel

Date: 26 March, 2024

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### SCHEDULE 2-1

#### INTERPRETATIONS

<b>Acceptance Date</b>	has the meaning ascribed to it in paragraph 2.6 of Schedule 2-6 (Acceptance Procedure).
<b>Acceptance Procedures</b>	means the procedure of that name as specified in Schedule 2-6 (Acceptance Procedures).
<b>Acceptance Test</b>	means a test to be conducted in accordance with the provisions of Schedule 2-6 (Acceptance Procedure) and <b>Acceptance Tests</b> shall be construed accordingly.
<b>Acceptance Test Criteria</b>	means the test criteria specified in Schedule 2-6 (Acceptance Procedures).
<b>Acceptance Test Period</b>	means the period during which the Acceptance Procedures shall be performed, pursuant to the provisions of Schedule 2-6 (Acceptance Procedures).
<b>Acquired Rights Directive</b>	means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended.
<b>Affected Party</b>	means the party seeking to claim relief in respect of a Force Majeure Event.
<b>Affiliate</b>	means any person, partnership, joint venture, corporation or other form of enterprise, domestic or foreign, including subsidiaries that directly or indirectly are controlled by, or are under common control with the Service Provider or its Parent Company.
<b>Assumed Contracts</b>	means contracts that the Service Provider identifies as part of the Set-up Services and that will be subject to the obligations of Clause 55 .
<b>Authority</b>	has the meaning ascribed to it in recital a) of this Contract.
<b>Availability</b>	means when the functions of the Service Provider System and the Services are accessible and can be utilised by End Users without impairment or disruption and " <b>Available</b> " shall be construed accordingly.
<b>Availability Reports</b>	means reports submitted by the Service Provider to the Customer as specified in Schedule 2-7 (Contract, Service Management and Reporting).
<b>BACS</b>	means the Banks Automated Clearing System.
<b>BCDR Plan</b>	means the plan consisting of general business continuity and disaster recovery principles, the Business Continuity Plan and Disaster Recovery Plan as further described in paragraph 1.2 of Schedule 2-16 (BCDR Plan).
<b>Benchmarker</b>	has the meaning given in Schedule 2-25.
<b>Benchmarking Report</b>	means the report produced by the Benchmarker following a Benchmark Review.

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<b>Benchmark Review</b>	means any benchmarking of the Charges as conducted by the Benchmarker under Schedule 2-25.
<b>Beneficiary</b>	means a Party having (or claiming to have) the benefit of an indemnity under this Contract.
<b>Breach of Security</b>	means in accordance with the security requirements in Schedule 2-17 (Security Management Plan) and the Security Policy, the occurrence of (a) any unauthorised access to or use of the Services, the Customer Premises, the Sites, the Service Provider System and/or any ICT, information or data (including the Confidential Information and the Customer Data) used by the Customer and/or the Service Provider in connection with this Contract; and/or (b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Customer Data), including any copies of such information or data, used by the Customer and/or the Service Provider in connection with this Contract.
<b>Business As Usual Date</b>	has the meaning set out in paragraph 3.1.1 of Schedule 2-4 (Charges and Invoicing).
<b>Business Continuity Plan</b>	has the meaning set out in paragraph 1.2.2 of Schedule 2-16 (BDCR Plan).
<b>Cabinet Office Statement</b>	means the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector 2000 (January 2000 as revised in November 2007 and December 2013 and as may be further amended from time to time) and the annex to the Cabinet Office Statement entitled "A Fair Deal for Pensions: staff transfer from central government" (October 2013 and as may be further amended from time to time) and, where applicable, any related guidance notes issued by HM Treasury (as amended from time to time).
<b>CCN Effective Date</b>	has the meaning ascribed to it in paragraph 3.3.1 of Schedule 2-8 (Contract Change Procedure).
<b>CEDR</b>	means the Centre for Effective Dispute Resolution.
<b>Charges</b>	means the Delivery Milestone Payments and the Annual Service Charges made by the Customer to the Service Provider both ascertained in accordance with Schedule 2.4 (Charges and Invoicing).
<b>Claim</b>	means any claim which it appears that a Beneficiary is, or may become entitled to indemnification under this Contract.
<b>Code</b>	has the meaning ascribed to it in Clause 18.5 of this Contract.
<b>Commercially Sensitive Information</b>	means (i) the information listed in Schedule 2-11 (Commercially Sensitive Information); or (ii) the information notified to the Customer in writing (prior to the commencement of this Contract) which has been clearly marked as Commercially Sensitive Information comprised of information: a) which is provided by the Service Provider to the Customer in confidence for the period set out in that Schedule or notification; and/or b) which constitutes a trade secret.
<b>Confidential Information</b>	means the Customer Confidential Information and/or the Service Provider Confidential Information.
<b>Consumables</b>	means any consumables supplied to the Customer by the Service Provider under this Contract (to include, without limitation, any

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	consumables referred to in the Specification).
<b>Contract</b>	means the Clauses of this contract together with the Schedules and annexes to it and any documents referred to in it or attached to it.
<b>Contract Change Note (CCN)</b>	means the contract change note specified in Annex A to Schedule 2-8 (Contract Change Procedure).
<b>Contract Change Procedure</b>	means the contract change procedure specified in Schedule 2-8 (Contract Change Procedure) for making changes to this Contract.
<b>Contract Generated Intellectual Property Rights</b>	means any Intellectual Property Rights created by the Service Provider as a result of the performance by the Service Provider of its obligations under this Contract including the Specially Written Software. There is and will be no Contract Generated Intellectual Property Rights under this contract.
<b>Contracted Hours</b>	means 24 hours each day, seven days each week and 365 days each year (or 366 days in each leap year) unless otherwise notified by the Customer to the Service Provider.
<b>Contracting Authority</b>	means a contracting authority as listed in the OJEU Notice.
<b>Contract Year</b>	a consecutive period of twelve (12) Months commencing on the Effective Date or each anniversary thereof.
<b>Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer</b>	take the meaning given in the GDPR.
<b>Conviction or Convictions</b>	means other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by Section 1(1) of The Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023) and the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2001 (SI 2001/1192) or any replacement or amendment to those Orders) provided any such convictions are not “protected” convictions as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended)).
<b>Crown Body</b>	means any department, office or agency of the Crown and “ <b>Crown Bodies</b> ” shall be construed accordingly.
<b>Customer Confidential Information</b>	means all Personal Data, Customer Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Customer, including all Intellectual Property Rights, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked “confidential”) or which ought reasonably be considered to be confidential.
<b>Customer Data</b>	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 Service Provider by or on behalf of the Customer; or (ii) which the Service Provider is required to generate, process, store or transmit pursuant to this Contract; or (b) any Personal Data for which the Customer is the Data Controller.

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<b>Customer Furnished Items</b>	means any items issued or otherwise furnished in connection with this Contract by or on behalf of the Customer.
<b>Customer Premises</b>	means premises owned, controlled or occupied by the Customer or any Crown Body which are made available for use by the Service Provider or its Sub-Contractors for provision of the Services on the terms set out in this Contract or any separate agreement or licence.
<b>Customer System</b>	means the Customer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Customer or the Service Provider in connection with this Contract which is owned by or licensed to the Customer by a third party and which interfaces with the Service Provider System or which is necessary for the Customer to receive the Services.
<b>Customer's Contract Manager</b>	As given in clause (9.3)
<b>Data Loss Event</b>	means any event that results, or may result, in unauthorised access to Personal Data held by the Service Provider 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.
<b>Data Protection Impact Assessment</b>	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
<b>Data Protection Legislation</b>	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.
<b>Data Subject Access Request</b>	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.
<b>Days</b>	means calendar days.
<b>Deductions</b>	means all Service Credits or any other deductions relevant to the performance of the Service Provider under the Contract
<b>Default</b>	means any breach of the obligations of any party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of any party, its employees, agents or Sub-Contractors in connection with or in relation to the subject matter of this Contract and in respect of which such party is liable to the other.
<b>Delivery Milestone Payments</b>	means the Charges set out in paragraph 3.1 of Schedule 2-4 (Charges and Invoicing).
<b>Disaster</b>	means the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for a period of 48 hours or more or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period.
<b>Disaster Recovery</b>	means the process of restoration of the Services by the provision of the Disaster Recovery Services.
<b>Disaster Recovery Plan</b>	has the meaning set out in paragraph 1.2.3 of Schedule 2-16 (BCDR

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	Plan).
<b>Disaster Recovery Services</b>	means the disaster recovery and/or business continuity services (as the context may require) to be provided by the Service Provider pursuant to Schedule 2-16 (BDCR Plan).
<b>Disaster Recovery Systems</b>	means the system identified by the Service Provider in the Service Provider Solution which shall be used for the purpose of delivering the Disaster Recovery Service.
<b>DPA 2018</b>	Data Protection Act 2018.
<b>Effective Date</b>	Means the 1 October, 2023
<b>Employee Liabilities</b>	means all claims and staffing related liabilities whatsoever, including without limitation, claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race or disability discrimination or discrimination on any of the protected grounds under the Equality Act 2010 or claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims whether in tort, contract or statute or otherwise, demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation), and any expenses and legal costs on an indemnity basis.
<b>End User</b>	means any person authorised to use the Service Provider System.
<b>Emergency Maintenance</b>	means ad hoc and unplanned maintenance provided by the Service Provider where:  a) the Customer reasonably suspects that the ICT Environment or the Goods and/or Services, or any part of the ICT Environment or the Goods and/or Services, has or may have developed a fault, and notifies the Service Provider of the same; or  b) the Service Provider reasonably suspects that the ICT Environment or the Goods and/or Services, or any part the ICT Environment or the Goods and/or Services, has or may have developed a fault.
<b>Environmental Information Regulations</b>	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.
<b>Environmental Management System</b>	includes EMAS, ISO 14001 and other environment management standards as notified to the Service Provider by the customer from time to time.
<b>Estimated Yearly Charges</b>	means for the purposes of calculating each Party's annual liability under Clause 14:  i. in the first Contract Year, the Estimated Year 1 Contract Charges; or  ii. in any subsequent Contract Years, the Charges paid or payable

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	<p>in the previous Contract Year; or</p> <p>iii. after the end of the Contract, the Charges paid or payable in the last Contract Year during the Contract Period.</p>
<b>European Economic Area</b>	means the European Economic Area consists of the European Union and all European Free Trade Association countries except Switzerland.
<b>Exit and Service Transfer Arrangements</b>	means the arrangements set out in Schedule 2-12 (Exit and Service Transfer Arrangements) which shall apply in the event of the expiry or termination (howsoever arising) of this Contract.
<b>Fair Deal for Staff Pensions</b>	means the annex to the Cabinet Office Statement entitled "A Fair Deal for Pensions: staff transfer from central government" (October 2013 and as may be further amended from time to time) and, where applicable, any related guidance notes issued by HM Treasury (as amended from time to time).
<b>FOIA</b>	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner's Office or relevant Government Department in relation to such legislation.
<b>Force Majeure Event</b>	means any circumstance not within a party's reasonable control including, without limitation: acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority, collapse of buildings, fire, explosion or accident; and any labour or trade dispute, strikes, industrial action or lockouts. Excluding for the avoidance of doubt, the withdrawal of the United Kingdom from the European Union and any related circumstances, events, changes or requirements.
<b>Framework Agreement</b>	means the meaning ascribed to it in recital b) of this Contract.
<b>GDPR</b>	means the General Data Protection Regulation (Regulation (EU) 2016/679).
<b>General Principles</b>	has the meaning ascribed to it in paragraph 1.2.1 of Schedule 2-16 (BDCR Plan).
<b>Good Industry Practice</b>	means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.
<b>Goods</b>	means any goods used in the provision of the Services including hardware and software.
<b>Guidance</b>	means any applicable binding guidance, direction or determination and any policies, advice or industry alerts which apply to the Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Service Provider by the Customer and/or have been published and/or notified to the Service Provider 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.



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<b>ICT Environment</b>	means the Customer System and the Service Provider System.
<b>Implementation Plan</b>	means the plan necessary to implement provision of the Services incorporated in Schedule 2-5 (Implementation Plan).
<b>Indemnifier</b>	means a Party from whom an indemnity is sought under this Contract.
<b>Information</b>	has the meaning given under section 84 of FOIA.
<b>Information Commissioner's Office</b>	means the independent body responsible for policing and enforcing the data protection and freedom of information regime in the UK.
<b>Insolvency Event</b>	<p>means where:</p> <ul style="list-style-type: none"> <li>a) the Service Provider is deemed unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;</li> <li>b) the Service Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;</li> <li>c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company);</li> <li>d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Service Provider (being a company);</li> <li>e) the holder of a qualifying floating charge over the assets of the Service Provider (being a company) has become entitled to appoint or has appointed an administrative receiver; (i) a person becomes entitled to appoint a receiver over the assets of the Service Provider or a receiver is appointed over the assets of the Service Provider;</li> <li>f) the Service Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or</li> <li>g) any event occurs, or proceedings is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) – (f).</li> </ul>
<b>Intellectual Property Rights</b>	means patents, patent applications, trade marks, service marks, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, trade or business names and other similar rights or obligations whether registrable or not in any country (including the United Kingdom).
<b>Installation Works</b>	means the process of installing a software application in a Customer's or a Customer's nominated hosting environment. Installation will include all necessary works specified by the Customer from readying the application for Customer testing to promotion to a live production environment.
<b>Interested Party</b>	means any organisation which has a legitimate interest in providing services of the same or similar nature to the Services in immediate or proximate succession to the Service Provider or any Sub-Contractor

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	and who had confirmed such interest in writing to the Customer.
<b>Invoicing Procedure</b>	means the procedure by which the Service Provider invoices the Customer, as set out in Schedule 2-4 (Charges and Invoicing).
<b>ISMP</b>	means the Information Security Management Plan. The scope of the ISMP will be as agreed by the parties and will directly reflect the scope of the Services.
<b>Law</b>	means any applicable law, statute, bye-law, regulation, order, regulatory policy, binding guidance or industry code, rule of Court or mandatory directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body including the Security Policy Framework, the Code.
<b>LED</b>	means the Law Enforcement Directive (Directive (EU) 2016/680).
<b>Liquidated Damages</b>	means the liquidated damages specified in Schedule 2-15 (Liquidated Damages).
<b>Liquidated Damages Period</b>	means the period specified in paragraph 4 of Schedule 2-15 (Liquidated Damages) for each instance where Liquidated Damages apply.
<b>Losses</b>	means all claims, actions, proceedings, orders, demands, complaints, investigations and any award, compensation, damages, awards, fines (excluding fines issued by the Information Commissioner's Office (ico.org.uk)), loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs incurred.
<b>Maintenance Schedule</b>	has the meaning given to it in Clause 51 (Maintenance of the ICT Environment).
<b>Malicious Software</b>	means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.
<b>Managed Services</b>	means the service described in the Specification for Managed Services to be performed by the Service Provider in accordance with this Contract.
<b>Materials</b>	has the meaning ascribed to it in Clause 52.10 of this Contract.
<b>Mediator</b>	has the meaning ascribed to it in Schedule 2-10 (Dispute Resolution Procedure).
<b>Medical Devices Laws</b>	means: (a) The Medical Devices Directive (as implemented into UK law); (b) not used; (c) the requirements of a Quality Management System in respect of medical devices as set out in ISO 13485; (d) any other applicable Laws relating to the promotion and sale of medical devices; and (e) not used.
<b>Annual Service Charge</b>	means the Charges set out in paragraph 3.2 of Schedule 2-4 (Charges

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	and Invoicing).
<b>NHS Employment Check Standards</b>	means the legal and mandatory checks employers must carry out for the appointment and on-going employment of all individuals in the NHS and include all pre-appointment checks that are required by law, those that are mandated by Department of Health policy, and those that are required for access to the NHS Care Record Service. The standards apply to permanent staff, staff on fixed-term contracts, temporary staff, volunteers, students, trainees, contractors as well as on the appointment of locums and agency staff (in which case the standards must be met by providers of such staff).
<b>Non-Core Hours</b>	1800hrs – 0800hrs weekdays, weekends and English public holidays
<b>Notice of Arbitration</b>	means the formal notice from the Service Provider or the Customer to the other party referring a dispute to arbitration in accordance with the provisions of Schedule 2-10 (Dispute Resolution Procedure).
<b>OJEU Notice</b>	means the contract notice issued by the Authority in respect of the Framework Agreement.
<b>Open Source Ordered Software</b>	means the open software source listed in Schedule 2-18 (Software and Software Licence Terms).
<b>Operating Environment</b>	means the Customer System and the Sites.
<b>Outgoing Service Provider</b>	means the party providing services to the Customer similar or the same as the Services and which is being replaced by the Service Provider.
<b>Parent Company</b>	means any company which is the ultimate Holding Company of the Service Provider or any other company of which the ultimate Holding Company of the Service Provider is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Service Provider or which is engaged in the same or similar business to the Service Provider. The term “ <b>Holding Company</b> ” shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto.
<b>Performance Improvement Plan Service Credit</b>	Not used
<b>Permitted Maintenance</b>	has the meaning given to it in Clause 51.3 (Maintenance of the ICT Environment).
<b>Persistent Breach</b>	has the meaning ascribed to it in Schedule 2-3 (Performance Management).
<b>Policies</b>	means the policies, rules and procedures of the Customer as notified to the Service Provider from time to time.
<b>Pre-Existing Intellectual Property Rights</b>	means any Intellectual Property Rights vested in or licensed to (a) the Service Provider prior to or independently of the performance by the Service Provider of its obligations under this Contract; and (b) the Customer prior to or independently of the performance by the Customer of its obligations under this Contract.
<b>Problem</b>	means an unknown underlying cause of one or more incidents.
<b>Protective Measures</b>	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and

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	services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it.
<b>Quarter</b>	means a three (3) month period beginning on 1 <sup>st</sup> January, 1 <sup>st</sup> April, 1 <sup>st</sup> July or 1 <sup>st</sup> October. The term “ <b>Quarterly</b> ” shall be similarly construed.
<b>Rectification Time</b>	has the meaning ascribed to it in Schedule 2-3 (Performance Management).
<b>Regulatory Bodies</b>	means 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 and “ <b>Regulatory Body</b> ” shall be construed accordingly.
<b>Related Service Provider</b>	means any person who provides services to the Customer in relation to the Customer’s project from time to time.
<b>Relevant Transfer</b>	means a transfer of employment to which TUPE applies or is treated as applying.
<b>Requests for Information</b>	means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.
<b>Resolved</b>	has the meaning given to it in paragraphs 2.23 and 2.24 of Schedule 2-3 (Performance Management) and “ <b>Resolve</b> ” and “ <b>Resolution</b> ” shall be construed accordingly.
<b>Review Report</b>	has the meaning ascribed to it in paragraph 6.2 of Schedule 2-16 (BDCR Plan).
<b>Scheduled Downtime</b>	has the meaning ascribed to it in Schedule 2-3 (Performance Management).
<b>Security Management Plan</b>	means the Service Provider’s security plan prepared pursuant to paragraph 3 of Schedule 2-17 (Security Management Plan), an outline of which is set out in Annex B of Schedule 2-17 (Security Management Plan).
<b>Security Policy</b>	means the Service Providers security policy annexed to Annex A of Schedule 2-17 (Security Management Plan), as updated by the Service Provider from time to time. Should the Customer provide security procedures and departmental security policies to the Service Provider, the Service Provider shall without any obligation and in good faith review the Customers internal procedures and departmental policies with a view to making reasonable adjustments to the Security Policy.
<b>Security Policy Framework</b>	means the Cabinet Office Security Policy Framework (available from the Cabinet Office Security Policy Division).
<b>Security Tests</b>	has the meaning ascribed to it in paragraph 4.1 of Schedule 2-17 (Security Management Plan).
<b>Services</b>	means the services referred to in Schedule 2-2 (Service Specification).
<b>Service Commencement</b>	means the date of commencement of the provision of the Services by

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<b>Date</b>	the Service Provider.
<b>Service Credits</b>	means the service credits specified in Schedule 2-3 (Performance Management) which shall be payable to the Customer by the Service Provider in the event that the Service Levels are not met.
<b>Service Downtime</b>	means the period during which the Services are not live, accessible and/or fully functioning.
<b>Service Failure</b>	means a failure by the Service Provider to deliver any part of the Services.
<b>Service Incident</b>	means an unplanned interruption to the Services or reduction in the quality of the Services.
<b>Service Incident Reports</b>	means reports submitted by the Service Provider to the Customer as specified in Schedule 2-7 (Contract, Service Management and Reporting).
<b>Service Levels</b>	means the levels of service defined in Schedule 2-3 (Performance Management).
<b>Service Provider Confidential Information</b>	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Service Provider, including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information.
<b>Service Provider Contract Manager</b>	As given in clause (9.3)
<b>Service Provider Equipment</b>	means the hardware, computer and communication devices and equipment supplied by the Service Provider or its Sub-Contractors (but not hired, leased or loaned from the Customer) for the provision of the Services.
<b>Service Provider Personnel</b>	means all employees, agents, consultants and contractors of the Service Provider and/or of any Sub-Contractor.
<b>Service Provider Proposals</b>	has the meaning ascribed to it in paragraph 6.2.3 of Schedule 2-16 (BCDR Plan).
<b>Service Provider Software</b>	means the proprietary software of the Service Provider as set out in Schedule 2-18 (Software and Software Licence Terms), including any applicable updates, upgrades, enhancements, configuration, development, or other derivative work.
<b>Service Provider Solution</b>	means the Service Provider's solution to the Customer's requirements as set out in Schedule 2-3 (Performance Management).
<b>Service Provider System</b>	means the information and communications technology system used by the Service Provider in providing the Services including the Software, the Service Provider Equipment and related cabling (but excluding the Customer System).
<b>Service Transfer</b>	means any transfer of the Services (or any part of the Services), for whatever reason, from the Service Provider or any Sub-Contractor to

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	the Customer or to a replacement service provider.
<b>Service Transfer Date</b>	means the date of a Service Transfer.
<b>Service Transfer Plan (STP)</b>	means (if applicable) the plan produced in accordance with paragraph 3 of Schedule 2-12 (Exit and Service Transfer Arrangements) by the Service Provider to be agreed by the Customer to facilitate any transfer of the Services (or any part of the Services), for whatever reason, from the Service Provider or any Sub-Contractor to the Customer or to a replacement service provider.
<b>Set-up Services</b>	means the due diligence, configuration and related work referred to in Clause 54 and Schedule 2-24, to be performed by the Service Provider to set up the Managed Services.
<b>Severity Level</b>	means the level of severity allocated to Service Incident by the Customer in accordance with Schedule 2-3 (Performance Management).
<b>Sites</b>	means any premises from which the Services are provided or from which the Service Provider manages, organises or otherwise directs the provision or the use of the Services or where any part of the Service Provider System is situated or where any physical interface with the Customer System takes place.
<b>Software</b>	means any Specially Written Software, Service Provider Software and Third Party Software.
<b>Specially Written Software</b>	means any software created by the Service Provider (or by a third party on behalf of the Service Provider, including by any Sub-Contractor) specifically for the purposes of this Contract.
<b>Staff Vetting Procedures</b>	means the Service Providers 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. Should the Customer provide procedures and departmental policies for the vetting of personnel to the Service Provider, the Service Provider shall without any obligation and in good faith review the Customers internal procedures and departmental policies with a view to making reasonable adjustments to the Staff Vetting Procedures.
<b>Staffing Information</b>	means written information about each of the Service Provider's or its Sub-Contractor's staff as may be requested by the Customer including, without limitation, all details which demonstrate to the satisfaction of the Customer that such staff are properly organised in respect of and assigned to the Services for the purposes of TUPE; job title, remuneration (meaning salary and benefits and any enhanced redundancy terms), age, length of service, notice period, particulars of employment in accordance with Section 1 of the Employment Rights Act 1996, the applicability of any collective agreement to such staff, any disciplinary action taken against any of them in the preceding two (2) years, details of any grievances raised by any of them in the preceding two (2) years, any Court or employment tribunal proceedings brought by any of them in the preceding two (2) years, any potential proceedings which the Service Provider's or its Sub-Contractor reasonably considers may be raised by any of them, and information about any of them who have been absent from work for one (1) month or more regardless of the reason at the time the staffing information is requested and any other information required by Regulation 11 of TUPE.

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<b>Standards and Regulations</b>	means the standards and regulations as set out in Schedule 2-13 (Standards and Regulations) with which the Service Provider shall comply in the provision of the Services and its responsibilities and obligations hereunder.
<b>Sub-Contractor</b>	means any supplier selected, appointed and managed by the Service Provider in accordance with the provisions of Schedule 2-9 (Sub-Contractors), including the Sub-Contractors specified in Schedule 2-9 (Sub-Contractors). The terms “ <b>Sub-Contract</b> ” and “ <b>Sub-Contracting</b> ” shall be similarly construed.
<b>Sub-processor</b>	means any third Party appointed to process Personal Data on behalf of the Contractor related to this Contract.
<b>Subsequent Transfer Date</b>	means the point in time, if any, at which services which are fundamentally the same as the Services (either in whole or in part) are first provided by a Successor or the Customer, as appropriate, giving rise to a relevant transfer under TUPE.
<b>Subsequent Transferring Employees</b>	means any employee, agent, consultant and/or contractor who, immediately prior to the Subsequent Transfer Date, is wholly or mainly engaged in the performance of services fundamentally the same as the Services (either in whole or in part) which are to be undertaken by the Successor or Customer, as appropriate.
<b>Successor</b>	means any third party who provides services fundamentally the same as the Services (either in whole or in part) in immediate or subsequent succession to the Service Provider upon the expiry or earlier termination of the Contract.
<b>Term</b>	means the term of this Contract as set out in Clause 10 of this Contract, subject to early termination (howsoever arising) pursuant to Clause 10.
<b>Third Party</b>	means any supplier of services fundamentally the same as the Services (in whole or in part) immediately before the Transfer Date.
<b>Third Party Software</b>	means software which is proprietary to any third party (other than an Affiliate of the Service Provider) which is or will be used by the Service Provider for the purposes of providing the Services, including the software specified as such in Schedule 2-18 (Software and Software Licence Terms).
<b>Transfer Date</b>	means the Transferred Staff's first day of employment with the Service Provider (or its Sub-Contractor)
<b>Transferred Staff</b>	means those employees whose employment compulsorily transfers to the Service Provider or a Sub-Contractor by operation of TUPE, COSOP or for any other reason, as a result of the award of this Contract, including the Transferring Customer Employees or the Transferring Outgoing Service Provider Employees.
<b>TUPE</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations or UK legislation implementing the Acquired Rights Directive.
<b>UnScheduled Downtime</b>	has the meaning ascribed to it in Schedule 2-3 (Performance Management).
<b>URN</b>	Prior to raising a Purchase Order (PO) with the Service Provider the

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	customer/drawdown authority must first request a Unique Reference Number (URN) from the Framework Authority (London Procurement Partnership). This URN will be unique to each individual call off contract and must be referenced on all PO's and invoices relating to this corresponding call off contract. This provides a clear audit trail linking the order back to both this specific call off contract and the overarching framework agreement.
<b>Value Added Tax</b>	means value added tax as provided for in the Value Added Tax Act 1994 and any other applicable sales tax.
<b>Wilful Default</b>	means a knowingly wrongful action or failure to act, or acting with reckless carelessness, not caring what the results of the carelessness may be.
<b>Workaround</b>	has the meaning ascribed to it in Schedule 2-3 (Performance Management).
<b>Working Days</b>	means Monday to Friday inclusive between 0800hrs and 1800hrs, excluding English public and bank holidays.
<b>Year</b>	means a period of twelve (12) months.



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### SCHEDULE 2-2

#### SERVICE SPECIFICATION

InterSystems HealthShare Health Connect is an integration engine that delivers the high-volume transaction support, process management, and monitoring required in a standard healthcare setting.

The specification of the Services provided by the Service Provider shall be a continuation of the functional specification provided under the prior HealthShare License Profile, Healthshare Order Form and the License and Support Services Agreement, each with an Effective Date of 1 October, 2022, as it may have been subsequently configured by the Customer.

Except as may be restricted by the Quality Agreement Addendum to the License Profile and the Intended Use Statement set out in Schedule 2.18- Software and Software License Terms, and the additional licenses purchased as part of the upgrade detailed in the License Profile, it is not the intent of this revised agreement to amend the specification of the Services currently in use by the Customer.

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### SCHEDULE 2-3

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

“**Persistent Breach**” shall mean:

- i. Not used
- ii. the Service Provider repeatedly breaching any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract.

“**Rectification Time**” means the period within which the Service Provider must rectify the Service Incident.

“**Service Credit**” means £0 which is the sum attributable for the occurrence of one Service Incident.

“**Service Downtime**” means any period during which the Services are not Available within the meaning of this Schedule 2-3.

“**Scheduled Downtime**” is the total period of Service Downtime which occurs with the prior written agreement of the parties in accordance with paragraph 1.3 of this Schedule.

“**UnScheduled Downtime**” means a period of Service Downtime which has not been agreed between the parties to this Contract.

#### 1. AVAILABILITY

1.1. The Service Provider shall monitor the Services and shall prepare an Availability Report on its performance and deliver the same to the Customer in accordance with the reporting requirements set out in Schedule 2-7 (Contract, Service Management and Reporting).

1.2. The Service Provider shall calculate Availability at the end of every month during the Term using the following formula (which shall be rounded to the nearest one hundredth of a percentage point):

$$1.2.1. \quad \text{Availability} = \frac{\text{Operation Time} - \text{UnScheduled Downtime}}{\text{Operation Time}} \times 100$$

Where **Operation Time** = Total number of minutes during the Contracted Hours in the relevant month, excluding any used Scheduled Downtime; and

UnScheduled Downtime = Total number of minutes of UnScheduled Downtime during the Contracted Hours in the relevant month.

1.3. In the absence of agreement, the Service Provider shall agree the times for Scheduled Downtime with the Customer and if the parties fail to agree then Service Downtime shall be recorded as UnScheduled Downtime.

1.4. Unless agreed otherwise by the Customer, the Service Provider shall:

1.4.1. conduct Scheduled Downtime during Non-Core Hours; and

1.4.2. to ensure that such Scheduled Downtime is carried out to minimise the disruption to the Customer's and/or End Users use of the Services.

1.5. For purposes of tracking Service Downtime duration, the UnScheduled Downtime will begin at the earlier of the time at which a problem with Availability is identified by the Service Provider or

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notified to the Service Provider by the Customer. UnScheduled Downtime ends at the point in time when the Customer agrees (acting reasonably) that Availability is restored.

- 1.6. If at any time, a Service Incident or slow system performance is causing the Customer or End User material difficulties in carrying out its activities, the Customer may at its sole discretion by written notice to the Service Provider deem that UnScheduled Downtime has taken place which shall continue until the Customer agrees (acting reasonably) that Availability is restored.
- 1.7. If the monthly Availability for the Service falls below 99.98%, the Service Provider will credit the Customer's next monthly Charge in accordance with the appropriate Service Credit calculated in reference to the percentage bands set out in the below table.

Availability		Service Credit
<99.98%	≥100%	0
<98%	≥99.97%	0
<97%	≥97.99%	0

## 2. SERVICE INCIDENT

- 2.1. The Service Provider shall monitor the Service and shall comply with the Service Incident reporting requirements set out in Schedule 2-7 (Contract, Service Management and Reporting) of this Contract.
- 2.2. In the event of any Service Incident, the Service Provider shall be required to exercise all efforts and apply all such resources as the Customer considers reasonably necessary to Resolve the Service Incident.
- 2.3. The Service Provider shall be required to provide a Resolution within the required Rectification Time in relation to Service Incidents which are categorised as Severity Level 3 or Severity Level 4 in which case if such a Resolution is provided then no further action shall be taken by the Customer in relation to such breach.
- 2.4. The Customer shall categorise the appropriate Severity Levels in respect of Service Incidents.

Customer Priority	CRISIS	HIGH	MEDIUM
<b>Problem Resolution</b>	Immediate and continuous 24 hour attention until the problem is resolved.	Problem resolved within the same (customer) business day.	Problem resolved within 5 business days.
<b>Defect Resolution (Bugfixes)</b>	Immediate and continuous 24 hour attention, generally by a Developer, until the defect is corrected or an acceptable work-around is provided.	Fix is tested and delivered to the customer within two weeks. It is also included in the next maintenance release.	Fix is included in the next major release.
<b>Escalation</b>	Immediate verbal notification to all appropriate Senior Managers by the Director of Customer Support.	Immediate automated notification to Senior Management.	Immediate automated notification to WRC Management.

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- 2.5. Not used

### **Severity Level Crisis – Critical Failure**

#### **Service Credits**

- 2.6. Not used  
2.7. Not used  
2.8. Not used

#### **Other remedies**

- 2.9. In addition to the above Service Credits, the Customer may notify members of the Service Provider's senior management team including the Service Provider's Contract Manager and the Service Provider's Managing Director and require either or both individuals to attend the Customer's office on twenty four (24) hours' notice to discuss the Service Incident.
- 2.10. If the event that the Service Incident is not Resolved before the meeting referred to in paragraph 2.9, the Customer may require the Service Provider to attend the meeting with a proposed Workaround for the Customer to review.
- 2.11. In the event that the Service Provider receives notification from the Customer of four (4) or more Severity Level 1 Service Incidents in any three (3) month rolling period, the Customer may terminate the Contract within a Year of notification. For the avoidance of doubt a Year will run from the date of the fourth Severity Level 1 Service Incident.

### **Severity Level High – Moderate Error**

#### **Service Credits**

- 2.12. Not used  
2.13. Not used  
2.14. Not used

#### **Other remedies**

- 2.15. In the event that the Service Provider fails to resolve the Service Incident within 48 hours of the Service Incident being notified to the Service Provider, the Customer may notify members of the Service Provider's senior management team including the head of service management and require the Service Provider to attend the Customer's office on forty-eight (48) hours' notice in relation to the failure to resolve the Service Incident.

### **Severity Level Medium – Minor Error**

#### **Service Credits**

- 2.16. Not used  
2.17. Not used  
2.18. Not used

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### Persistent Breach

- 2.19. In the event of a Persistent Breach, the Customer may implement the Performance Improvement Plan referred to in paragraph 4 of this Schedule.

### Calculating Rectification Time

- 2.20. The Rectification Time for each Service Incident will be calculated as the difference between the time a Service Incident is logged by the Customer and the time the Service Incident is documented as Resolved by the Customer.

### Resolving a Service Incident

- 2.21. A Service Incident shall be considered Resolved and closed when:
- 2.21.1. the Customer confirms to the Service Provider that a resolution has been successful and the Services are being provided to the standard required under the Contract; or
  - 2.21.2. the Service Provider provides a Workaround to a Service Incident that restores the Services to at least the standard required under the Contract. In this case the following process applies:
    - (a) the Service Provider will provide details of the proposed Workaround (whether technical, through workflow adjustments or otherwise);
    - (b) the Customer, acting reasonably, approves the Service Provider proposed Workaround, or commences using a Workaround that restores the Services, then;
    - (c) the Service Provider and/or Customer shall forthwith apply the agreed Workaround, and restore the Services to at least the standard required under the Contract, on completion of which time the Service Incident shall be deemed to be Resolved;
  - 2.21.3. if a Service Incident is only partly attributable to the Service Provider, the Service Incident shall remain with the Service Provider until such time as the Service Provider can show that it has Resolved that part of the Service Incident that is attributable to the Service Provider.

## 3. Calculating Service Credits

- 3.1. Service Credits do not apply.

## 4. Performance Improvement Plan

- 4.1. In respect of any Persistent Breach by the Service Provider to deliver the Services, or where the Service Provider has not Resolved the Service Incident to the Customer's satisfaction, the Customer shall be entitled to notify members of the Service Provider's senior management.
- 4.2. Where the Customer considers, following notification in accordance with paragraph 4.1, that adequate steps have not been taken to rectify the Service Incident, the Customer may notify the Service Provider's head of service management and require the Service Provider to provide the Customer with a draft Performance Improvement Plan for the on-going service issue.
- 4.3. The draft Performance Improvement Plan must set out
- 4.3.1. the actions to be taken by the Service Provider to remedy the failure in question and the date by which each action must be completed;
  - 4.3.2. the criteria that apply in measuring whether such Performance Improvement Plan has been achieved to the Customer's reasonable satisfaction.

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- 4.4. The Customer is required to agree the contents of the draft Performance Improvement Plan within five Working Days of receipt from the Service Provider.
- 4.5. In the event that the Performance Improvement Plan is not agreed by the Customer, acting reasonably, the Customer may convene a meeting with the Service Provider and/or such relevant third parties as the Customer may reasonably require to attend, to discuss the on-going service issue and the steps that are being taken, or ought to be taken, by the Service Provider to resolve it. Any such meeting shall be at a time and location agreed by the parties acting reasonably.
- 4.6. Where the Service Provider fails to achieve the relevant Performance Improvement Plan within the agreed timescales, the Performance Improvement Plan Service Credit shall apply.
- 4.7. For the avoidance of doubt all applicable Service Levels shall continue to apply in addition to the Performance Improvement Plan Service Credit.
- 4.8. Where there are recurring escalations under paragraph 4 or where the parties fail to agree the Performance Improvement Plan, the parties may escalate the matter in accordance with Schedule 2-10 (Dispute Resolution Procedure).

## SCHEDULE 2-4

### CHARGES AND INVOICING

#### 1. INTRODUCTION

- 1.1. This Schedule 2-4 details:
  - 1.1.1. the Charges for the Services; and
  - 1.1.2. the Invoicing Procedure that shall apply to the Services provided under this Contract.

#### 2. GENERAL

- 2.1. The Charges are exclusive of Value Added Tax. The Customer shall pay the Value Added Tax on the Charges at the rate and in the manner prescribed by law from time to time.
- 2.2. The Service Provider shall continuously indemnify the Customer against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Customer at any time on receipt of a written demand in respect of the Service Provider's failure to account for or to pay any Value Added Tax relating to payments made to the Service Provider under this Contract.
- 2.3. Any amounts due under paragraph 2.2 of this Schedule 2-4 shall be paid in cleared funds by the Service Provider to the Customer within five (5) Working Days of receipt of a written demand.
- 2.4. If at any point during the Term the Service Provider reduces its charges for the Services offered under the Framework Agreement in accordance with the terms of the Framework Agreement, the Service Provider shall immediately notify the Customer and reduce the Charges for the Services under this Contract by the same amount.

#### 3. CHARGES

##### 3.1. Delivery Milestone Payments

- 3.1.1. The Customer shall pay the following Charges to the Service Provider on the terms agreed between the parties within ten (10) Working Days of the occurrence of the events identified below (the "**Delivery Milestone Payments**"):

Charge	Event
HealthCare Enterprise for x86-64 (Microsoft Windows),  Acute Care Beds: 2,682  Annual Visits: 2,978,000	Upon execution of this Agreement

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	License Upgrade Fee: £37,030.39 excluding VAT	

### 3.2. Annual Service Charges

3.2.1. The Customer shall pay the following Charges to the Service Provider on the terms agreed between the parties in advance on an annual basis for the remainder of the Term (the “**Annual Service Charges**”) as follows:

Charge	Event
Software Update and Technical Assistance Fees	Upon execution of this Agreement, annually, for a 3 year term (subject to increase) and thereafter automatically renewed for up to an additional 7 annual terms.
<b>£58,113.02 excluding VAT, subject to annual increase</b>	
Additional Pro-rata Software Update & Technical Assistance (SUTA) Fees for the NINE MONTH period: 1 January 2024 – 30 September 2024 (please note, for next year’s renewal, the price will cover the full 12 months, so will be slightly higher (in order that it affords a co-terminus data with the	Upon execution of this Agreement, annually, for a 3 year term (subject to increase) and thereafter automatically renewed for up to an additional 7 annual terms.



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	<b>£6,110.01 excluding VAT, subject to annual increase</b>		

- 3.2.2. The Annual Service Charges are subject to indexation in accordance with Service Providers standard annual price increase.
    - 3.2.3. The Customer shall issue a purchase order for the total of the Annual Service Charges within 10 days of execution of this Agreement.
  - 3.3. The Delivery Milestone Payments and the Annual Service Charges will be ascertained in accordance with the terms set out in this Schedule 2-4.
  - 3.4. Optional enhancements to the Services are chargeable and will be subject to the Contract Change Process.

#### 4. INVOICES

- 4.1. Prior to raising a Purchase Order (PO) with the Service Provider the customer/drawdown authority must first request a Unique Reference Number (URN) from the Framework Authority (London Procurement Partnership). This URN will be unique to each individual and must be referenced on all PO's relating to this corresponding call off contract. This provides a clear audit trail linking the order back to both this specific call off contract and the overarching Framework Agreement.
- 4.2. When the Service Provider receives a PO from a customer/drawdown authority containing a URN linking the order back to both this specific call off Contract and the overarching Framework Agreement they must quote the URN on the corresponding invoice in order to maintain the audit trail.

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- 4.3. Under the terms of the overarching Framework Agreement London procurement Partnership (LPP) have the right to request copies of all PO's from the customer/drawdown authority and/or invoices from the Framework Service provider relating to a specific URN/s in order to ensure that they are accurately invoicing a given Framework Service Provider for the correct amount of ABI owed.
- 4.4. The Service Provider shall ensure that invoices in respect of the Charges include the following information:
- 4.4.1. the event to which the invoice relates and a summary of the corresponding Service;
  - 4.4.2. any Service Credits due;
  - 4.4.3. total value excluding Value Added Tax;
  - 4.4.4. the Value Added Tax percentage;
  - 4.4.5. the total value including Value Added Tax; and
  - 4.4.6. the tax point date relating to the rate of Value Added Tax shown;
  - 4.4.7. The URN provided by LPP.
- 4.5. Without limitation, the Service Provider shall demonstrate that the Charges have been properly and justifiably incurred, and will provide evidence of the Charges to the Customer prior to issuing an invoice.
- 4.6. The Service Provider shall submit invoices directly to an authorised representative of the Customer.

## 5. INVOICE PAYMENT

- 5.1. The Service Provider shall accept payment of the Charges via electronic bank transfer. The Service Provider shall provide the Customer with bank details for BACS.
- 5.2. All invoices submitted by the Service Provider shall be payable by the Customer within twenty (20) Working Days of the date of receipt of the invoice, unless otherwise specified in accordance with the provisions of this Schedule 2-4.
- 5.3. In the event of an invoice being disputed by the Customer, the Customer shall make payment in respect of any undisputed amount in accordance with this Schedule 2-4 and raise a dispute with the Service Provider as soon as practicable with a covering statement providing sufficient detail of the reason for any non-payment to enable the Service Provider to understand the nature of the dispute.
- 5.4. The Service Provider shall respond to the Customer within ten (10) Working Days of receipt of a disputed invoice stating whether or not the Service Provider accepts the Customer's dispute. If the Service Provider accepts the Customer's dispute then the Service Provider shall supply the Customer with a replacement valid invoice. If it does not accept the dispute then the matter shall be dealt with in accordance with the provisions of Clause 20 (Dispute Resolution) under the Contract.
- 5.5. Interest shall be payable on any late payments of the Charges under this Contract in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

## 6. TIME AND MATERIALS CHARGES

- 6.1 .Not applicable

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## SCHEDULE 2-5

### IMPLEMENTATION (Not used)

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

#### 1. IMPLEMENTATION

- 1.1. If required by the Customer, both parties shall perform all their obligations under this Contract in accordance with the following Implementation Plan:
- 1.2. In the event that the Service Provider fails (or is likely to fail), due to its Default, to fulfil an obligation by the date specified in the Implementation Plan for such fulfilment, the Service Provider shall notify the Customer in writing of such failure (including full details of the reasons for and consequences of the delay) and, at the request of the Customer and without prejudice to the Customer's other rights and remedies:
  - 1.2.1. arrange all such additional resources as are necessary to fulfil the said obligation as early as practicable thereafter at no additional charge to the Customer; and
  - 1.2.2. take all reasonable steps necessary to eliminate or mitigate the consequences of the delay, including issuing a correction plan (covering those aspects for which the Service Provider is responsible) for approval not later than ten (10) Working Days after the initial notification under paragraph 1.2 of this Schedule, which once approval has been secured from the Customer, shall be followed by the Service Provider.
- 1.3. In the event that any obligation of the Service Provider specified in the Implementation Plan is (or is likely to become) delayed as a result of a Default by the Customer then:
  - 1.3.1. the Service Provider shall immediately notify the Customer of the fact of the delay (including full details of the consequences of the delay);
  - 1.3.2. the date associated with the relevant obligation(s) as specified in the Implementation Plan (and the dates similarly associated with any subsequent obligation(s) specified in the Implementation Plan) shall be amended by a period of time equal to the period of such Customer's Default (or other such period as the parties agree);
  - 1.3.3. both parties shall use all reasonable endeavours to mitigate the impact of such delay and to recover any resultant delay to the performance of the Services; and
  - 1.3.4. the Customer shall reimburse those reasonable costs of the Service Provider which are both reasonably and necessarily incurred by the Service Provider as a direct result of such delay.
- 1.4. Where a delay is attributable in part to the Service Provider's Default and in part to a Customer Default, the parties shall negotiate in good faith with a view to agreeing a fair and reasonable apportionment of responsibility for the delay. If necessary, the parties may escalate the matter in accordance with Clause 20.
- 1.5. Time shall be of the essence in relation to milestones and/or deliverables in the Implementation Plan which are stated by the Customer to be key milestones and/or deliverables.

#### 2. IMPLEMENTATION PLAN

- 2.1 The parties shall use reasonable endeavours to mutually agree an Implementation Plan within 4 weeks of the Effective Date, if required. The Implementation Plan shall not include key milestones and/or deliverables.



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### SCHEDULE 2-6

#### ACCEPTANCE PROCEDURES (Not used)

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

#### 1. INTRODUCTION

- 1.1 This Schedule specifies the Acceptance Procedures and the Acceptance Test Criteria to be used in the acceptance of the Services, if required under the Implementation Plan.

#### 2. ACCEPTANCE PROCEDURES

- 2.1 The Service Provider shall, during the Acceptance Test Period, make available the Services to the Customer (including any products supplied by the Service Provider necessary to enable the provision of the Services) for the Acceptance Procedures to be performed.
- 2.2 The Customer will conduct Acceptance Tests on the Services to test whether it meets the appropriate Service Levels.
- 2.3 The Customer will perform the Acceptance Procedures in respect of the Services (including any applicable delivery milestones stated within the Implementation Plan of this Contract).
- 2.4 The Acceptance Procedures shall be recorded as successful and the Service Provider notified accordingly when all the Acceptance Test Criteria are met.
- 2.5 The Acceptance Procedures shall be recorded as unsuccessful and the Service Provider notified accordingly where any of the Acceptance Test Criteria are not met.
- 2.6 For the avoidance of doubt, the Acceptance Date shall be deemed to have occurred on the expiry of five (5) Working Days after all Acceptance Tests are recorded as successful.
- 2.7 In the event that the Acceptance Procedures in respect of the Services or any part thereof, have not been recorded as successful pursuant to paragraph 2.5 of this Schedule by the end of the relevant Acceptance Test Period, the Customer will extend the Acceptance Test Period by a period of ten (10) Working Days (or such other period as the parties may agree) during which the Service Provider shall correct the faults which caused the Acceptance Procedures to be recorded as unsuccessful and the Acceptance Procedures shall be re-performed.
- 2.8 In the event that after the Customer has extended the Acceptance Test Period pursuant to paragraph 2.67 of this Schedule the relevant Acceptance Procedures have not been recorded as successful by the end of that period, the Customer shall, without prejudice to its other rights and remedies, be entitled to:
- 2.8.1 extend the Acceptance Test Period for a further period (or periods) specified by the Customer during which the Service Provider shall correct the faults which caused the Acceptance Procedures to be recorded as unsuccessful and the Acceptance Procedures shall be re-performed; or
- 2.8.2 reject the Services, terminate this Contract and receive a pro rata refund of the unused portion of any Annual Service Charge in that Contract Year.
- 2.9 If the Customer fails to carry out the relevant Acceptance Tests within the Acceptance Test Period and such failure is wholly and solely due to the actions or inactivity of the Customer, the Acceptance Tests shall be deemed to have been completed successfully.
- 2.10 The Acceptance Procedures set out in paragraph 2 of this Schedule shall apply to each of the phases of testing set out in paragraph 3 of this Schedule (unless stated otherwise in paragraph 3).

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- 2.11 The right to reject and terminate in paragraph 2.8.2 of this Schedule shall apply to each element of the Services so that the Customer can reject and terminate parts of the Service rather than the entire Services if it so wishes. If the Customer only terminates the rejected part of the Services the refund referred to in paragraph 2.8.2 of this Schedule shall be in respect of the part of the Service so rejected.
  - 2.12 The Service Provider shall provide such assistance as the Customer requires in relation to the conducting of the Acceptance Tests.
  - 2.13 During the implementation/rollout phase (as further described in paragraph 3 of this Schedule), the Customer reserves the right to re-test any service element which failed the Acceptance Tests conducted in the previous testing phase (as further described in paragraph 3 of this Schedule) even if such service element subsequently passed the Acceptance Test and was signed off by the Customer. In the event of such re-test, the Customer shall have all rights and remedies set out in the Contract.

### 3. ACCEPTANCE TEST CRITERIA

As defined in the Implementation Plan.

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### SCHEDULE 2-7

#### CONTRACT, SERVICE MANAGEMENT & REPORTING

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

#### 1. CONTRACT MANAGEMENT

1.1. If required by the Customer, the Service Provider shall provide to the Customer's other suppliers (as are notified to the Service Provider periodically) such reasonable co-operation, data, information (including any documentation), advice and assistance in connection with the Services to enable any such person to create and maintain technical or organisational interfaces with the Services and on the termination (howsoever arising) or expiry of this Contract, to enable the timely transition of the Services (or any of them) to any replacement service provider.

1.2. In respect of network, communications, computer or other equipment provided by a third party contractor that do or are required to interface with the Service Provider System, the Service Provider shall:

1.2.1. ensure that there is no interference with the provision of the Services in accordance with this Contract; and

1.2.2. take all necessary steps within its power to ensure that the interface is successfully achieved,

and the cost of such activity shall be incorporated within the existing Charges, provided that if it is subsequently agreed by the parties, or determined in accordance with Clause 20, that the third party supplier (or the Customer where provided by the Customer) should have been responsible, or partly responsible, for resolving the relevant incident, the Service Provider may recover its reasonable additional expenses for resolving the issue to the extent that the third party contractor is agreed, or is determined, to have been responsible for resolving the incident, and to the extent that the Customer is able to recover an equivalent amount from the relevant third party contractor.

1.3. Any change in the way in which the Service Provider provides the Services which would affect the Customer's use of the Services, materially increase the Customer's risk or reduce the effect of the governance provisions of the Contract shall require the Customer's prior written approval.

1.4. The Service Provider undertakes to:

1.4.1. inform the Customer in writing reasonably in advance of any adverse effects of carrying out its obligations under this paragraph 1.2 on the Services;

1.4.2. minimise any such adverse effects to the extent reasonably practicable in the circumstances; and

1.4.3. liaise with the Customer regarding the most appropriate time to carry out these obligations and comply with the Customer's requirements in this regard.

1.5. The Service Provider shall ensure that any new releases and upgrades of the Software:

1.5.1. comply with the interface requirements in this Contract; and

1.5.2. are notified to the Customer three (3) (or such other period as notified by the Customer) months before the release of any new Software or upgrade to Software; and

1.5.3. are co-ordinated with the Customer to ensure it minimises any disruption to the Services, the ICT Environment or the Customer's operations.

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### **2. PERFORMANCE MONITORING**

- 2.1. The Service Provider shall ensure that the Services and its performance is measured consistently in order to:
  - 2.1.1. provide data to monitor the Service Provider's performance against the Service Levels;
  - 2.1.2. enable the pro-active management of the Services;
  - 2.1.3. the preparation of the Availability Reports and Service Incident Reports by the Service Provider;
  - 2.1.4. verify if the Service Provider is complying with the Service Levels; and
  - 2.1.5. document any issues in the Service Provider's performance and/or delivery of the Services.

### **3. AVAILABILITY REPORTS**

- 3.1. The Service Provider shall be responsible for measuring the Availability of the Service Provider System and the Services in accordance with paragraph 2 of this Schedule 2-7.
- 3.2. The Service Provider shall provide the Customer with monthly Availability Reports detailing a record of the Availability of the Services for the previous month.
- 3.3. Availability Reports shall be provided by the Service Provider to the Customer by the 5<sup>th</sup> Working Day of the following month.

### **4. SERVICE INCIDENT REPORTS**

- 4.1. The Service Provider shall be responsible for monitoring the Service Incidents in relation to the Services and shall provide the Customer with a Service Incident Report on a monthly basis summarising the following:
  - 4.1.1. a record of any failures to provide the Services in accordance with this Contract including a summary of all Service Incidents and those which remain in an "open" status and those which have been excluded in accordance with paragraph 3.4 of Schedule 2-3 (Performance Management);
  - 4.1.2. the Service Credits to be applied, if applicable;
  - 4.1.3. a rolling total of the number of Service Incidents that have occurred, and the amount of Service Credits that have been incurred by the Service Provider over the preceding six (6) months; and
  - 4.1.4. details of the number and nature of any complaints from the Customer.

### **5. LOGGING A SERVICE INCIDENT**

- 5.1. The Customer shall contact the Service Provider directly using telephone, email or electronic portal] within 4 hours of a Crisis, High or Medium Service Incident being identified.
- 5.2. The Customer shall determine the Severity Level which relates to each Service Incident. The Service Provider shall be entitled to challenge the Severity Level which is allocated by the Customer. Any such challenge shall not affect the obligations of the Service Provider to respond to the Service Incident in accordance with the Severity Level initially allocated by the Customer. If the Service Provider and the Customer are not able to agree on the Severity Level of a Service Incident, the matter shall be resolved in accordance with Schedule 2-10 (Dispute Resolution Procedure).



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- 5.3. The Customer is expected to log all Service Incidents via the WRC Helpdesk.

Support phone:

+1 617-621-0700; or  
+44 (0) 844 854 2917; or  
+44 (0) 1753 830 077

Support email:

support@intersystems.com

Support online:

WRC Direct

Contact support@intersystems.com for a login

- 5.4. Outside the Working Day the Service Provider shall provide an on-call point of contact in the event that a Crisis or High Service Incident occurs.
- 5.5. The Service Provider shall log a Service Incident as soon as it becomes aware of such Service Incident either through being notified by the Customer/ End User or otherwise.
- 5.6. Where the Service Provider receives more than one report of a Service Incident then the first report shall be deemed to be the Service Incident.
- 5.7. The Service Provider, on receiving notification of each Service Incident, will:
- 5.7.1. triage the call and review the information provided by the Customer;
  - 5.7.2. document the action intended to be taken or which has been taken to rectify the Service Incident;
  - 5.7.3. document the Service Provider's plans for remedying the Service Incident and/or for preventing the Service Incident from re-occurring including details where applicable of the estimated time within which such Service Incident will be Resolved.

## 6. TRANSPARENCY REPORTS:

- 6.1. Not used

**Annex A**

**Management Information**

**Not required**

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## SCHEDULE 2-8

### CONTRACT CHANGE PROCEDURE

#### 1. INTRODUCTION

- 1.1. This Schedule sets out the Contract Change Procedure to be used by the Customer and the Service Provider to effect changes to this Contract.
- 1.2. In accordance with Clause 27 of the Contract, changes to the Sub-Contractors listed in Schedule 2-9 (Sub-Contractors) shall not be subject to the Contract Change Procedure and shall be subject to Clause 29.5 of the Contract.

#### 2. PRINCIPLES

- 2.1. The Customer and the Service Provider shall conduct discussions relating to proposed changes to this Contract in good faith. Neither party shall unreasonably withhold nor delay consent to the other party's proposed changes to this Contract.
- 2.2. Until such time as a Contract Change Note (CCN) has been signed by both parties, the Service Provider shall continue to provide and make available to the Customer the Services in accordance with this Contract.
- 2.3. Any work undertaken in connection with any changes to this Contract by the Service Provider, its Sub-Contractors or agents (other than that which has previously been agreed in accordance with the provisions of paragraph 2.2 of this Schedule) shall be undertaken entirely at the expense and liability of the Service Provider unless otherwise agreed between the Customer and the Service Provider in advance.
- 2.4. Any discussions, negotiations or other communications which may take place between the parties in connection with any proposed changes to this Contract, including the submission of any written communications, prior to the signing by both parties of the relevant CCN, shall be without prejudice to the rights of either party.

#### 3. PROCEDURE

- 3.1. Should either party wish to propose a change to this Contract, that party shall submit a draft CCN detailing the proposed change to the other party using the proforma at Annex A to this Schedule in accordance with Clause 8.1 of this Contract.
- 3.2. Within ten (10) Working Days of the submission of a draft CCN (or such other period as may be agreed between the parties) the receiving party shall respond to the draft CCN in accordance with this Contract. If appropriate, the parties shall enter into discussions to discuss the draft CCN.
- 3.3. Discussion between the parties following the submission of a draft CCN shall take place within five (5) Working Days (or such other period as agreed by the parties) and result in either:
  - 3.3.1. agreement between the parties on the changes to this Contract to be made (including agreement on the date upon which the changes to this Contract are to take effect (the "**CCN Effective Date**")) within five (5) Working Days (or such other period as agreed by the parties), such agreement to be expressed in the form of proposed revisions to the text of the relevant parts of this Contract; or
  - 3.3.2. no further action being taken on that draft CCN.
- 3.4. Where agreement is reached in accordance with paragraph 3.3.1 of this Schedule, the party submitting the draft CCN shall prepare a final CCN for execution by both parties within five (5) Working Days (or such other period as agreed by the parties). The final CCN, the content of which has been agreed between the parties in accordance with paragraph 3.3.1 of this Schedule, shall be uniquely identified by a sequential number allocated by the Customer.

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- 3.5. The Service Provider shall sign two (2) copies of each CCN and submit these to the Customer not less than ten (10) Working Days prior to the CCN Effective Date.
  - 3.6. Subject to the agreement reached in accordance with paragraph 3.3.1 of this Schedule remaining valid, the Customer shall sign both copies of the approved CCN within five (5) Working Days of receipt by the Customer. Following signature by the Customer, one (1) copy of the signed CCN shall be returned to the Service Provider by the Customer.
  - 3.7. A CCN signed by both parties shall constitute an amendment to this Contract pursuant to Clause 8 of this Contract.

### **4. CHARGE VARIATIONS**

- 4.1. The Charges, shall only be varied due to:
  - 4.1.1. agreement between the parties; and
  - 4.1.2. reduction in the charges in accordance with paragraph 2.4 of Schedule 2-4 (Charges and Invoicing).

### Contract Change Note for the Contract Change Procedure

Customer Name: .....

Sequential Number: [to be allocated by the Customer]

Title: .....

Originator: ..... for the [Customer/Service Provider]

Date change first proposed: .....

Number of pages attached: .....

WHEREAS the Service Provider and the Customer entered into a Contract for the provision of the Services dated [insert date] and now wish to amend that Contract as follows:

#### Reason for proposed change

[Party proposing change to complete]

#### Full details of proposed change

[Party proposing change to complete]

#### Target date for implementing proposed change

[Party proposing change to complete]

#### Details of likely impact, if any, of proposed change on other aspects of the Contract

[Party proposing change to complete]

#### IT IS AGREED as follows:

1. With effect from [date] the Contract shall be amended as set out below:

[Details of the amendments to the Contract to be inserted here – to include the explicit changes required to the text in order to effect the change, i.e. Clause/Schedule/paragraph number, required deletions and insertions etc]

2. Save as herein amended, all other terms and conditions of the Contract inclusive of any previous CCNs shall remain in full force and effect.

#### Signed for and on behalf of the Service Provider

By .....

Name .....

Title .....

Date .....

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**Signed for and on behalf of the Customer**

**By** .....

**Name** .....

**Title** .....

**Date** .....

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**SCHEDULE 2-9**

**SUB-CONTRACTORS**

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

**1. INTRODUCTION**

1.1. This Schedule contains:

1.1.1. details of the Sub-Contractors to be engaged or employed by the Service Provider in the provision of the Services; and

1.1.2. the procedure to select, appoint and manage Sub-Contractors.

1.2. Clause 27 of this Contract sets out the conditions and restrictions placed on amending or changing Sub-Contractors.

**2. SUB-CONTRACTORS**

Name and full contact details	Obligation
None	

**3. PROCEDURE TO SELECT, APPOINT AND MANAGE SUB-CONTRACTORS**

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The following procedure shall be followed by the Service Provider when selecting, appointing and managing Sub-Contractors under this Contract:

### **Appointment of Sub-Contractors**

- 3.1. The Service Provider shall exercise due skill and care in the selection and appointment of any Sub-Contractors to ensure that the Service Provider is able to:
  - 3.1.1. manage any Sub-Contractors in accordance with Good Industry Practice; and
  - 3.1.2. comply with its obligations under this Contract in the delivery of the Services.
- 3.2. Prior to sub-contracting any of its obligations under this Contract, the Service Provider shall notify the Customer in writing of:
  - 3.2.1. the proposed Sub-Contractor's name, registered office and company registration number;
  - 3.2.2. the scope of the Services to be provided by the proposed Sub-Contractor; and
  - 3.2.3. where the proposed Sub-Contractor is an Affiliate of the Service Provider, evidence that demonstrates to the reasonable satisfaction of the Customer that the proposed Sub-Contract has been agreed on "arm's-length" terms.
- 3.3. The Customer consents to the appointment of the Sub-Contractors as set out in Schedule 2-9 of this Contract at the date of this Contract.



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## SCHEDULE 2-10

### DISPUTE RESOLUTION PROCEDURE

#### 1. INTRODUCTION

- 1.1. This Schedule sets out the mediation and arbitration dispute resolution procedure governing disputes under this Contract.
- 1.2. In the event that a dispute cannot be resolved by the Customer and Service Provider representatives nominated under Clause 20.3 of this Contract within a maximum of ten (10) Working Days (or such other period as agreed by the parties) after referral, the dispute shall be further referred to mediation in accordance with the provisions of Clause 20.4 of this Contract.
- 1.3. Subject always to the provisions of Clause 20 of this Contract, nothing in this dispute resolution procedure shall prevent the Customer or the Service Provider from seeking from any Court of the competent jurisdiction an interim order restraining the other party from doing any act or compelling the other to do any act.

#### 2. MEDIATION

- 2.1. The procedure for mediation pursuant to Clause 20.5 of this Contract and consequential provisions relating to mediation shall be as follows:
  - 2.1.1. a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the Customer and the Service Provider or, if they are unable to agree upon the identity of the Mediator within ten (10) Working Days after a request by one party to the other, or if the Mediator agreed upon is unable or unwilling to act, either party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“**CEDR**”) to appoint a Mediator; and
  - 2.1.2. the Customer and the Service Provider shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. The parties may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure.
- 2.2. Unless otherwise agreed by the Customer and the Service Provider, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.
- 2.3. In the event that the Customer and the Service Provider reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on both parties once it is signed by Customer’s representative and Chris Norton, Managing Director or their representative.
- 2.4. Failing agreement, either the Customer or the Service Provider may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Contract or otherwise without the prior written consent of both parties.
- 2.5. The Customer and the Service Provider shall each bear their own costs in relation to any reference made to the Mediator and the fees and all other costs of the Mediator shall be borne jointly in equal proportions by both parties unless otherwise directed by the Mediator.
- 2.6. Work and activity to be carried out under this Contract shall not cease or be delayed during the mediation process.
- 2.7. In the event that the Customer and the Service Provider fail to reach agreement in the structured

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negotiations within forty (40) Working Days of the Mediator being appointed, or such longer period as may be agreed, then any dispute or difference between them may, subject to the agreement of both parties, be referred to arbitration in accordance with the provisions of Clause 20.5 of this Contract.

### 3. ARBITRATION

- 3.1. In the event that a dispute between the Customer and the Service Provider, or a claim by one against the other, pursuant to the terms of this Contract is not resolved pursuant to paragraph 2 of this Schedule, the parties may, in accordance with the provisions of Clause 20.5 of this Contract and subject to paragraph 2.7 of this Schedule, refer the matter to arbitration in accordance with this Schedule.
- 3.2. The party seeking to initiate the arbitration shall give a written Notice of Arbitration to the other party. The Notice of Arbitration shall specifically state:
  - 3.2.1. that the dispute is referred to arbitration;
  - 3.2.2. the particulars of this Contract; and
  - 3.2.3. a brief summary of the subject of the dispute.
- 3.3. Unless otherwise agreed in writing by the Customer and the Service Provider, the provisions of the Arbitration Act 1996 shall govern the arbitration commenced pursuant to this Schedule.
- 3.4. Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, if referred to arbitration in accordance with this Schedule shall be resolved by arbitration under the procedural rules of the London Court of International Arbitration (which are deemed to be incorporated into this Contract save that in the event of any conflict between those rules and this Contract, this Contract shall prevail).
- 3.5. It is agreed between the Customer and the Service Provider that for the purposes of the arbitration, the decision of the arbitrator shall be final and binding on the parties, except in the case of fraud, bias, manifest error, material breach of instructions on the part of the Arbitrator, or any material failure by the arbitrator to comply with the London Court of International Arbitration procedural rules, in which case a party will be permitted to apply to Court for an Order that:
  - 3.5.1. the Arbitrator reconsider his decision (either all of it or part of it);
  - 3.5.2. the Arbitrator's decision be set aside (either all of it or part of it).
- 3.6. The arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential between the parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made to any body other than the tribunal, the Customer and the Service Provider, their legal representatives and any person necessary to the conduct of the proceedings, without the agreement of all parties to the arbitration.
- 3.7. The arbitration proceedings shall take place in London and in the English language and the arbitration proceedings shall be governed by, and interpretations made in accordance with, the laws of England. The arbitration tribunal shall consist of a sole arbitrator to be agreed by the parties and in the event that the parties fail to agree the appointment of the arbitrator within ten (10) Working Days or, if the person appointed is unable or unwilling to act, as appointed by the Court.
- 3.8. The Customer and the Service Provider shall each bear their own costs in relation to any reference made to the arbitrator and the fees and all other costs of the arbitrator shall be borne jointly in equal proportions by both parties unless otherwise directed by the arbitrator.

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- 3.9. In the event that the Customer and the Service Provider do not agree to refer the matter to arbitration, then any dispute or difference between them may be referred to the Courts in accordance with the provisions of Clause 36 of this Contract.

## SCHEDULE 2-11

## COMMERCIALLY SENSITIVE INFORMATION

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

## 1. INTRODUCTION

- 1.1. Without prejudice to the Customer's general obligation of confidentiality, the parties acknowledge that the Customer may have to disclose Information in or relating to this Contract following a Request for Information pursuant to Clause 18 of this Contract.
- 1.2. In this Schedule the parties have sought to identify the Service Provider's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be contrary to the public interest.
- 1.3. Where possible, the parties have sought to identify where any relevant Information will cease to fall into the category of Information to which this Schedule applies.
- 1.4. Without prejudice to the Customer's obligation to disclose Information in accordance with FOIA, the Customer will, acting reasonably but in its sole discretion, seek to apply the commercial interests exemption set out in s.43 of the FOIA to the following Information:

	Item(s)	Duration of Confidentiality
1.	Schedule 2.2, Service Specification	Duration of Contract and six years after the Term
2.	Schedule 2.4, Charges and Invoicing (including all quotations, and pre contract correspondence)	Duration of Contract and six years after the Term
3.	Schedule 2-11, Commercially Sensitive Information	Duration of Contract and six years after the Term
4.	Schedule 2-15, Liquidated Damages	Duration of Contract and six years after the Term
5.	Schedule 2-16, BCDR Plan	Duration of Contract and six years after the Term
6.	Schedule 2-17, Security Management Plan	Duration of Contract and six years after the Term
7.	Schedule 2-18, Software and	Duration of Contract and six years after the Term

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	Software Licence Terms	
8.	Schedule 2-22, Processing, Personal Data and Data Subjects	Duration of Contract and six years after the Term
9.	Schedule 2-23, Extra Call-off Terms and Conditions	Duration of Contract and six years after the Term
10.	Schedule 2-24, Further Customer Obligations	Duration of Contract and six years after the Term
11.	Schedule 2-25, Managed Services – Set-up Services	Duration of Contract and six years after the Term
12.	Any employee personal information	Duration of Contract and six years after the Term

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**SCHEDULE 2-12**

**EXIT AND SERVICE TRANSFER ARRANGEMENTS (Not used)**

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

**1. INTRODUCTION**

- 1.1. This Schedule describes the duties and responsibilities of the Service Provider to the Customer leading up to and covering the expiry or termination (howsoever arising) (including partial termination) of this Contract and the transfer of service provision to a replacement service provider.
- 1.2. The objectives of the Exit and Service Transfer Arrangements are to ensure a smooth transition of the availability of the Services from the Service Provider to a replacement service provider at the termination (howsoever arising) (including partial termination) or expiry of this Contract.

**2. EXIT AND SERVICE TRANSFER ARRANGEMENTS**

- 2.1. The Service Provider agrees to indemnify and keep the Customer fully indemnified for itself and on behalf of any replacement service provider in respect of any claims, costs (including reasonable legal costs), demands, and liabilities arising from the provision of incorrect information provided to the Customer by the Service Provider, to the extent that any such claim, cost, demand or liability directly and unavoidably arises from the use of the incorrect information in a manner that can reasonably be assumed to be proper in bidding for or providing services similar to the Services.

**3. SERVICE TRANSFER PLAN**

- 3.1. Where required by the Customer, no later than three (3) months prior to the Effective Date, and thereafter as specified in paragraph 3.3 of this Schedule, the Service Provider shall prepare a Service Transfer Plan (STP) for review by the Customer. The Customer shall review the STP within twenty (20) Working Days of receipt from the Service Provider and shall notify the Service Provider of any suggested revisions to the STP. In this respect, the Customer will act neither unreasonably, capriciously nor vexatiously. Such suggested revisions shall be discussed and resolved within ten (10) Working Days. The agreed STP shall be signed as approved by each party.
- 3.2. The STP shall provide comprehensive proposals for the activities and the associated liaison and assistance that will be required for the successful transfer of the Services, including the following details:
  - 3.2.1. proposals for the identification and transfer of documentation providing details of the Services;
  - 3.2.2. proposals for the identification of all Goods;
  - 3.2.3. proposals for the identification of all leases, circuit agreements, maintenance agreements and support agreements utilised by the Service Provider in connection with the provision of Services, together with details of the relevant lessors and contractors, the payment terms, expiry dates and any relevant novation and/or early termination provisions;
  - 3.2.4. proposals for the identification and return of all Customer Furnished Items in the possession and/or control of the Service Provider or any third party (including any Sub-Contractor);
  - 3.2.5. a detailed summary identifying the owners of title and risk in all the Goods and Customer Furnished Items following transfer of the Services;
  - 3.2.6. proposals to enable the Customer or the replacement service provider to recruit

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suitably skilled personnel;

- 3.2.7. proposals for the training of key members of the replacement service provider's personnel in connection with the continuation of the provision of Services following the expiry or termination (howsoever arising) of this Contract charged at rates agreed between the parties at that time;
  - 3.2.8. proposals for the granting of licences to use all software (including the Software) necessary for the Customer's receipt of Services and the provision of copies of all related documentation;
  - 3.2.9. proposals for the transfer of all Customer Data then in the Service Provider's possession to either the Customer or a replacement service provider, including:
    - 3.2.9.1. an inventory of all Customer Data;
    - 3.2.9.2. details of the data structures in which the Customer Data is stored, in the form of an agreed data model together with information on other data structures in which the Customer Data could be stored;
    - 3.2.9.3. proposed transfer methods, both physical and electronic; and
    - 3.2.9.4. proposed methods for ensuring the integrity of the Customer Data on transfer;
  - 3.2.10. proposals for providing the Customer or a replacement service provider copies of:
    - 3.2.10.1. all documentation used in the provision of the Service and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Service Provider; and
    - 3.2.10.2. all documentation relating to the use and operation of the Goods;
  - 3.2.11. proposals for the methods of transfer of the Goods to the Customer or a replacement service provider;
  - 3.2.12. proposals for the assignment or novation of all leases, circuit agreements, maintenance agreements and support agreements utilised by the Service Provider in connection with the performance of the Services;
  - 3.2.13. proposals for the disposal of any redundant Goods and materials; and
  - 3.2.14. proposals for the supply of any other information or assistance reasonably required by the Customer or a replacement service provider in order to effect an orderly hand over of the provision of the Services.
- 3.3. The STP shall be reviewed and updated by the Service Provider. In this regard, the Service Provider shall provide a revised version of the STP to the Customer on or before [31 July and 31 January] each year (or more frequently as may be agreed between the parties). The revised STP shall be reviewed and agreed in accordance with the provisions of paragraph 3.1 of this Schedule.

## 4. ASSISTANCE ON EXPIRY OR TERMINATION

- 4.1. In the event that this Contract expires or is terminated the Service Provider shall, where so requested by the Customer, provide assistance to the Customer to migrate the provision of the Services to a replacement service provider including as set out in the Service Transfer Plan.

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### SCHEDULE 2-13

#### STANDARDS AND REGULATIONS

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

#### 1. INTRODUCTION

- 1.1. This Schedule 2-13 sets out the Standards and Regulations with which the Service Provider shall comply in its provision of the Services.

#### GENERAL STANDARDS

#### 1. COMPLYING WITH FUTURE GOVERNMENT REQUIREMENTS AND STANDARDS

The Service Provider shall comply with future Government requirements and Standards in accordance with any Government Guidance issued during the Term of this Contract and as developed and updated, from time to time.

#### 2. CURRENT STANDARDS

- 2.1. The Service Provider shall at all times comply with the Standards.
- 2.2. The Service Provider shall discharge its obligations hereunder (including the provision of the Services) with all due skill, care and diligence including in accordance with Good Industry Practice and its own established internal procedures.
- 2.3. The Service Provider warrants that all the Service Provider Personnel and Sub-Contractors used to provide the Goods and the Services shall possess and exercise such qualifications, skill and experience as are necessary for the proper performance of the Services.
- 2.4. The introduction of new methods or systems which impinge on the provision of the Service shall be subject to prior Approval.
- 2.5. The Service Provider shall undertake its obligations arising under this Contract in accordance with the ISO 9001 Quality Management System standard, and all other quality and technical standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Service Provider would reasonably and ordinarily be expected to comply with and any other applicable quality Standards, Government codes of practice and Guidance.

The Service Provider shall comply with the following standards at all times during the Term where applicable to the goods and services provided:

- a) The Service Provider acknowledges that the definitive source for NHS and social care standards and amendments to them is the Information Standards Board for Health and Social Care ([www.isb.nhs.uk](http://www.isb.nhs.uk)). The definitive source for British (BS), European (CEN) or International (ISO) standards and amendments to them is the British Standards Institution ([www.bsigroup.co.uk](http://www.bsigroup.co.uk)).
- b) The Service Provider must also adhere to the Information Governance requirements as set out in Annex A.
- c) The Service Provider shall observe and keep track of NHS and industry standards as such standards evolve and emerge and are issued by the Customer. The Service Provider will use these standards in the development of future releases of the Services.



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- d) Unless otherwise agreed by the Customer, the Service Provider shall comply with latest approved versions of the standards as published by the Information Standards Board for Health and Social Care and the British Standards Institution.
- e) If the Customer requires the Service Provider to implement additional standards, then this shall be requested using the Contract Change Procedure.

### **Release Management**

- f) The Service Provider shall assess new and amended Customer standards as part of the requirements definition for a new release. The release definition shall detail the standards the new release will comply with and indicate where it will not.
- g) The Service Provider shall state the compliance of the new release with the Compliance Requirements given below.
- h) Should the Service Provider reasonably believe that adoption of any standard conflicts with any other obligation under this Contract, then the Service Provider shall request direction from the Customer.
- i) Any other variation from the standards must be agreed by the Customer as part of the design and development of an update to the Services. The variation must be explicitly stated and agreed by the Customer.

### **Audit**

- j) The Service Provider shall on reasonable request provide the Customer with documents showing how standards have been implemented in the provision of Services.
- k) If the Customer finds that the Services do not comply with a standard where compliance has been agreed as part of the release then this will be raised as a defect. The Service Provider shall resolve the service issue in accordance with the procedures set down in the terms and conditions.

## **Information Governance**

### **2. General Standards**

#### **2.1. Quality Management System**

- 2.1.1. The Service Provider shall undertake its obligations arising hereunder and in all Contracts in accordance with the ISO 9001 Quality Management System standard or equivalent.
- 2.1.2. The Service Provider shall ensure that its Sub-Contractors undertake their obligations arising under Contracts in accordance with the ISO 9001 Quality Management System standard or equivalent.

#### **2.2. Environmental Management System**

- 2.2.1. The Service Provider shall undertake its obligations arising hereunder and in all Contracts in accordance with the ISO 14001 Environmental Management System standard or equivalent.
- 2.2.2. The Service Provider shall ensure that its Sub-Contractors undertake their obligations arising under Contracts in accordance with the ISO 14001 Environmental Management System standard or equivalent.

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### **3. Project management**

- 3.1. For project management responsibilities, the Service Provider shall ensure that ARIES or an equivalent methodology is used.

### **4. Information Security**

- 4.1. The Service Provider shall undertake its obligations arising hereunder and in all Contracts in accordance with or in a manner consistent with the ISO 27001 Information Security Management standard or equivalent.
- 4.2. The Service Provider shall ensure that all Goods and the Services intended for the transmission of protectively marked material or for the protection of systems accredited to store or process protectively marked material shall be protected and delivered to the standards set out in the Manual of Protective Security (MPS) or equivalent.
- 4.3. The Services shall comply with the Information Age Government Security Framework or equivalent.
- 4.4. The Service Provider shall prepare a Risk Management Accreditation Document Set (RMADS) (as defined in HMG Infosec Standard 2) covering the scope of the Services and shall maintain said RMADS throughout the term of this Contract. The RMADS shall be subject to the approval of the pan-Government Accrerator.

### **5. Health and Safety at Work**

- 5.1. The Service Provider shall undertake its obligations arising hereunder and in all Contracts in accordance with the OHSAS 18001 Occupational Health and Safety Management System or equivalent.
- 5.2. Both parties shall take all necessary measures to ensure the health and safety of the other party's employees and agents visiting their premises.
- 5.3. The Service Provider shall notify the Customer of any use of substances listed under COSHH regulations or the Montreal Protocol in the provision of the Goods and the Services.

### **6. Environmental Standards**

- 6.1. The Service Provider shall undertake its obligations in accordance with Directive 2002/96/EC on Waste Electrical and Electronic Equipment and Directive 2002/95/EC on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment.

### **7. Data protection**

- 7.1. The Service Provider shall undertake its obligations arising hereunder and in all Contracts in accordance with the Data Protection Act 2018, as described in Schedule 2-22 within this Contract.

### **8. SUSTAINABILITY**

- 8.1. The Service Provider undertakes to follow a sound environmental management policy so that its activities comply with all applicable environmental legislation and regulations and that its products or services (including the Services) are procured, produced, packaged, delivered and are capable of being used and ultimately disposed of, in ways that are appropriate from an environmental protection perspective.
- 8.2. The Service Provider shall comply with relevant obligations under the Waste Electrical and Electronic Equipment Regulations 2002/96/EC.

### **9. SECURITY**

- 9.1. The Service Provider shall ensure that security is maintained to the level required by Schedule 2-17, and subject to the relevant audit rights at Clause 32 of this Contract.

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## SCHEDULE 2-14

### TITLE AND RISK (Not used)

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

#### 1. INTRODUCTION

- 1.1. This Schedule 2-14 specifies the ownership and passing of title and risk from one party to another under certain circumstances during and following the Term of this Contract.

#### 2. CONTRACT COMMENCEMENT

- 2.1. The Goods and the Customer Furnished Items to be used in the provision of the Services may (as applicable) be provided by the Service Provider, the Customer, a third party (e.g., lessor) or a previous service provider of the Customer. Subject always to the provisions of paragraph 3 of this Schedule, title and risk in those Goods and Customer Furnished Items shall be as specified in this paragraph 2 of this Schedule.
- 2.2. Where any Goods are provided by the Service Provider (other than Goods which are leased, loaned or hired by a third party in accordance with paragraph 2.4 of this Schedule):
- 2.2.1. title and risk remains with the Service Provider and such Goods (if required) shall be licensed to the Customer or its authorised agents; and
- 2.2.2. if the Goods are licensed in accordance with paragraph 2.2.1 of this Schedule and are in the Customer's sole possession and control, the Customer:
- 2.2.2.1. undertakes the safe custody, and the due return in accordance with the Service Transfer Plan, of those Goods; and
- 2.2.2.2. shall be responsible for any deterioration in those Goods, fair wear and tear excepted.
- 2.3. Where any Customer Furnished Items are provided by the Customer (other than Customer Furnished Items which are provided by a previous service provider in accordance with paragraph 2.5 of this Schedule):
- 2.3.1. title remains with the Customer and such Customer Furnished Items (if required) shall be licensed to the Service Provider or its Sub-Contractors for use only for the purposes of this Contract;
- 2.3.2. the Service Provider undertakes the safe custody, and the due return in accordance with the Service Transfer Plan, of those Customer Furnished Items;
- 2.3.3. the Service Provider shall be responsible for any deterioration in such Customer Furnished Items, fair wear and tear excepted; and
- 2.3.4. neither the Service Provider, nor any Sub-Contractor, nor any other person shall have a lien on such Customer Furnished Items for any sum due to the Service Provider, any Sub-Contractor or any other person and the Service Provider shall take all reasonable steps to ensure that the title of the Customer and the exclusion of any such lien are brought to the notice of all Sub-Contractors and other people dealing with such Customer Furnished Items.
- 2.4. Where any Goods are leased, loaned or hired from a third party either directly to the Customer or via the Service Provider (in which case the identity of the third party shall be disclosed to the Customer), title to those Goods shall remain with the lessor and risk shall be determined in accordance with the relevant third party terms and conditions.

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- 2.5. Where any Customer Furnished Items are provided by a previous service provider to the Customer, title shall remain with the previous service provider (or the third party leasing, loaning or hiring such Customer Furnished Items) and shall be licensed to the Customer, its authorised agents or the Service Provider, as agreed between the parties concerned.

### 3. DURING THE TERM

- 3.1. Where ownership of any Goods and/or Customer Furnished Items to be used in the provision of the Services changes during the Term, the passing of title and risk in those Goods and Customer Furnished Items shall be as specified in this paragraph 3 of this Schedule.
- 3.2. Title in all Goods provided by the Service Provider shall pass to the Customer on the earlier of:
- 3.2.1. payment for such Goods; or
  - 3.2.2. such Goods successfully passing the Acceptance Tests.
- 3.3. Notwithstanding paragraph 3.2.1 of this Schedule, risk in Goods provided by the Service Provider shall pass to the Customer when such Goods successfully pass the Acceptance Tests. If the Customer has paid for the Goods prior to conclusion of the Acceptance Tests, the Service Provider shall promptly repay the amounts paid by the Customer if the Goods (or any part thereof) do not successfully pass the Acceptance Tests.
- 3.4. Notwithstanding paragraph 3.2 of this Schedule, at anytime prior to the transfer of such Goods to the Customer in accordance with paragraph 3.2 of this Schedule, the Customer may request that the Service Provider transfer to a lessor nominated by the Customer certain Goods specified in the Customer's request. The title and risk in such Goods during the Term shall be determined in accordance with the relevant lease agreement. Where any terms in the lease agreement conflict or are inconsistent with any terms contained in this Contract, the Service Provider agrees not to enforce such conflicting or inconsistent terms against the Customer.
- 3.5. Where title and risk in any Customer Furnished Items is to transfer to the Service Provider, the Customer and the Service Provider shall agree the terms of such transfer in accordance with the Contract Change Procedures.

### 4. SERVICE TRANSFER

- 4.1. Title and risk in the Goods after the Term shall be determined as specified in the Service Transfer Plan.

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## SCHEDULE 2-15

### LIQUIDATED DAMAGES (Not used)

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

#### 1. INTRODUCTION

- 1.1. This Schedule sets out the circumstances under this Contract where the Customer has a right to claim Liquidated Damages rather than the other rights and remedies expressed in the Contract. The Schedule sets out the period of such Liquidated Damages and their amounts.

#### 2. LIQUIDATED DAMAGES

- 2.1. Without prejudice to any other remedies available to the Customer:

2.1.1. if:

2.1.1.1. any milestone or deliverable has not been met by the date set out in the Implementation Plan; and/or

2.1.1.2. the Acceptance Procedures have not been recorded as successful in accordance with paragraph 2.4 of Schedule 2-6 (Acceptance Procedures) by the end of the Acceptance Test Period,

the Service Provider shall pay to the Customer as Liquidated Damages for each Day of delay the relevant sum specified in paragraph 5 of this Schedule up to the end of the relevant Liquidated Damages Period. Such payment shall be in full and final settlement of the Service Provider's financial liability for any loss or damage incurred by the Customer during the Liquidated Damages Period; and

2.1.2. if:

2.1.2.1. any milestone or deliverable has not been met; and/or

2.1.2.2. the Acceptance Procedures have not been recorded as successful, by the end of the Liquidated Damages Period,

the Customer shall be entitled to claim any remedy available to it for loss or damage incurred by it thereafter.

- 2.2. No payment or concession to the Service Provider by the Customer or other act or omission of the Customer shall in any way affect the rights of the Customer to recover the Liquidated Damages pursuant to the provisions of paragraph 2.1 of this Schedule or be deemed to be a waiver of the right of the Customer to recover any such damages unless such waiver has been signed by the Customer, expressly made in writing by the Customer and refers specifically to a waiver of the Customer's rights to claim Liquidated Damages.

- 2.3. At the Effective Date, the Service Provider and the Customer agree that the daily Liquidated Damages sum specified in paragraph 5 of this Schedule represents a genuine pre-estimate of the Customer's loss, calculated in accordance with paragraph 6 of this Schedule.

#### 3. CIRCUMSTANCES WHERE LIQUIDATED DAMAGES APPLY

- 3.1. [DN: full details of circumstances where Liquidated Damages would apply to be inserted here by Customer as set out in requirement]

#### 4. PERIOD OF LIQUIDATED DAMAGES

- 4.1. [DN: full details of the period of Liquidated Damages to be inserted here by Customer as set out in requirement]

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### **5. AMOUNT OF LIQUIDATED DAMAGES**

5.1. [DN: full details of value of Liquidated Damages to be inserted]

### **6. CALCULATION OF GENUINE PRE-ESTIMATE OF LOSS**

6.1. [DN: full details of the calculation of the estimate to be inserted]

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**SCHEDULE 2-16**

**BCDR PLAN**

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

**1. PURPOSE OF THIS SCHEDULE**

- 1.1. 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 Service Provider to develop, review, test, change, and maintain a BCDR Plan in respect of the Services.
- 1.2. The BCDR Plan shall be divided into three parts:
  - 1.2.1. Part A which shall set out general principles applicable to the BCDR Plan (**General Principles**)
  - 1.2.2. Part B which shall relate to business continuity (**Business Continuity Plan**); and
  - 1.2.3. Part C which shall relate to disaster recovery (**Disaster Recovery Plan**).
- 1.3. The BCDR Plan shall detail the processes and arrangements which the Service Provider 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.

**2. DEVELOPMENT OF BCDR PLAN**

- 2.1. The BCDR Plan shall unless otherwise required by the Customer in writing, be based upon and be consistent with the provisions of paragraphs 3, 4 and 5 of this Schedule.
- 2.2. The Service Provider shall ensure that it's Sub-Contractors' disaster recovery and business continuity plans are integrated with the BCDR Plan.

**3. PART A - GENERAL PRINCIPLES AND REQUIREMENTS**

- 3.1. The BCDR Plan shall:
  - 3.1.1. set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
  - 3.1.2. provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of Services and any services provided to the Customer by a Related Service Provider;
  - 3.1.3. contain an obligation upon the Service Provider to liaise with the Customer and (at the Customer's request) any Related Service Provider with respect to issues concerning business continuity and disaster recovery where applicable;
  - 3.1.4. 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 Service Providers as notified to the Service Provider 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



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- and fax) for both portable and desk top configurations, where required by the Customer;
- 3.1.6. contain a risk analysis, including:
  - 3.1.6.1. failure or disruption scenarios and assessments and estimates of frequency of occurrence;
  - 3.1.6.2. identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
  - 3.1.6.3. identification of risks arising from the interaction of Services with the services provided by a Related Service Provider; and
  - 3.1.6.4. a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- 3.1.7. provide for documentation of processes, including business processes, and procedures;
- 3.1.8. set out key contact details (including roles and responsibilities) for the Service Provider (and any Sub-Contractors) and for the Customer;
- 3.1.9. identify the procedures for reverting to "normal service";
- 3.1.10. set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to (i) ensure that there is no data loss; and (ii) preserve data integrity;
- 3.1.11. identify the responsibilities (if any) that the Customer has agreed it will assume in the event of the invocation of the BCDR Plan; and
- 3.1.12. if required by the Customer, 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.
- 3.2. The BCDR Plan shall be designed so as to ensure that:
  - 3.2.1. the Services are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
  - 3.2.2. the adverse impact of any Disaster, Service Failure, or disruption on the operations of the Customer is minimal as far as reasonably possible;
  - 3.2.3. it complies with the relevant provisions of ISO 22301 (as amended) and all other industry standards from time to time in force; and
  - 3.2.4. there is a process for the management of disaster recovery testing detailed in the BCDR Plan.
- 3.3. 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.
- 3.4. The Service Provider 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 Service Provider of this Contract.

## 4. PART B - BUSINESS CONTINUITY ELEMENT - PRINCIPLES AND CONTENTS

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- 4.1. 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 and unless the Customer expressly states otherwise in writing:
    - 4.1.1. 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
    - 4.1.2. the steps to be taken by the Service Provider 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.
  - 4.2. 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.

### 5. PART C - DISASTER RECOVERY ELEMENT - PRINCIPLES AND CONTENTS

- 5.1. The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Service Provider 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.
- 5.2. The Disaster Recovery Plan shall only be invoked upon the occurrence of a Disaster.
- 5.3. The Disaster Recovery Plan shall include the following:
  - 5.3.1. the technical design and build specification of the Disaster Recovery System;
  - 5.3.2. details of the procedures and processes to be put in place by the Service Provider and any Sub-Contractor 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:
    - 5.3.2.1. data centre and disaster recovery site audits;
    - 5.3.2.2. backup methodology and details of the Service Provider's approach to data back-up and data verification;
    - 5.3.2.3. identification of all potential disaster scenarios;
    - 5.3.2.4. risk analysis;
    - 5.3.2.5. documentation of processes and procedures;
    - 5.3.2.6. hardware configuration details;
    - 5.3.2.7. network planning including details of all relevant data networks and communication links;
    - 5.3.2.8. invocation rules;
    - 5.3.2.9. service recovery procedures; and
    - 5.3.2.10. steps to be taken upon Service resumption to address any prevailing effect of the Service Failure or disruption;

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- 5.3.3. 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;
  - 5.3.4. details of how the Service Provider shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
  - 5.3.5. access controls to any disaster recovery sites used by the Service Provider or any Sub-Contractor in relation to its obligations pursuant to this Schedule; and
  - 5.3.6. testing and management arrangements.

### 6. REVIEW AND AMENDMENT OF THE BCDR PLAN

- 6.1. The Service Provider shall prepare the BCDR Plan within 60 days of the Effective Date of this Contract upon Customer request, and shall review part or all of the BCDR Plan and the risk analysis on which it is based:
  - 6.1.1. on a regular basis and as a minimum once every six (6) calendar months;
  - 6.1.2. within three (3) months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 8 of this Schedule; and
  - 6.1.3. where the Customer requests any additional reviews (over and above those provided for in paragraphs 6.1.1 and 6.1.2 of this Schedule) by notifying the Service Provider to such effect in writing, whereupon the Service Provider 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.
- 6.2. Each review of the BCDR Plan pursuant to paragraph 6.1 of this Schedule 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 Service Provider 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 Service Provider shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Customer a report upon the Customer's reasonable request ("**Review Report**") setting out:
  - 6.2.1. the findings of the review;
  - 6.2.2. any changes in the risk profile associated with Services; and
  - 6.2.3. the Service Provider's proposals ("Service Provider 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 Service Provider 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.
- 6.3. The Service Provider shall as soon as is reasonably practicable after receiving the Customer's approval of the Service Provider 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 Service Provider Proposals. Any such change shall be at the Service Provider's expense unless it can be reasonably shown that the changes are required because of a material change to the Project's risk profile.

### 7. TESTING OF THE BCDR PLAN

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- 7.1. The Service Provider shall test the BCDR Plan on a regular basis (and in any event not less than once in every Year or such other basis as required by the Customer). Subject to paragraph 7.2 of this Schedule, the Customer may require the Service Provider 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.
- 7.2. If the Customer requires an additional test of the BCDR Plan it shall give the Service Provider written notice and the Service Provider shall conduct the test in accordance with the Customer's requirements and the relevant provisions of the BCDR Plan. The Service Provider's costs of the additional test shall be borne by the Customer unless the BCDR Plan fails the additional test in which case the Service Provider's costs of that failed test shall be borne by the Service Provider.
- 7.3. Following each test, the Service Provider 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.
- 7.4. The Service Provider 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.
- 7.5. The Service Provider shall ensure that any use by it or any Sub-Contractor 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.
- 7.6. The Service Provider shall, within twenty (20) Working Days of the conclusion of each test, provide to the Customer a report setting out:
- 7.6.1. the outcome of the test;
  - 7.6.2. any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
  - 7.6.3. the Service Provider's proposals for remedying any such failures.
- 7.7. Following each test, the Service Provider 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 Service Provider, at no additional cost to the Customer, by the date reasonably required by the Customer and set out in such notice.
- 7.8. 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 Service Provider of any of its obligations under this Schedule or otherwise.
- 7.9. The Service Provider shall also perform a test of the BCDR Plan as part of the commissioning of any new project.

## 8. INVOCATION OF THE BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN

- 8.1. In the event of a complete loss of service or in the event of a Disaster, the Service Provider shall immediately invoke the BCDR Plan (and shall inform the Customer promptly of such invocation). In all other instances the Service Provider shall only invoke or test the BCDR Plan with the prior consent of the Customer.

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**SCHEDULE 2-17**

**SECURITY MANAGEMENT PLAN**

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

**1. INTRODUCTION**

- 1.1. This Schedule covers:
  - 1.1.1. principles of protective security to be applied in delivering the Services;
  - 1.1.2. wider aspects of security relating to the Services;
  - 1.1.3. the development, implementation, operation, maintenance and continual improvement of an ISMP;
  - 1.1.4. the creation and maintenance of the Security Management Plan;
  - 1.1.5. audit and testing of ISMP compliance with the security requirements (as set out in Schedule 2-3 (Performance Management)).
  - 1.1.6. conformance to relevant ISMP requirements and;
  - 1.1.7. obligations in the event of actual, potential or attempted breaches of security.

**2. PRINCIPLES OF SECURITY**

- 2.1. The Service Provider acknowledges that the Customer places great emphasis on the confidentiality, integrity and availability of information and consequently on the security provided by the ISMP.
- 2.2. The Service Provider shall be responsible for the effective performance of the ISMP and shall at all times provide a level of security which:
  - 2.2.1. is in accordance with Good Industry Practice, Law and this Contract;
  - 2.2.2. complies with the Security Policy;
  - 2.2.3. complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4) available from the Cabinet Office Security Policy Division (COSPD) unless advised otherwise by the Customer;
  - 2.2.4. meets any specific security threats to the ISMP;
  - 2.2.5. complies with the security requirements as set out in Schedule 2-3 (Performance Management); and
  - 2.2.6. complies with the Customer's ICT standards.
- 2.3. Subject to Clause 50.3 of this Contract, the references to standards, guidance and policies set out in paragraph 2.2 of this Schedule shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, from time to time.
- 2.4. In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Service Provider should notify the Customer's Contract Manager of such inconsistency promptly upon becoming aware of the same, and the Customer's Contract

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Manager shall, as soon as practicable, advise the Service Provider which provision the Service Provider shall be required to comply with.

### 3. ISMP AND SECURITY MANAGEMENT PLAN

#### 3.1. Introduction

- 3.1.1. The Service Provider shall develop, implement, operate, maintain and continuously improve and maintain an ISMP which will, without prejudice to paragraph 2.2 of this Schedule, be approved, by the Customer, tested in accordance with this Schedule, periodically updated and audited to assure its consistency with ISO 27001.
- 3.1.2. The Service Provider shall develop and maintain a Security Management Plan in accordance with this Schedule to apply during the Term.
- 3.1.3. The Service Provider shall comply with its obligations set out in the Security Management Plan.
- 3.1.4. Both the ISMP and the Security Management Plan shall, unless otherwise specified by the Customer, aim to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Customer Premises, the Sites, the Service Provider System and any ICT, information and data (including the Customer Confidential Information and the Customer Data) to the extent used by the Customer or the Service Provider in connection with this Contract.

#### 3.2. Development of the Security Management Plan

- 3.2.1. Within 60 Working Days of Customer request and in accordance with paragraph 3.4 of this Schedule, the Service Provider will prepare and deliver to the Customer for approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan set out in Annex B of this Schedule.
- 3.2.2. If the Security Management Plan, or any subsequent revision to it in accordance with paragraph 3.4 of this Schedule, is approved by the Customer it will be adopted immediately and will replace the previous version of the Security Management Plan at Annex B. If the Security Management Plan is not approved by the Customer the Service Provider shall amend it within ten (10) Working Days of a notice of non-approval from the Customer, provided such notice details with relevant specificity the reasons for non-approval, and re-submit to the Customer for approval. The parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the parties may agree in writing) from the date of its first submission to the Customer. If the Customer does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with Schedule 2-10 (Dispute Resolution Procedure). No approval to be given by the Customer pursuant to this paragraph 3.2.2 of this Schedule may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 3.3.4 of this Schedule shall be deemed to be reasonable; provided that the Authority provide written details regarding such non-compliance with the requirements.

#### 3.3. Content of the Security Management Plan

- 3.3.1. The Security Management Plan will set out the security measures to be implemented and maintained by the Service Provider in relation to all aspects of the Services and all processes associated with the delivery of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Schedule (including the principles set out in paragraph 2.2 of this Schedule).

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- 3.3.2. The Security Management Plan (including the draft version) should also set out the plans for transiting all security arrangements and responsibilities from those in place at the date of signature of this Contract to those incorporated in the Service Provider's ISMP at the date set out in the Implementation Plan for the Service Provider to meet the full obligations of the security requirements at Schedule 2-3 (Performance Management).
  - 3.3.3. The Security Management Plan will be structured to be consistent with ISO 27001, cross-referencing if necessary to other Schedules of this Contract which cover specific areas included within that standard.
  - 3.3.4. The Security Management Plan shall be written in plain English in language which is readily comprehensible to the staff of the Service Provider and the Customer engaged in the Services and shall only reference documents which are in the possession of the Customer or whose location is otherwise specified in this Schedule.

### 3.4. **Amendment and Revision of the ISMP and Security Management Plan**

- 3.4.1. The ISMP and Security Management Plan will be fully reviewed and updated by the Service Provider annually, or from time to time to reflect:
  - 3.4.1.1. emerging changes in Good Industry Practice;
  - 3.4.1.2. any change or proposed change to the Service Provider System, the Services and/or associated processes;
  - 3.4.1.3. any new perceived or changed security threats; and/or
  - 3.4.1.4. any reasonable request by the Customer.
- 3.4.2. The Service Provider will provide the Customer with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMP and Security Management Plan at no additional cost to the Customer. The results of the review should include:
  - 3.4.2.1. suggested improvements to the effectiveness of the ISMP;
  - 3.4.2.2. updates to the risk assessments;
  - 3.4.2.3. proposed modifications to the procedures and controls that effect information security to respond to events that may impact on the ISMP; and/or
  - 3.4.2.4. suggested improvements in measuring the effectiveness of controls.
- 3.4.3. On receipt of the results of such reviews, the Customer will approve any amendments or revisions to the ISMP or Security Management Plan in accordance with the process set out at paragraph 3.2.2 of this Schedule.
- 3.4.4. Any change or amendment which the Service Provider proposes to make to the ISMP or Security Management Plan (as a result of a Customer request or change to the Schedule 2-3 (Performance Management) or otherwise) shall be subject to the Contract Change Procedure and shall not be implemented until approved in writing by the Customer.

## 4. TESTING

- 4.1. The Service Provider shall conduct tests of the ISMP ("**Security Tests**") on an annual (or such otherwise period as advised by the Customer) basis or as otherwise agreed by the parties. The

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date, timing, content and conduct of such Security Tests shall be agreed in advance with the Customer.

- 4.2. The Customer shall be entitled to send a representative to witness the conduct of the Security Tests. The Service Provider shall provide the Customer with the results of such tests (in a form approved by the Customer in advance) as soon as practicable after completion of each Security Test.
- 4.3. Without prejudice to any other right of audit or access granted to the parties, the parties ("Auditing Party") and/or its authorised representatives shall be entitled, during normal business hours and upon reasonable prior written notice to the other Party ("Audited Party"), to carry out such tests as each may deem necessary in relation to the ISMP and the other parties compliance with the ISMP and the Security Management Plan. The Auditing Party may notify the Audited Party of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery of the Services. If such tests adversely affect the Service Provider's ability to deliver the Services to the agreed Service Levels, the Service Provider shall be granted relief against any resultant under-performance for the period of the tests.
- 4.4. Where any Security Test carried out pursuant to paragraphs 4.2 or 4.3 of this Schedule reveals any actual or potential Breach of Security, the Auditing Party shall promptly notify the Audited Party of any proposed changes to the ISMP and to the Security Management Plan (and the implementation thereof) which the Auditing Party proposes to make in order to correct such failure or weakness. Subject to the Audited Parties approval in accordance with paragraph 3.4.4 of this Schedule, the Service Provider shall implement such changes to the ISMP and the Security Management Plan in accordance with the timetable agreed with the Customer or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMP or Security Management Plan is to address a non-compliance with the Security Policy or security requirements (as set out in Schedule 2-3 (Performance Management)), the change to the ISMP or Security Management Plan shall be at no cost to the Customer.

## 5. COMPLIANCE WITH APPLICABLE ISO STANDARDS

- 5.1. To be consistent with ISO/IEC 27000 Series.

## 6. BREACH OF SECURITY

- 6.1. Either party shall notify the other in accordance with the agreed security incident management process as defined by the ISMP upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.
- 6.2. Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 6.1 of this Schedule, the Service Provider shall:
  - 6.2.1. promptly take all reasonable steps necessary to:
    - 6.2.1.1. remedy such breach or protect the integrity of the ISMP against any such potential or attempted breach or threat; and
    - 6.2.1.2. prevent an equivalent breach in the future.
  - Such steps shall include any action or changes reasonably requested by the Customer. In the event that such action is taken in response to a breach that is determined by the Customer acting reasonably not to be covered by the obligations of the Service Provider under this Contract, then the Service Provider shall be entitled to refer the matter to the Contract Change Procedure; and
  - 6.2.2. as soon as reasonably practicable provide to the Customer full details (using such reporting mechanism as defined by the ISMP) of the Breach of Security or the potential or attempted Breach of Security.



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**Annex A**

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

**Security Policy**

Not applicable

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### Annex B

#### Security Management Plan

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

The current version of the Service Provider's Data Protection, Privacy and Security Policy is incorporated below.

The Service Providers Data Protection, Privacy and Security Policy may be amended or updated by the Service Provider from time to time, and the latest version shall apply.

The latest version of the Service Providers Data Protection, Privacy and Security Policy can be found here:  
<https://www.intersystems.com/gt/>



Data Protection,  
Privacy and Security

## SCHEDULE 2-18

## SOFTWARE AND SOFTWARE LICENCE TERMS

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

## 1. INTRODUCTION

- 1.1. This Schedule details the various elements of the Software and categorises them into Specially Written Software, Service Provider Software and Third Party Software.
- 1.2. Annexes A and B of this Schedule sets out the licence terms for the Service Provider Software and Third Party Software (including Open Source Ordered Software), respectively.
- 1.3. The Service Provider shall update this Schedule periodically to record any Software subsequently acquired from third parties or developed for the delivery of the Services.

## 2. SPECIALLY WRITTEN SOFTWARE

- 2.1. The Specially Written Software shall consist of any programs, codes and software written by or on behalf of the Service Provider for use by the Service Provider specifically in the provision of the Services (including any modifications or enhancements made to such software during the Term) and including the following items:

Software	Supplier (if Affiliate of the Service Provider)	Purpose	To be deposited in Escrow?
NONE	NONE	NONE	NO

- 2.2. The Service Provider will develop Software to meet the Service Provider's requirements. The following components will be modified to create the Specially Written Software: **NONE**.

## 3. SERVICE PROVIDER SOFTWARE

- 3.1. The Service Provider Software comprises the following items:

Software	Supplier (if Affiliate of the Service Provider)	Purpose	[Number of Licences]	[Restrictions]	[Number of Copies]	[Other]	To be deposited in Escrow?
HealthShare Health Connect	Service Provider		25 HLUS	4 production instances and 6 non-production instances			No

## 4. THIRD PARTY SOFTWARE

- 4.1. The Third Party Software shall consist of the following items, including any Open Source Ordered Software:

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Software	Supplier	Purpose	[Number of Licences]	[Restrictions]	Number of Copies]	[Other]	To be deposited in Escrow?
See Below							No

Service Provider Software may incorporate and include various third-party and open-source software and content. Customer's use of each third-party and open-source product is subject to the terms and conditions applicable to such product.

Service Provider has endeavoured to identify below the material third-party and open-source products incorporated, included or shipped with the Service Provider Software, as well as the location of the terms and conditions applicable to each third-party and open-source product.

The current list of open source software that may be contained in the Service Providers Software is incorporated below. This list may be updated and amended by the Service Provider from time to time and the latest version shall apply. The latest version of the Service Providers Third-Party Products list can be found here: <https://www.intersystems.com/third-party-products/>

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Annex A

Service Provider Software

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

**LICENSE AND SUPPORT SERVICES AGREEMENT**

1. This License Agreement is between the InterSystems Corporation (“InterSystems”) and the end user customer (“you,” the “Customer” or the “End User”) identified in the attached License Profile (“License Profile”). This License Agreement shall not be binding until your initial License Profile is fully completed and an order form (the “Order Form”) has been fully executed.
2. As of the date specified on the License Profile or, if no date is specified, on the date the License Profile has been executed by you or on your behalf and accepted by InterSystems (the “Effective Date”), InterSystems hereby grants to you a nontransferable and nonexclusive license (the “License”) to use the InterSystems product(s) named in the License Profile (the “Licensed Software”) in the manner described herein and subject to the license scope described in the License Profile and provided that all fees set forth on the Order Form are paid. No License shall be granted upon the physical delivery of any software to you. For the avoidance of doubt, the “Licensed Software” shall not include any open source or third-party software that may be shipped with, installed with or used in conjunction with InterSystems’ proprietary software.
3. If you acquire the License directly from InterSystems or its affiliate, then you will be required to execute the License Profile and Order Form and you are responsible for paying all fees specified therein to InterSystems or such affiliate. If you acquire the License via a third party (a “Partner”), then you will be required to execute the License Profile or otherwise acknowledge your acceptance of these terms. The Partner will execute the Order Form and will be responsible for paying all fees specified therein to InterSystems.
4. From time to time, the size and/or scope of your License may be adjusted, which adjustment will be reflected in an amended and restated License Profile replacing your prior License Profile. The effective date of such amended License Profile will be the date such amended License Profile is delivered to you.
5. Your License is subject to InterSystems’ standard Terms and Conditions in effect from time to time relating to the Licensed Software (“Product Terms”). A link to the relevant Product Terms is set forth in your License Profile.
6. The License Profile specifies whether your License is a paid-up License or is a subscription License. The term (“License Term”) of a paid-up License shall be 30 years from the Effective Date. The License Term of a subscription License begins on the Effective Date and, unless otherwise provided in the License Profile, is renewed automatically from year to year on the anniversary of the Effective Date unless proper notice of non-renewal is provided. The License Term of a paid-up or a subscription License is subject to earlier termination in accordance with section 12 below.
7. The Licensed Software may only be used on servers operated by you or on your behalf. You may not sublicense the Licensed Software or otherwise make it available to third parties except as explicitly provided herein.

End User Customer name: \_\_\_\_\_  
Licensed Software: \_\_\_\_\_

initials: \_\_\_\_\_  
Date: \_\_\_\_\_

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8. Software Update and Technical Assistance services (“Support Services”) shall be provided in accordance with the Product Terms and pricing in effect on the date such Support Services are invoiced. Unless otherwise provided in the License Profile, Support Services are renewed automatically from year to year on the anniversary of the Effective Date unless proper notice of non-renewal is provided.
9. InterSystems hereby warrants to you that (i) the Licensed Software will operate substantially in accordance with InterSystems’ documentation relating thereto for one year from the Effective Date or the end of the License Term, whichever occurs first, and (ii) all Support Services shall be performed in a manner consistent with industry standards. The foregoing warranties are conditioned upon the use of the Licensed Software strictly in accordance with InterSystems’ documentation and instructions, and the absence of any misuse, damage, alteration or modification thereof. INTERSYSTEMS SHALL NOT BE DEEMED TO HAVE MADE ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE CONDITION, MERCHANTABILITY, TITLE, NON-INFRINGEMENT, DESIGN, OPERATION OR FITNESS FOR A PARTICULAR PURPOSE OF THE LICENSED SOFTWARE OR SUPPORT SERVICES. MOREOVER, THE LICENSED SOFTWARE IS NOT A SUBSTITUTE FOR THE SKILL, KNOWLEDGE AND EXPERIENCE OF THE INDIVIDUALS WHO MAY USE THE LICENSED SOFTWARE. Your exclusive remedy for a breach of the above warranties shall be for InterSystems to use reasonable efforts to repair, replace or re-perform any non-conforming Licensed Software or Support Services, as applicable. The limited warranties above are not a substitute for Support Services, which in the case of a paid-up License, are available for a separate fee.
10. In the event of a valid claim that any Licensed Software that has not been altered, modified, misused or damaged infringes upon the intellectual property rights of a third party when used in accordance with InterSystems’ documentation and instructions, InterSystems shall either (a) modify the Licensed Software, (b) procure a license for you to use the Licensed Software or (c) terminate your License, at InterSystems' sole discretion.
11. InterSystems’ and any affiliate’s liability to you shall in no event exceed the portion of the fee received by InterSystems or such affiliate in respect of the specific Licensed Software or Support Services on account of which such liability arose. In no event shall InterSystems or any affiliate be liable to you for any special, incidental, exemplary, indirect or consequential damages or lost profits.
12. Either party may terminate this License Agreement with 30 days advance written notice upon the other party’s breach if the breach is not cured during that period. Either party may terminate this License Agreement immediately upon written notice to the other party if the other party declares bankruptcy, makes an assignment for the benefit of creditors, or ceases to function as a going concern. In addition, you may terminate this License Agreement upon 30 days advance written notice if InterSystems discontinues support for the platform on which the Licensed Software operates. A subscription License shall terminate automatically on the last day of the final period for which InterSystems has received the proper fee. You, or the Partner, as the case may be, shall be liable for all fees relating to Licensed Software or Support Services provided prior to termination, and Sections 11, 12, 13, 14 and 15 hereof shall survive termination or expiration of this License Agreement. Your rights to use the Licensed Software cease immediately upon termination or expiration of this License Agreement.

End User Customer name: \_\_\_\_\_  
Licensed Software: \_\_\_\_\_

initials: \_\_\_\_\_  
Date: \_\_\_\_\_

## CALL OFF TERMS AND CONDITIONS

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13. The Licensed Software and related documentation are and shall remain the sole property of InterSystems. You agree not to (i) decompile, disassemble, or reverse engineer the Licensed Software or (ii) disclose to others the Licensed Software or any data or information relating to the Licensed Software. In addition, you agree not to use or disclose any confidential information provided to you by InterSystems or its affiliates contained in or relating to the Licensed Software, Support Services or this business relationship. You agree to allow InterSystems or its representatives to audit your use of the Licensed Software upon 5 days advance notice by InterSystems. You agree to provide access to your premises and otherwise cooperate with InterSystems in such audit.
14. The parties are and shall be independent contractors to one another, and this License Agreement shall not create an agency, partnership or joint venture between the parties. Neither party nor its employees, agents or representatives shall be deemed to be an agent or employee of the other party and each party acknowledges that it is not authorized to bind or in any way commit the other party to any legal, financial or any other obligation.
15. This License Agreement shall be governed by and construed in accordance with the laws of, and the parties agree to submit to exclusive jurisdiction of the Commonwealth of Massachusetts, USA. The English version of this License Agreement shall control unless otherwise required by local law.
16. You agree to comply with all applicable laws, including, but not limited to: U.S. export control or similar laws with respect to the distribution of the Licensed Software, Support Services and technical data; the US Foreign Corrupt Practices Act and any other anti-corruption laws; and applicable data protection laws. Without InterSystems' prior written consent, you may not allow the Licensed Software, Support Services or technical data to be exported to or used in a country or region where a license, permit or special permission is required. InterSystems may, but shall not be required to, apply for such license, permit or permission at your expense.
17. This document, together with the License Profile and, if you have acquired your License directly from InterSystems or its affiliate, the Order Form, as well as the Product Terms in effect as of the Effective Date (or, in the case of Support Services, as of the date such Support Services are provided), constitute the entire agreement (the "License Agreement") between you and InterSystems relating to your use of the Licensed Software and receipt of Support Services and supersedes any prior understandings between us as well as any purchase orders or similar documents that may be submitted to InterSystems or its affiliate. To the extent any provision in this document or in the Product Terms conflicts with any provision in the License Profile or Order Form, the latter shall control. InterSystems shall have the right to transfer or assign this License Agreement without your consent or prior notice to you. You may not assign this License Agreement without InterSystems' prior written consent. Except where InterSystems amends your License Profile to reflect a change in the scope of your License, this License Agreement may only be modified or amended by a writing signed by both parties.

End User Customer name: \_\_\_\_\_

initials: \_\_\_\_\_

Licensed Software: \_\_\_\_\_

Date: \_\_\_\_\_



## End User License Profile and Order Form - HealthShare

The undersigned End User is ordering the following License from the InterSystems entity identified below ("InterSystems") to use the Licensed Software identified below along with any Support Services or Implementation Services identified below. The current size, scope and limitations of your License are reflected in this License Profile and Order Form. This License Profile and Order Form will be amended and restated by InterSystems from time to time if the scope of your License changes. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the License Agreement.

**Effective Date:** As of even date with the Call-Off Terms and Conditions. This End User License Profile and Order Form- HealthShare replaces the prior HealthShare License Profile and the prior HealthShare Order Form, each with an Effective Date of 1 October, 2023.

### End User Customer

Customer Name: Manchester University Hospitals NHS Foundation Trust  
 Contact Person: Mark Delderfield  
 Address: Oxford Road  
 City: Manchester State / Province: *Manchester*  
 Zip / Post Code: M13 9WL Country: *United Kingdom*  
 Phone:

### License Agreement

The following Licensed Software is licensed to you pursuant to the License Terms available at [www.InterSystems.com/EULSA](http://www.InterSystems.com/EULSA). Such License Terms together with the Product Terms identified below, and this License Profile shall constitute your license agreement governing your use of the Licensed Software ("License Agreement").

### Licensed Software

The End User hereby orders a License to use the following Licensed Software in the following size as an upgrade to its existing License.

Product	License Size*			License Metrics
	Production Instances	Non-Production Instances**	Health License Units	
<i>HealthShare Health Connect</i>	<i>4 [previously 2]</i>	<i>6 [previously 3]</i>	<i>25 [previously 24]</i>	<i>Acute Beds, Annual Visits</i>



## CALL OFF TERMS AND CONDITIONS

				<i>Laboratory Episodes [Genomic use case, as defined below]</i>
<p>* As of the effective date of this License Profile and Order</p> <p>** Non-Production Licenses may only be used for system configuration, development, testing and training. They may <b>not</b> be used for mirroring, failover, disaster recovery, sharding, reporting, analytics or any other purpose.</p>				

**Product Terms** – The Product Terms for the Licensed Software can be found at [www.InterSystems.com/HTC](http://www.InterSystems.com/HTC)

## Metric Definitions

The size of your License is determined by the following metrics.

<b>Metric</b>	<b>Metric Definition</b>	<b>Current Value*</b>
<i>Acute Care Beds</i>	<p><i>Means the total number of beds available for rehabilitation, long term-care, or other non-acute care in facilities that are covered by the HealthShare license.</i></p> <p><i>Standard Metric: 1 HLU = 400 Non-Acute Care Beds</i></p>	<i>2,682</i>
<i>Annual Visits</i>	<i>means the total number of emergency or other outpatient visits during a one-year period.</i>	<i>2,978,000</i>

## CALL OFF TERMS AND CONDITIONS

	<p><i>Standard Metric: 1 HLU = 500,000 Annual Visits</i></p>	
<p><i>Laboratory Episodes (Genomic Use Case Only)</i></p>	<p><i>Laboratory Episodes means the total number of laboratory orders placed during the year. An order may contain any number of tests for a single patient.</i></p> <p><i>Standard Metric: 1 HLU = up to 500,000 annual Laboratory Episodes.</i></p> <p><i>[For the genomics use case, the Health Connect solution will only serve external providers integrating with the MFT/MU genomic service (i.e. not to be used for any other diagnostic specialty within the Trust)</i></p> <p><i>MFT/MU process</i></p>	<p><i>230,000 per annum</i></p>

## CALL OFF TERMS AND CONDITIONS

	<p><i>approximately 230k of non-MFT/MU tests per year, predominantly covering a population of the Northwest (just under 7m)</i></p> <p><i>MFT/MU do get specialist tests from outside of the Northwest from across the UK in low volumes. Therefore, this may include any NHS provider in the UK ordering tests.]</i></p>	
<p>* As of the effective date of this Profile</p>		

## Fees

The following SUTA fees are due as a result of this order.

Product	Ordered	Current SUTA Fees*
HealthShare Health Connect	25 HLUs	Term and charges as per Schedule 2.4- Charges and Invoicing, of the Call Off Terms and Conditions
	4 Production Instances	
	6 Non-Production Instances	
* Annual SUTA Fees due for this product following this order, as described in Schedule 2.4		

SUTA Fees are subject to periodic adjustment in accordance with the Product Terms.

## License Type

**Paid Up License** (Annual Software Update and Technical Assistance services (SUTA) charged separately)

## License Size Adjustment

The current size of your License is shown above. If your Licensed Software usage increases, you are required to promptly upgrade your License to an appropriate size. Any such upgrade shall be reflected in an amended and restated License Profile stating your new License size.

InterSystems may periodically send you a statement listing the current metric values used to determine the size of your License. Within 30 days, you shall certify that these values are correct or provide updated values if they are not. InterSystems reserves the right to audit your Licensed Software usage from time to time.

## License Scope

Your License enables you to use the Licensed Software internally within your organization to store, exchange and access information. You may use the Licensed Software at or for a facility if (a) such facility is owned by you, (b) such facility is included in the above determination of your license size (i.e., the above metrics cover such facility) and (c) such facility is identified below (each, a "Covered Facility"). You may only use the Licensed Software at your Covered Facilities for storing, exchanging, and accessing data related to healthcare services provided at those Covered Facilities. (If "All" is indicated, then all facilities owned and/or operated by you are covered, as subject to the requirements above.)

### **Covered Facilities / Organizations**

*All, please note the scope of the genomics use case above.*

You may also use the Licensed Software to exchange data with or provide data access to other (3rd party) organizations, as long as all data stored, exchanged or accessed relates to the delivery of or payment for patient care at your covered facilities / organizations. The Licensed Software may not be used to provide health information exchange, interoperability or other IT services on a commercial basis or to provide services that are independent of your delivery of or payment for patient care.

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In placing this order, you confirm that:

- (a) This License Profile and Order Form, when signed by InterSystems, will be governed by and complies with the conditions of the License Agreement and all Licensed Software and Support Services will be provided in accordance with the License Agreement;
- (b) The metric values and/or license size listed above are accurate as of the Effective Date and you will promptly notify InterSystems of any material increase; and
- (c) You will pay all fees in accordance with the Product Terms and this License Profile and Order Form.

Accepted By

## CALL OFF TERMS AND CONDITIONS

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**Manchester University Hospitals  
NHS Foundation Trust**

**InterSystems Corporation**

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Authorized Signatory

Date

---

Authorized Signatory

Date

---

Printed Name

Title

---

Printed Name

Title



### Quality Agreement Addendum to License Profile

The InterSystems product(s), HealthShare Health Connect (the "Licensed Software") is/are offered here, and you accept them, as "Non-Medical Device" with regard to medical device regulations effective in the European Union. You are authorized to offer and configure the Licensed Software only to the extent such configurations and solutions do not represent the Licensed Software as a medical device under applicable regulations, including 93/42/EEC and 2017/745. You shall be responsible for, and indemnify and hold harmless InterSystems from, any penalty, expense, or injury incurred by InterSystems as a result of your breach of the requirements of this paragraph.

LIMITED TO INTENDED USES: Customer understands and accepts that Regulated Products have limits on their intended use. The Statements of Intended Use for the Regulated Products have been attached to this Quality Agreement, and the Customer shall not attempt to configure, implement, modify, alter, or generally make use of (generally referred to as "Configuration") the Regulated Product for any function not described and allowed by the Statement of Intended Use for the respective Regulated Product. InterSystems makes no warranty that any Regulated Product is safe for use or authorized for import under any other circumstances.

### Intended Use Statement:

#### HealthShare Health Connect

Health Connect is communication middleware intended to facilitate interoperability and connection among disparate data systems. It is intended to provide health information managers the ability to translate, normalize and reconcile data from disparate sources.

**Manchester University Hospitals  
NHS Foundation Trust**

Accepted By

**InterSystems Corporation**

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

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**Annex B**

**Third Party Software**

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

**As per (4)- THIRD PARTY SOFTWARE**

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### SCHEDULE 2-19

#### INSURANCES

##### 1. INTRODUCTION

- 1.1. This Schedule contains the list of insurances to be maintained by the Service Provider.
- 1.2. The Service Provider shall:
  - 1.2.1. maintain these insurances with a reputable insurance company on terms that are as favourable to those generally available to a prudent service provider in respect of risks insured in the international insurance market; and
  - 1.2.2. not cancel these insurances or make any material change to them without the express written consent of the Customer.
- 1.3. The Service Provider shall procure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as avoided in whole or part. The Service Provider shall use reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or avoid any insurance, or any cover or claim under any insurance in whole or in part.

##### 2. LIST OF INSURANCE PROVISIONS

- 2.1. The Service Provider shall effect and maintain the following insurances in relation to the performance of its obligations under this Contract:
  - 2.1.1. public liability insurance adequate to cover all risks in the performance of this Contract from time to time with a minimum limit of £1,000,000 including umbrella policy in the aggregate or such higher limit as required by Contracting Bodies to be specified where relevant in an invitation to further competition and as required by Law from time to time;
  - 2.1.2. employers' liability insurance with a minimum limit of indemnity as required by Law from time to time; and
  - 2.1.3. product liability insurance adequate to cover all risks in the performance of this Contract from time to time with a minimum limit of £1,000,000 including umbrella policy in the aggregate or such higher limit as required by Contracting Bodies to be specified where relevant in an invitation to further competition and as required by Law from time to time; and
  - 2.1.4. professional indemnity insurance to cover all risks in the performance of this Contract from time to time with a minimum limit of indemnity of £1,000,000 including umbrella policy in the aggregate as required by Contracting Bodies to be specified where relevant in an invitation to further competition and as required by Law from time to time.
- 2.2. Any excess or deductibles under the insurances referred to shall be the sole and exclusive responsibility of the Service Provider.
- 2.3. The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities arising under this Contract.
- 2.4. The Service Provider shall produce to the Customer, on request, copies of all insurance policies referred to in this paragraph 2 or a broker's verification of insurance to demonstrate that the appropriate cover is in place.



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- 2.5. If, for whatever reason, the Service Provider fails to give effect to and maintain the insurances required by this Contract then the Customer may make alternative arrangements to protect its interests and may recover the premium and other costs of such arrangements as a debt due from the Service Provider.
- 2.6. The Service Provider shall maintain the insurances referred to in full force and effect at all times from the Commencement Date until that date which is six (6) Years following the expiration or earlier termination of this Contract or such longer term as may be required by the Customer.
- 2.7. The Service Provider shall use its reasonable endeavours to ensure that it shall not by its acts or omissions cause any policy of insurance to be invalidated or voided.

Class	Minimum Sum Insured
Public Liability	£1,000,000
Employers Liability	in accordance with any legal requirement for the time being in force.
Professional Indemnity	£1,000,000
Product Liability	£1,000,000
Business Continuity	Business Continuity Insurance is not required on the Service Commencement Date. The Customer may during the Term require the Service Provider to maintain Business Continuity Insurance for a sum as agreed between the parties in the event that during the Term the Service Provider downgrades the support arrangements provided under Schedule 2-16 (BCDR Plan)

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### SCHEDULE 2-20

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

#### STAFFING (not used)

- 1.1. The Service Provider shall be entirely responsible for the employment and conditions of service of the Service Provider Personnel employed in the performance of the Services under the Contract.
- 1.2. The Service Provider will employ sufficient employees to ensure that the Service is provided at all times and in all respects in complete conformity with Schedule 2-3 (Performance Management). This will include, but not be limited to, the Service Provider providing a sufficient reserve of trained and competent staff to provide the Services during staff holidays or absence due to sickness or voluntary absence. In relation to the Services, the Service Provider will employ only such persons as are careful, skilled and experienced in the duties required of them, and will ensure that every such person is properly and sufficiently trained and instructed (at the Service Provider's expense) and carries out the Services with regard to:
  - 1.2.1. the task or tasks that person has to perform;
  - 1.2.2. all relevant provisions of the Contract including, without limitation, Schedule 2-3 (Performance Management).
  - 1.2.3. all relevant policies, rules, procedures and standards of the Customer (including any racial discrimination and equal opportunities policies);
  - 1.2.4. the need for those working in a health service environment to observe the highest standards of hygiene, customer care, courtesy and consideration;
  - 1.2.5. the need to keep confidential all information howsoever acquired whether relating to the Customer and its business, or relating to patients, including but not limited to patient identity, clinical conditions and treatment.
- 1.3. The adherence of the Service Provider's Personnel to required standards of performance shall be routinely monitored and the Service Provider shall promptly take such remedial action as may be required where such standards are not attained.
- 1.4. Before the Service Provider engages or employs any person in the provision of the Services, or in any activity related to, or connected with the provision of the Services, the Service Provider shall comply with the following guidance as amended from time to time:
  - 1.4.1. NHS Employment Check Standards including without limitation the Criminal Record and Barring Check Standard; and
  - 1.4.2. such other checks as required by the Disclosure and Barring Service or which are to be undertaken in accordance with current and future national guidelines and policies.
- 1.5. The Service Provider will, when recruiting potential employees for the purpose of the Contract, act in accordance with Schedule 2-3 (Performance Management).
- 1.6. The Service Provider shall ensure that employees of appropriate levels of experience and expertise perform the Services to achieve cost efficiency.
- 1.7. The Service Provider shall at all times provide a sufficient number of staff of a supervisory level to ensure that all Service Provider Personnel are at all times adequately supervised and properly perform their duties. The Service Provider shall ensure that such supervisory level staff are sufficiently skilled, trained and instructed with regard to all matters under the Contract, including without limitation the performance of the Services.

## CALL OFF TERMS AND CONDITIONS

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- 1.8. The Customer reserve the right to reject staff whom they consider to be unsuitable for the duties proposed. Where staff are rejected the Service Provider shall supply alternative staff. In addition, the Customer may (but not unreasonably or vexatiously) instruct the Service Provider to remove from work in or about the provision of the Services any person employed or engaged by the Service Provider and the Service Provider shall immediately comply with such instruction, and in the case of a removal from work shall, as soon as it is reasonably practicable thereafter provide a substitute and any such instruction shall not give rise to any liability whatsoever on the part of the Customer to the Service Provider or any other Party and shall not affect in any way the obligations of the Service Provider to carry out the Services to Schedule 2-3 (Performance Management).
- 1.9. The Service Provider shall ensure that any employees to whom reference is made by name in Schedule 2-3 (Performance Management) are actively involved in the provision of the Services or are replaced with employees acceptable to the Customer. The Service Provider acknowledges that if it is ever the wish of the Service Provider to change the partners and/or employees committed to provide the Services as provided for in Schedule 2-3 (Performance Management) it shall first give notice of such wish to the Customer explaining the reasons for such wish together with full details of any proposed replacement partner and/or employee. The Customer shall be under no obligation to approve or accept any such replacement. If any of the partners or employees referred to in Schedule 2-3 (Performance Management) cease, in the reasonable opinion of the Customer, to provide and be responsible for the provision of the Services and the quality of the Services then the Customer may terminate the Contract in accordance with this Contract paying only for the Services provided up to the date of such termination.
- 1.10. The Service Provider shall procure that all potential staff or persons performing any of the Services during the Term who may reasonably be expected in the course of their employment or engagement to have access to children or other vulnerable persons and/or access to persons receiving clinical services and/or medical services:
  - 1.10.1. are questioned concerning their Convictions; and
  - 1.10.2. in the case of all potential staff or persons performing any of the Service during the Term, obtain standard and enhanced disclosures from the Disclosure and Barring Service before the Service Provider engages the potential staff or persons in the provision of the Services to the Customer. The Service Provider shall take all necessary steps to procure that such potential staff or persons obtain standard and enhanced disclosures from the Disclosure and Barring Service including, without limitation, the Service Provider being registered with the Disclosure and Barring Service and that all such disclosures are renewed every three years while such potential staff are performing any of the Services during the Term.
- 1.11. The Service Provider shall procure that no person who discloses any Convictions upon being questioned about their Convictions in accordance with paragraph 1.10, or who is found to have any Convictions following receipt of standard and enhanced disclosures from the Disclosure and Barring Service in accordance with paragraph 1.10, or who fails to obtain standard and enhanced disclosures from the Disclosure and Barring Service upon request by the Service Provider in accordance with paragraph 1.10 is employed without the Customers prior written consent.
- 1.12. The Service Provider shall procure that the Customer is kept advised at all times of any member of staff who, subsequent to his/her commencement of employment as a member of staff receives a Conviction or whose previous Convictions become known to the Customer, and if the Customer, acting reasonably, considers that the Conviction has a material bearing upon the suitability of the individual concerned to be engaged in the provision of the Services, such person shall only continue to have access to the persons receiving health services and/or have substantial access to children with the Customer's prior written consent. The Service Provider shall indemnify and keep indemnified the Customer against any Losses arising out of any claim by any person in respect of whom the Customer denies consent to continue to provide the Services as a result of such person disclosing or receiving a Conviction.

## CALL OFF TERMS AND CONDITIONS

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- 1.13. The Service Provider shall procure that the Customer is kept advised at all times of any:
- 1.13.1. disciplinary incident relating to the Service Provider Personnel involving visitors, patients or the Customer's staff or property; and
  - 1.13.2. incidence of serious misconduct involving the Service Provider Personnel.
- 1.14. The Service Provider shall only employ staff for the purposes of the Contract who:
- 1.14.1. fulfil any minimum training and qualification requirements of the Customer as set out in the Service Specification and also all training and qualification requirements that may be deemed necessary by the Customer, legislation, or any special bodies or associations including but not limited to any 'break away training' and secondary security training that may be deemed necessary by the Customer;
  - 1.14.2. are medically and physically fit in so far as the requirements of the work are concerned (subject to the duties imposed by the Equality Act 2010 including, without limitation, the duty to make reasonable adjustments where the relevant employee has a 'disability' within the meaning of the Equality Act 2010).
- 1.15. The Service Provider shall not employ in or about the provision of the Services any person who has suffered from, has signs of, is under treatment for, or who is suffering from any medical condition which is known to, or does potentially place the health of the Customer's staff, residents, patients or visitors at risk. In all such cases, the Service Provider is required to notify the Customer of each particular incident. The Service Provider may receive and will accept such instruction as to the immediate and future working capability of the affected employee, upon the Sites. Such instruction may necessitate the need for further investigation, which shall be the duty and responsibility of the Service Provider at his own expense.
- 1.16. The Service Provider will comply with the Customer's policy and procedures on cross infection and notifiable diseases and will co-operate with and act upon the advice of the Customer's infection control representative. Accordingly, the Service Provider shall be required to fulfil certain responsibilities and carry out certain tasks including but not limited to minimising the risk to service users from staff-borne illnesses and making available a programme of appropriate vaccination and offers to update vaccinations for all of the Service Provider Personnel. In the event that there are outbreaks of infections amongst the Service Provider Personnel, the Service Provider shall liaise with the Customer on the appropriate way of dealing with such occurrences.
- 1.17. The Service Provider will maintain detailed records of its staff employed or engaged in providing the Services including details of names and usual place of duty and any other information relating to the Service Provider's obligations in this paragraph 1.21 as may be reasonably required and these records will be available to the Customer on reasonable request.
- 1.18. As a condition of employment in the contract, Service Provider Personnel:
- 1.18.1. shall not corruptly solicit or receive any bribe or other consideration from any person, or fail to account for monies or property received in connection with duties under the Contract;
  - 1.18.2. shall not be uncivil to persons encountered in the course of work, or make unnecessary use of authority in connection with the discharge of their functions under the Contract;
  - 1.18.3. shall not act in a manner reasonably likely to bring discredit upon the Customer;
  - 1.18.4. shall maintain proper standards of appearance and deportment whilst at work;
  - 1.18.5. shall not at any time be on duty under the influence of alcohol or drugs;
  - 1.18.6. shall on being charged with any criminal offence, notify the Service Provider immediately;

## CALL OFF TERMS AND CONDITIONS

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- 1.18.7. shall not neglect, nor without due and sufficient cause omit, to discharge promptly and diligently a required task within the terms of the Contract.
- 1.18.8. shall not misuse or abuse the Customer's property;
- 1.18.9. shall not smoke while on the Site, except in those areas where smoking is expressly permitted.
- 1.19. The Service Provider shall provide its employees with a form of identification that is acceptable to the Customer and which employees shall display on their clothing at all times while on the Site.
- 1.20. The Customer shall not be liable for loss of, or damage to, the personal property of Service Provider Personnel, howsoever caused.
- 1.21. It is the joint responsibility of the Service Provider and his employees to ensure that the employees supplied to carry out the Services have not worked excessive hours which could prejudice the standards of service. In accordance with the Working Time Regulations 1998 it is the responsibility of the Service Provider to keep records of hours worked for each employee.

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**SCHEDULE 2-21**

**PENSIONS (not used)**

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

**[DN: Any Additional Requirements to be Confirmed]**

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### SCHEDULE 2-22

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

#### **Data – Customer Data, Data Protection, Processing, Personal Data and Data Subjects**

##### **1. Customer Data**

- 1.1. The Service Provider shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- 1.2. The Service Provider shall not store, copy, disclose, process or use the Customer Data except as necessary for the performance by the Service Provider of its obligations under this Contract or as otherwise expressly authorised in writing by the Customer.
- 1.3. To the extent that Customer Data is held and/or processed by the Service Provider, the Service Provider shall supply that Customer Data to the Customer as requested by the Customer in the format specified in Schedule 2-7 (Contract, Service Management and Reporting) or by the Customer from time to time.
- 1.4. The Service Provider shall take responsibility for Customer Data under its sole control for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data in accordance with the Data Protection Act. Additionally, the Service Provider will comply with all applicable aspects of the Data Protection Act, including, but not limited to, obligations with regards to unlawful or authorized use, loss, or damage of Customer Data.
- 1.5. The Service Provider shall ensure that any system under the sole control of the Service Provider on which the Service Provider holds any Customer Data, including back-up data, is a secure system that complies with the Security Policy.
- 1.6. If the Customer Data is corrupted, lost or sufficiently degraded solely as a result of the Service Provider's Default, the Customer may:
  - 1.6.1. require the Service Provider (at the Service Provider's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with the requirements specified in the BCDR Plan and the Service Provider shall do so as soon as practicable but not later than the period specified in Schedule 2-16 (BCDR Plan); and/or
  - 1.6.2. itself restore or procure the restoration of Customer Data to a standard that enables the Services to be provided under this Contract, and shall be repaid by the Service Provider any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the BCDR Plan.
- 1.7. If at any time the Service Provider suspects or has reason to believe that Customer Data under its sole control has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Service Provider shall notify the Customer immediately and inform the Customer of the remedial action the Service Provider proposes to take.
- 1.8. The Service Provider shall indemnify and keep the Customer indemnified at all times from and against all losses sustained by the Customer in the event of any loss, destruction, corruption, degradation or inaccuracy of Customer Data arising solely by reason of any act, omission or Default of the Service Provider in the provision of the Services under this Contract.
- 1.9. If any third party makes a claim or intimates the intention to make a claim against either party to this Contract, which may reasonably be considered as likely to give rise to liability for acts conducted under this Contract in respect of the Customer Data, the Service Provider agrees to indemnify the Customer at all times for all losses that arise solely by reason of any act, omission or Default of the Service Provider in the provision of the Services in relation to the Customer Data under this Contract.

## CALL OFF TERMS AND CONDITIONS

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- 1.10. Either party shall inform the other immediately, or as soon as practically possible, in writing of:
  - 1.10.1. the nature of the relevant claim;
  - 1.10.2. not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the other party; and
  - 1.10.3. give the other party and its professional advisors reasonable access to its records and premises so that the claim can be properly investigated.
- 1.11. Each party shall ensure that they comply with, and not breach the provisions of the Data Protection Act and FOIA.

## 2. DATA PROTECTION

- 2.1. The Parties acknowledge that for the purposes of the Data Protection Legislation, with regard to Customer Data that the Customer is the Controller and the Service Provider is the Processor. The only processing that the Service Provider is authorised to do is listed in Schedule 2-22 by the Customer and may not be determined by the Service Provider.
- 2.2. The Customer shall not ask or require the Service Provider to process Personal Data in a manner not in compliance with the Data Protection Legislation or otherwise in a manner that the Customer could not do as a Controller or as a Processor for a Controller. The Service Provider shall notify the Customer promptly in writing, providing sufficient information to describe the Service Provider's objection, if it considers that any of the Customer's instructions infringe the Data Protection Legislation. Where the Customer agrees with the Service Provider's determination that the Customer's instructions infringe the Data Protection Legislation, then the Customer shall notify the Service Provider and the Service Provider shall not be required to comply with that instruction nor shall the Service Provider be held to be in breach of the Agreement for any failure to comply with such instruction. If the Customer does not agree with the Service Provider's determination that the Customer's instructions infringe the Data Protection Legislation, then the Customer shall provide a written explanation of why such instruction does not comply with the Data Protection Legislation and the Service Provider may rely on such explanation to carry out the Customer's instructions.
- 2.3. The Service Provider 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:
  - 2.3.1. a systematic description of the envisaged processing operations to be performed solely by the Service Provider and the purpose of such processing;
  - 2.3.2. an assessment of the necessity and proportionality of the processing operations to be performed solely by the Service Provider in relation to the Services;
  - 2.3.3. information for the Customer to perform an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 2.3.4. the measures relating solely to the Service Provider's processing of Customer Data to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 2.4. The Service Provider shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
  - 2.4.1. process that Personal Data only in accordance with Schedule 2-22, unless the Contractor is required to do otherwise by Law. If it is so required the Service Provider shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
  - 2.4.2. 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 the failure to reject



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- shall not amount to approval by the Customer of the adequacy of the Protective Measures) having taken account of the:
  - 2.4.2.1. nature of the data to be protected;
  - 2.4.2.2. harm that might result from a Data Loss Event;
  - 2.4.2.3. state of technological development; and
  - 2.4.2.4. cost of implementing any measures;
- 2.4.3. ensure that :
  - 2.4.3.1. the Service Provider personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 2-22);
  - 2.4.3.2. it takes all reasonable steps to ensure the reliability and integrity of any Service Provider personnel who have access to the Personal Data and ensure that they:
    - 2.4.3.2.1. are aware of and comply with the Service Provider's duties under this Clause;
    - 2.4.3.2.2. are subject to appropriate confidentiality undertakings with the Service Provider or any Sub-processor;
    - 2.4.3.2.3. 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
    - 2.4.3.2.4. have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 2.4.4. not transfer Personal Data outside of the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
  - 2.4.4.1. the Customer or the Service Provider 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;
  - 2.4.4.2. the Data Subject has enforceable rights and effective legal remedies;
  - 2.4.4.3. the Service Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred by Service Provider (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and
  - 2.4.4.4. the Service Provider complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data; and
- 2.4.5. at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Contract unless the Service Provider is required by Law to retain the Personal Data.
- 2.5. Subject to paragraph 2.6, the Service Provider shall notify the Customer immediately if it:
  - 2.5.1. receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 2.5.2. receives a request to rectify, block or erase any Personal Data;

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- 2.5.3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- 2.5.4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- 2.5.5. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- 2.5.6. becomes aware of a Data Loss Event.
- 2.6. The Service Provider's obligation to notify under paragraph 2.5 shall include the provision of further information to the Customer in phases, as details become available.
- 2.7. Taking into account the nature of the processing, the Service Provider shall provide the Customer with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 2.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
  - 2.7.1. the Customer with full details and copies of the complaint, communication or request;
  - 2.7.2. such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - 2.7.3. the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 2.7.4. assistance as requested by the Customer following any Data Loss Event; and
  - 2.7.5. 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.
- 2.8. The Service Provider shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Service Provider employs fewer than 250 staff, unless:
  - 2.8.1. the Customer determines that the processing is not occasional;
  - 2.8.2. the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
  - 2.8.3. the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 2.9. The Service Provider shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 2.10. Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 2.11. Before allowing any Sub-processor to process any Personal Data related to this Contract, the Service Provider must:
  - 2.11.1. notify the Customer in writing of the intended Sub-processor and processing;
  - 2.11.2. obtain the written consent of the Customer;
  - 2.11.3. enter into a written agreement with the Sub-processor which give effect to the terms set

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out in this paragraph 2 such that they apply to the Sub-processor; and

- 2.11.4. provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 2.12. The Service Provider shall remain fully liable for all acts or omissions of any Sub-processor.
- 2.13. The Customer may, following the Contract Change Procedure, request to revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 2.14. The Parties agree to take account of any binding guidance issued by the Information Commissioner's Office. The Customer may, following the Contract Change Procedure, request to amend this Contract to ensure that it complies with any binding guidance issued by the Information Commissioner's Office.

Description	Details
Subject matter of the processing	<i>Personal Data will be processed on Customer site and on the Customers systems under the instructions of the Customer.</i>
Duration of the processing	<i>Any processing will commence from the Effective Date and will continue until the expiry of this Contract.</i>
Nature and purpose of the processing	<i>The processing may include collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) for the purpose of carrying out contractual obligations specified in this Contract.</i>
Type of Personal Data	<i>The data being processed under this Contract is likely to include special category personal data, such as patient health information. It is also likely to include name, address, date of birth, NI number, telephone number, pay, images, biometric data.</i>
Categories of Data Subject	<i>Data subjects will vary according to the purpose of each Contract, but it is anticipated that this will include staff (including volunteers, agents, and temporary workers), Customer clients, suppliers, patients, students / pupils, members of the public, users of a particular website, and information and personal data specific to organisations covered by the software under the Contract</i>

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Plan for return or destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>At the sole option of the Data Controller, the Service Provider shall return and/or destroy all Personal Data in accordance with the Contract and/or Data Controller's instructions and policies</i>
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### SCHEDULE 2-23 (Not used)

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

#### Extra Call-off Terms and Conditions

[DN: Any additional Call-off Terms and Conditions to be included]

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**SCHEDULE 2-24**

**FURTHER CUSTOMER OBLIGATIONS**

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

**The following Customer responsibilities are applicable:**

- The Customer is responsible for providing Service Provider with third-party interface specifications as may be required. This will include but not be limited to both third party system interfaces and interfaces to internal Authority systems required to support the management and operation of the Services.
- The Customer is responsible for any consequential third-party licenses not listed in Schedule 2-18 Software and Software License Terms, and costs of same and any associated support.
- The Customer is responsible for any third-party relationships in respect of the use of the Services, including the timely performance of works by those third parties.
- The Customer is responsible for ensuring that an appropriate level of Information Governance and appropriate Information Sharing Agreement(s) is/are in place between the Customer and any relevant third-party.
- The Customer shall provide the Service Provider with appropriate IP address(es) and ensure firewall permissions have been granted.
- The Customer shall provide sufficient network bandwidth to support the required data volumes.
- The Customer is responsible for the establishment, provision and configuration of supporting infrastructure, including proven connectivity at an appropriate level of security to any third-party system.
- The Customer is responsible for any costs incurred by third-party suppliers or any other relevant third party, in the support of the provision of Services.
- The Customer shall ensure that web browsers used by the Customer to connect to the Services shall be versions that are a) "in-support" as determined by the browser manufacturer, and b) are also supported by the Service Provider. For security, technological and cost reasons, web browsers should not be used that are unsupported, out-of-support or end-of-life. See for instance: <https://digital.nhs.uk/about-nhs-digital/standards-for-web-products/withdrawal-of-support-for-internet-explorer>
- The Customer shall use Service Provider Software that is no more than two major releases behind the latest release of the Service Provider Software.
- The Customer is responsible for downloading audit logs at the end of the Term of the Agreement.

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- Any requests made for audit information by the Customer or any other relevant third party will be the responsibility of the Customer to fulfil.
- The Customer shall account for the audit records, audit logs or any equivalent database or information stored by the Services as a consequence of the operation of the Services in the Information Governance Agreements and Information Sharing Agreements (both new and existing) in place between the Customer or any other relevant third party which for the avoidance of doubt includes any user of the Services. For the further avoidance of doubt, the Service Provider cannot modify audit records, audit logs or any equivalent database or information once created to account for any relevant third party including any user of the Services ceasing to access the Services or for any other reason. Audit records, audit logs or any equivalent database or information should be considered to form a permanent, unmodifiable record.

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### SCHEDULE 2-25

#### MANAGED SERVICES – SET UP SERVICES (Not used)

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

#### Set-up Services

#### Outline

#### Timetable

Stage	Timetable	
	Estimated start date	Estimated completion date
Planning and Due Diligence:		
Implementation:		
Roll-out:		

#### Planning and Due Diligence

- 1.1 The Service Provider shall conduct a due diligence exercise to examine all relevant Customer Sites, Customer Furnished Items, Customer Systems, Operating Environment, the Customer's contracts with third parties, and shall then prepare the Implementation Plan in co-operation with the Customer. The Implementation Plan shall list any Customer Furnished Items to be transferred to the Service Provider in accordance with paragraph 1.5 of this Schedule and any Assumed Contracts to be transferred in accordance with Clause 55.

#### Implementation

- 1.2 The Service Provider and the Customer shall co-operate in implementing the Managed Services in accordance with the implementation provisions of the Implementation Plan.

#### Roll-out

- 1.3 The Service Provider and the Customer shall co-operate in rolling out the Managed Services in accordance with the roll-out provisions of the Implementation Plan.

#### Asset transfer

- 1.4 In consideration of the sum of one pound sterling (£1.00) receipt of which is acknowledged, the Customer agrees that:

#### Customer Furnished Items

- 1.5 If the Implementation Plan identifies any Customer Furnished Items then the Customer shall, as from the Managed Services Acceptance Date, transfer the Customer Furnished Items to the Service Provider with full title guarantee.] [DN: To be confirmed.]

#### No warranty

- 1.6 Any transfer (whether by way of sale, licence or sub-licence) of Customer Furnished Items made by Customer to Service Provider under this Schedule is made on an "as is" basis. The Customer



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excludes all representations (unless fraudulent), warranties and conditions and other contractual terms howsoever arising whether by statute, common law or otherwise and whether express or implied (except that the items are free from encumbrances) to the maximum extent permitted by applicable law in relation to those Customer Furnished Items.

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### SCHEDULE 2-26 MANAGED SERVICES – BENCHMARKING (not used)

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

#### 1. Interpretation

- 1.1 In addition to the definitions and rules of interpretation in Clause xx, the definitions and rules of interpretation in this paragraph apply in this Schedule.

**Benchmarked Services:** the Managed Services taken as a whole.

**Benchmarker:** the independent third party appointed under paragraph 3 of this Schedule.

**Comparison Sample:** a sample of organisations providing Equivalent Services identified in accordance with paragraph 4 of this Schedule.

**Equivalent Services:** services that are identical, or similar in all material respects, to the Benchmarked Services (including in terms of scope, specification, volume and quality of performance), are generally available within the UK and are supplied to a customer similar in size to the Customer over a similar period.

**Median Price:** in relation to the Equivalent Services provided by a Comparison Sample, the median price of the relevant services over the previous 12-month period. If there are an even-numbered number of organisations in the Comparison Sample then the Median Price shall be the arithmetic mean of the middle two prices.

- 1.2 The Benchmarked Services shall be good value if the Fees attributable to the Benchmarked Services are, having regard to the Service Level Arrangements, less than or equal to [125]% of the Median Price for Equivalent Services provided by a Comparison Sample (**Good Value**).

#### 2. Purpose and scope of Benchmark Review

- 2.1 The purpose of the Benchmark Review shall be to establish whether the Benchmarked Services are Good Value.

#### 3. Appointment of Benchmarker

- 3.1 Each Benchmark Review shall be performed by an independent third party appointed by agreement between the parties. [If the parties cannot agree on the independent third party within [NUMBER] Working Days of receipt by the Service Provider of the Customer's written request, then the Benchmarker shall be [CONSULTANTS].]
- 3.2 The Service Provider has the right at any time to require the Benchmarker to enter into an appropriate and reasonable confidentiality undertaking directly with it.
- 3.3 Each party shall bear its own costs and expenses relating to a Benchmark Review, except that the costs and expenses of the Benchmarker shall be shared equally by the Parties.
- 3.4 The Benchmarker shall conduct the Benchmark Review by applying the following general principles and criteria:
- (a) benchmarking shall be carried out in an independent and objective manner;
  - (b) the Benchmarker shall be jointly instructed by the Parties;
  - (c) benchmarking shall be truly comparative in respect of the technology, services and service levels;

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- (d) benchmarking shall be structured and undertaken in a way that causes the minimum disruption possible; and
  - (e) immediately following selection of the Benchmarker, the Parties and the Benchmarker shall (all acting reasonably and in good faith) agree the general principles and method of benchmarking.
- 3.5 The Service Provider shall not be deemed to be in breach of this Contract for any failure to perform any obligation under this Contract (nor shall it be liable for Service Credits) where such failure results from any disruption to the Service Provider's performance as a result of disruption caused by the Benchmarker.
- 4. Benchmarking process**
- 4.1 The instructions to the Benchmarker shall require the Benchmarker to produce, and to send to each party for approval, a draft plan for the Benchmark Review within [NUMBER] Working Days after the date of appointment of the Benchmarker. The plan shall include:
  - (a) a proposed timetable for the Benchmark Review (including for delivery of the Benchmarking Report);
  - (b) a description of the information that the Benchmarker requires each party to provide;
  - (c) a description of the benchmarking methodology to be used; and
  - (d) details of any organisations providing Equivalent Services that the Customer, having consulted with the Service Provider (and including any organisations providing Equivalent Services reasonably proposed by the Service Provider), proposes should be included within the Comparison Sample.
- 4.2 In carrying out the benchmarking analysis, the Benchmarker shall have regard to the following matters when performing a comparative assessment of the Benchmarked Services:
  - (a) the contractual and business environment under which the Equivalent Services are being provided;
  - (b) any front-end investment and development costs and expenses;
  - (c) the relevant supplier's risk profile, including the financial, performance and liability risk (including any limitation or exclusion or limitation of the Service Provider's liability under this Contract) associated with the provision of the Equivalent Services as a whole; and
  - (d) any other factors reasonably identified by the Service Provider which, if not taken into consideration, could unfairly cause the Service Provider's pricing to appear non-competitive.
- 4.3 Each party shall give notice in writing to the Benchmarker and to the other party within [NUMBER] Working 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 its approval of the draft plan and any suggested amendments shall be reasonable.
- 4.4 Where a party suggests amendments to the draft plan under paragraph 4.3, the Benchmarker shall, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph [ ], paragraph [ ] and paragraph [ ] shall apply to any amended draft plan. If the Benchmarker believes that the suggested amendments are not reasonable, the Benchmarker shall discuss the amendments with the parties to reach a resolution. If the parties are unable to agree a resolution within [NUMBER] Working Days of the matter first being referred to each of them by the Benchmarker for discussion, then such matter shall be resolved in accordance with the Dispute Resolution Procedure.
- 4.5 Failure by a party to give notice under paragraph 4.4 shall be treated as approval of the draft plan by that party.

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- 4.6 Once the plan is approved by both parties, the Benchmarker shall carry out the Benchmark Review in accordance with it. Each Party shall, to the extent it is not precluded from doing so by confidentiality obligations owed to third parties, provide the information described in the plan, together with any additional information reasonably required by the Benchmarker.
- 4.7 The Benchmarker shall share with the Parties, in an even-handed manner, all data relating to the benchmarking and the Benchmarking Report to the extent that it is lawfully able to do so.
- 4.8 The selection of the Comparison Sample (both in terms of number and identity of entities) shall be a matter for the Benchmarker's professional judgment, but such sample shall not include entities providing Equivalent Services in offshore jurisdictions if, and to the extent that, the Service Provider is not itself providing the Benchmarked Service offshore.
- 4.9 In conducting the Benchmark Review, the Benchmarker shall apply correction factors to the information to take account of reasons for difference in accordance with his professional judgment. Such normalisation information shall be available for approval by the parties before the production of the Benchmarking Report.
- 4.10 The Benchmarker shall perform the Benchmark Review in a fully transparent and open manner, and shall promptly provide the Customer and the Service Provider with full details of all data and methodologies employed at all stages of the Benchmark Review.

### **5. Benchmark Report**

- 5.1 The Benchmarker shall prepare a Benchmark Report setting out its findings. Those findings shall:
- (a) include a finding as to whether or not the Benchmarked Services are Good Value;
  - (b) include other findings regarding the quality and competitiveness or otherwise of the Services; and
  - (c) if the Benchmarked Services are not Good Value, specify the changes that would be required to the Services, and in particular to the Charges, in order to make the Benchmarked Services Good Value.
- 5.2 If the Benchmarking Report states that the Managed Services, Charges or Service Levels (or any part of them) that are benchmarked are not Good Value then Clause 57.1 shall apply.