AGREEMENT FOR THE SUPPLY OF SERVICES

AWARD LETTER

For the attention of:	
Supplier name:	FarrPoint Limited
Registered company number:	SC296299
Supplier address:	Exchange Place 2, 5 Semple Street, Edinburgh, EH3 8BL.
By email to email address:	
Your reference:	NHS52
Our reference:	C249843
Award of agreement for the supply of:	Advice and guidance as detailed in Annex 2
Customer:	NHS England

This Award Letter and its Annex(es) set out the terms of the Agreement between NHS England as the 'Customer' and the Supplier for the provision of the Services. Unless the context otherwise requires, capitalised expressions used in this Award Letter have the same meanings as in the terms and conditions set out in Annex 1 to this Award Letter (the "Conditions"). In the event of any conflict between this Award Letter, the Conditions and Annexes 2 and 3, the following order of precedence shall apply:

- a) Award Letter;
- b) Conditions;
- c) Annex 2; and
- d) Annex 3.

Please do not attempt to attach any Supplier terms and conditions or amend this Agreement as these will not be accepted by the Customer and may delay processing of the Agreement.

For the purposes of the Agreement, the Customer and the Supplier agree as follows:

1) The Services shall be performed at:

Address:	Exchange Place 2, 5 Semple Street, Edinburgh, EH3 8BL.
Contact telephone number:	

- 2) The Services to be Delivered are:
 - a. The Supplier will produce a report for the Future Connectivity programme to provide advice and guidance related to Smart Networks which can be used by NHS organisations in England.

- b. The focus of the report should be on how understanding and investing in Smart Networks can deliver long term cost efficiency and connectivity benefits to the NHS. It should also recognise increasing future digital demand that will be placed on networks as outlined by the NHS England Future Connectivity Programme.
- c. The Supplier will create meaningful and practical guidance that can be used across the NHS in a consistent way to inform and direct future planning and investment.
- d. The supplier will produce and maintain a project plan and host workshops to present their report. These workshops will allow NHS England to monitor supplier progress and feedback on drafts to increase delivery confidence.
- e. The full Specification can be accessed in Annex 2.
- 3) The Charges for the Services to be Delivered shall be as set out in Annex 3.
- 4) The Term shall be the period from the start date to the Expiry Date as follows, and the following Extension Period(s) shall be applicable:

Start date	01 March 2024
Expiry Date	30 June 2024
Extension Period(s)	Zero

5) The details and addresses for communications and service of notices on the Parties are:

Customer	
Named contact	
Title	
Address	
Email address	
Supplier	
Named contact	
Title	
Address	
Email address	

6) The following persons are Key Personnel for the purposes of the Agreement:

Name	Title
Not applicable	Not applicable

7)	Processing of Personal Data by the Supplier for and on behalf of the Customer is occurring
	pursuant to this Agreement:

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In the event that the answer is yes, or if this becomes the case during the term of this Agreement, the Parties shall complete the table below and clauses 12.2 to 12.10 shall apply in respect of such Processing.

The table below sets out the agreed description of the Processing being undertaken in connection with the exercise of the Parties' rights and obligations under the Agreement. The Supplier shall comply with any further written instructions with respect to Processing given by the Customer and any such further instructions shall be incorporated into this table:

Description	Details		
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Laws, the Customer is the Controller and the Supplier is the Processor in accordance with clause 12.		
Subject matter of the Processing	[This should be a high level, short description of what the processing is about i.e. its subject matter]		
Duration of the Processing	Commence Processing the Personal Data from the Start Date, as required in order to provide the Services.		
	Unless expressly agreed otherwise, cease Processing the Personal Data immediately upon the termination or expiry of the Agreement or, if sooner, the Service to which it relates.		
Nature and purposes of Processing	[Please be as specific as possible, but make sure that you cover all intended purposes.		
	The nature of the processing means any operation such as 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 or data whether or not by automated means) etc.		
	The purpose might include: employment processing, statutory obligation, recruitment assessment etc		
	Include location country of data and details of any sub- processors.]		
Type of Personal Data being Processed	[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]		
Categories of Data Subjects	[Examples include: Staff (including volunteers, agents, and temporary workers), customers/clients, suppliers, patients, members of the public, users of a particular website etc]		
Plan for return of the data once the Processing is complete unless requirement under union or member	[Describe how long the data will be retained for, how it will be returned or destroyed]		

state law to preserve that type of data	
Data Protection Officer of Supplier	[include name and contact details]

- 8) The Liability Cap shall be a sum equal to 125% of the Charges paid or payable under the Agreement to the Supplier.
- 9) For the purposes of the Agreement the following Customer policies apply (as may be updated from time to time):

Staff Vetting Procedures
Data security requirements
Equality and diversity policy
Environmental policy
CSR Policies

10) The Supplier shall be required to ensure that any person potentially to be employed in the supply of the Services has undertaken a Disclosure and Barring Service check:

No		

If 'Yes' the Supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Agreement, relevant to the work of the Customer, or is of a type otherwise advised by the Customer (each such conviction a "Relevant Conviction"), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the supply of the Services.

The Supplier must be in Receipt of a valid Purchase Order Number before submitting an invoice. All invoices should be sent, quoting that number to the address given on the purchase order. To avoid delay in payment it is important that the invoice is compliant and that it includes an item number (if applicable) and the details (name and telephone number) of the Customer contact. Non-compliant invoices will be sent back to the Supplier, which may lead to a delay in payment.

Any queries regarding outstanding payments should be directed to NHS England's Accounts Payable section by email at financialaccounts@nhs.net.

Invoices should clearly quote the purchase order number, be addressed to NHS England, X24 Payables K005, PO Box 312, LEEDS LS11 1HP and be sent as a PDF attachment by email to the following email address; sbs.apinvoicing@nhs.net (one invoice per PDF) and emails must not exceed 10Mb and quote, 'X24 Invoice Scanning' in subject line or alternatively invoices can be sent via post to the above address.

Please remember to quote the reference number above in any future communications relating to this Agreement.

Please direct all queries to the Customer contact. We thank you for your co-operation to date, and look forward to forging a successful working relationship resulting in a smooth and successful supply of the Services.

The individuals set out below shall execute this Agreement, on behalf of the Customer and the Supplier.



Annex 1: Terms and Conditions of Agreement for Services

1. Interpretation

1.1. In these terms and conditions:

Agreement means the contract between (i) the Customer and (ii) the

Supplier comprising the Award Letter, these Conditions and

Annexes 2 and 3:

Award Letter means the letter from the Customer to the Supplier printed above this Annex 1 (Terms and Conditions of Agreement for

Background IP means any Intellectual Property Rights owned by or licensed

to a Party that are not Foreground IP;

Central Government Body means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to

time by the Office for National Statistics:

Government Department: a)

b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or

tribunal):

Non-Ministerial Department: or c)

d) Executive Agency; and

to the extent not included in the above, the Department for

Health and Social Care;

means the charges for the Services as specified in the Award

Letter and set out in Annex 3;

means as defined in the Award Letter;

means as defined in the Public Contracts Regulations 2015:

means any and all information of a technical, commercial, financial or sensitive nature (including without limitation data. know-how, formulae, processes, designs, photographs, audio or videotape, CD ROMs, drawings, specifications, samples, programmes, materials, records, business plans, consumer research, analysis or experience) in whatever medium which is disclosed by or on behalf of either Party ("Discloser") to the other Party or to any person on behalf of that other Party ("Recipient") orally, pictorially, electronically, in writing, by demonstration, by viewing in machine readable form, or by any other means. For the avoidance of doubt the Supplier's "Confidential Information" shall include information of a commercial, financial or sensitive nature that is disclosed, marked or stated to be 'confidential' by the Supplier or on the Supplier's behalf to the Customer or to any person on the Customer's behalf as part of the Supplier's involvement in the supply of the Services. Customer "Confidential Information" shall include the information set out within any documents issued by the Customer or on the Customer's behalf and marked or stated to be 'confidential', known by the Recipient to be confidential, or which ought reasonably to be considered by the Recipient to be confidential (including any data referred or attached thereto). Confidential Information shall not include

Charges

Conditions

Contracting Authority

Confidential Information

information that: (i) was known by the Recipient without restriction as to use or disclosure prior to receiving such information from the Discloser; (ii) has become generally known or available to the public through no act or omission on the part of the Recipient; (iii) is rightfully acquired by the Recipient from a third party who has the right to disclose it and who provides it without restriction as to use or disclosure; or (iv) is independently developed by the Recipient without use of the Confidential Information of the Discloser:

Control

means the possession by a person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly;

Controller or Data Controller **CSR Policies**

has the meaning given to it in the Data Protection Laws;

means the Customer's policies, including, without limitation, anti-bribery and corruption, health and safety, modern slavery, the environmental and sustainable development, equality and diversity, and any similar or updated policy notified to the Supplier by the Customer from time to time, and "CSR Policy" shall mean any one of them;

CSR Laws

means Laws relating to corporate social responsibility issues (e.g. anti-bribery and corruption, health and safety, the environmental and sustainable development, equality and diversity), including but not limited to the Modern Slavery Act 2015, the Public Services (Social Value) Act 2012, the Public Contracts Regulations 2015 and Article 6 of the Energy Efficiency Directive 2012/27/EU, from time to time in force;

Customer

NHS England;

Customer Data

means 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, including any Customer Confidential Information, and which:

- a) are supplied to the Supplier by or on behalf of the Customer; or
- b) the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or
- c) any Personal Data for which the Customer is the Controller:

Data Protection Laws

means applicable legislation protecting the fundamental rights and freedoms of individuals, in respect of their right to privacy and the processing of their personal data, as amended from time to time, including Regulation (EU) 2016/679 as transposed into the United Kingdom's national law by the operation of section 3 of the EU (Withdrawal) Act 2018 (and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019;, 'the UK General Data Protection Regulation' ("UK GDPR") and the Data Protection Act 2018) and the Privacy and Electronic Communications Regulations 2003, together

with decisions, guidelines, guidance notes and codes of practice issued from time to time by courts, data protection authorities and other applicable Government authorities;

Data Protection Impact

Assessment

an assessment by the Customer of the impact of the envisaged processing on the protection of Personal Data;

Data Subject has the meaning given to it in the Data Protection Laws;

Data Subject Access Request

means a request made by a Data Subject in accordance with rights granted pursuant to the Data Protection Laws to access

his or her Personal Data:

Deliverables means anything, including any and all works or materials,

created or developed by or on behalf of the Supplier pursuant to the terms of this Agreement or otherwise arising out of or in

connection with the provision of the Services;

Dispute Notice

means as defined in clause 21.1;

DSP Toolkit

EIRs

means the data security and protection toolkit, an online self-assessment tool that allows organisations to measure their performance against the National Data Guardian's 10 data security standards and supports key requirements of the UK GDPR, which can be accessed from https://www.dsptoolkit.nhs.uk/, as may be amended or replaced by the Customer or the Department of Health and Social Care from time to time;

Social Gare from time to time

means the Environmental Information Regulations 2004 (SI

2004/3391);

Expiry Date means the date for expiry of the Agreement as set out in the

Award Letter;

Extension Period means the period, if any, as specified in the Award Letter, by

which the Term may be extended by the Customer; (not to

exceed [36 months] in total);

FOIA means the Freedom of Information Act 2000;

Force Majeure Event means any event outside the reasonable control of either

Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happeningsbeyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action bythat Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding, for the avoidance of doubt, (i) an epidemic or pandemic, ii) any industrial dispute relating to the Supplier or Supplier Staff or any other failure in the Supplier's or a Sub-contractor's supply chain; and iii) the withdrawal of the UK from the European Union and any related circumstances, events, changes or

requirements;

Foreground IP means any Intellectual Property Rights in the Deliverables;

Good Industry Practice shall mean in relation to any undertaking and any circumstances and in particular the provision of services to UK

Government bodies or organisation of similar standing, the

exercise of that degree of professionalism, skill, diligence, prudence, care, efficiency, timeliness, judgement and foresight which would reasonably and ordinarily be expected from a leading and expert internationally recognised company engaged in the same type of activity under the same or similar circumstance seeking to comply with its contractual obligations in full and complying with applicable Laws;

Information

has the meaning given under section 84 of the FOIA;

Intellectual Property Rights

means patents, rights to inventions, copyright and related rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world;

Key Personnel

means any persons specified as such in the Award Letter or otherwise notified as such by the Customer to the Supplier in ...

writing;

Laws

means any law, statute, subordinate legislation within the meaning ofsection 21(1) of the Interpretation Act 1978, bye law, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply. For the avoidance of doubt, this shall include any Laws arising out of or in connection with any withdrawal of the United Kingdom from the European Union;

Liability Cap

means the aggregate liability of the Supplier which shall not exceed the greater of: i) a sum equal to 125% of the Charges paid or payable under the Agreement to the Supplier; or ii) the value specified in the Award Letter:

NIS Regulations

means The Network and Information Systems Regulations 2018 and any guidelines, guidance notes, codes of practice and codes of conduct issued from time to time by a competent authority;

Party

means the Supplier or the Customer (as appropriate) and "Parties" shall mean both of them:

Personal Data

has the meaning given to it in the Data Protection Laws, and applies to personal data which is Processed by the Supplier or any Sub-contractor on behalf of the Customer or a Central Government Body pursuant to or in connection with this Agreement;

Personal Data Breach

means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed: Process has the meaning given to it in the Data Protection Laws, and

"Processed" and "Processing" shall be construed accordingly;

Processor or Data Processor has the meaning given to it in the Data Protection Laws;

Purchase Order Number means the Customer's unique number relating to the supply

of the Services;

Receipt means the physical or electronic arrival of the invoice at the

address specified above under the heading "Payment" or at any other address given by the Customer to the Supplier for

the submission of invoices from time to time:

Request for Information has the meaning set out in the FOIA or the Environmental

Information Regulations 2004 as relevant (where the meaning

set out for the term "request" shall apply);

Restricted Country means any country which is not subject of an adequacy

decision, as set out in Part 3, Schedule 21 of the DPA 2018;

Services means the services to be supplied by the Supplier to the

Customer under the Agreement as set out in the Specification;

Specification means the specification for the Services (including as to

quantity, description and quality) as specified in the Award

Letter and Annex 2;

Staff means all persons employed or engaged by a Party to

perform its obligations under this Agreement, including any contractors and subcontractors and persons employed or

engaged by such contractor or subcontractors;

Staff Vetting Procedures means vetting procedures that accord with Good Industry

Practice and, where specified in the Award Letter or otherwise requested by the Customer, the Customer's procedures for the vetting of personnel as provided to the Supplier from time to time, which shall always include but not be limited to a check through the Disclosure and Barring Service (DBS);

Standards means any standards reasonably applicable given the

Supplier's expertise and the Services provided, which shall always include as a minimum the DSP Toolkit or any

replacement of the same;

Standard Contractual Clauses means the standard contractual clauses for the transfer of

personal data to processors established in third countries which do not ensure an adequate level of protection as set out in Commission Decision C (2010) 593 and reference to the standard contractual clauses shall be to the clauses as updated, amended, replaced or superseded from time to time

by the Information Commissioner's Office;

Sub-contract means any contract or agreement (or proposed contract or

agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any

part thereof;

Sub-contractor means any third party with whom:

a) the Supplier enters into a Sub-contract; or

b) a third party under limb (a) above enters into a Subcontract, or the servants or agents of that third party;

Sub-Processor has the meaning given to it in clause 12.4.7;

Supplier means the person named as Supplier in the Award Letter;

Term means as defined in clause 4.1;
Transparency Information means as defined in clause 13.1;
Transparency Report means as defined in clause 13.2;

VAT means value added tax in accordance with the provisions of

the Value Added Tax Act 1994; and

Working Day means a day (other than a Saturday or Sunday) on which

banks are open for business in the City of London.

1.2. In this Agreement, unless the context otherwise requires:

- 1.2.1. references to numbered clauses are references to the relevant clause in these Conditions;
- 1.2.2. any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.2.3. the headings to the clauses of this Agreement are for information only and do not affect the interpretation of the Agreement;
- 1.2.4. any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- 1.2.5. the word 'including' shall be understood as meaning 'including without limitation'.

2. Basis of Agreement

- 2.1. The return or submission by the Supplier of a validly executed Agreement constitutes an offer by the Supplier to provide the Services subject to and in accordance with this Agreement.
- 2.2. The offer detailed in clause 2.1 shall be deemed to be accepted by the Customer on valid execution by the Customer of the Agreement.

3. Supply of Services

- 3.1. In consideration of the Customer's agreement to pay the Charges, the Supplier shall supply the Services to the Customer for the Term subject to and in accordance with this Agreement.
- 3.2. In supplying the Services, the Supplier shall:
 - 3.2.1. co-operate with the Customer in all matters relating to the Services and comply with all the Customer's instructions;
 - 3.2.2. perform the Services with all reasonable care, skill and diligence in accordance with Good Industry Practice in the Supplier's industry, profession or trade:
 - 3.2.3. use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;
 - 3.2.4. ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
 - 3.2.5. comply with all applicable Standards, Laws and guidance;

- 3.2.6. provide all equipment, tools and vehicles and other items as are required to provide the Services: and
- 3.2.7. perform the Services promptly and in any event within any time limits as may be set out in the Agreement.
- 3.3. The Customer may by written notice to the Supplier at any time request a variation to the Specification of the Services. In the event that the Supplier agrees to any variation to the Specification of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Customer and the Supplier.

4. Term

- 4.1. The Agreement shall take effect on the date specified in Award Letter and shall expire on the later of:
 - 4.1.1. the Expiry Date; or
 - 4.1.2. the end date of any Extension Period applicable in accordance with clause 4.2; subject to any early termination in accordance with this Agreement (the "**Term**").
- 4.2. The Customer may, if specified in the Award Letter, extend the Term of the Agreement for one or more Extension Periods (up to a maximum Term of 36 months) by giving not less than 10 Working Days' notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.

5. Charges, Payment and Recovery of Sums Due

- 5.1. The Charges for the Services shall be as set out in Annex 3 and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 5.2. The Supplier shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 5.3. In consideration of the supply of the Services by the Supplier, the Customer shall pay the Supplier the invoiced amounts no later than 30 days after Receipt of a valid and undisputed invoice which includes a valid Purchase Order Number. The Customer may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 5.4. All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the Receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.
- 5.5. If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate this Agreement in accordance with clause 17.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 20.
- 5.6. If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.7. If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Customer. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

6. Premises and Equipment

- 6.1. If necessary, the Customer shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services, such access to be non-exclusive and revocable. All equipment, tools and vehicles brought onto the Customer's premises by the Supplier or the Staff shall be at the Supplier's risk.
- 6.2. If the Supplier supplies all or any of the Services at or from the Customer's premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate the Customer's premises, remove the Supplier's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Customer's premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Customer's premises or any objects contained on the Customer's premises which is caused by the Supplier or any Staff, other than fair wear and tear.
- 6.3. Any access to the Customer's premises and any labour and equipment that may be provided by the Customer in connection with provision of Services shall be provided without acceptance by the Customer of any liability in respect of any actions, claims, costs and expenses incurred by third parties for any loss or damages to the extent that such loss or damage is not attributable to the negligence or other wrongful act of the Customer or its servant or agent. The Supplier shall indemnify the Customer in respect of any actions, suits, claims, demands, losses, charges, costs and expenses, 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 provision of Services to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of his sub-Suppliers.
- 6.4. If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Customer may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 6.5. The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer's premises the Supplier shall, and shall procure that all Staff shall, comply with all the Customer's security requirements.
- 6.6. Where all or any of the Services are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Customer in writing.
- 6.7. Without prejudice to clause 3.2.6, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.
- 6.8. The Supplier shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Customer is notified otherwise in writing within 5 Working Days.

7. Staff and Key Personnel

- 7.1. The Supplier shall employ sufficient Staff to ensure that it complies with its obligations under this Agreement. This will include, but not be limited to, the Supplier providing a sufficient reserve of trained and competent Staff to provide the Services during Staff holidays or absence.
- 7.2. The Supplier shall use reasonable endeavours to ensure the continuity of all Staff in the provision of the Services. The redeployment and/or replacement of any Key Personnel by the Supplier shall be subject to the prior written approval of the Customer, such approval not to be unreasonably withheld or delayed. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 7.3. If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:

- 7.3.1. refuse admission to the relevant person(s) to the Customer's premises;
- 7.3.2. direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
- 7.3.3. require that the Supplier promptly replaces any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,

and the Supplier shall comply with any such notice.

- 7.4. The Supplier shall:
 - 7.4.1. ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
 - 7.4.2. if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and
 - 7.4.3. procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.
- 7.5. The Supplier shall agree on a case by case basis which Supplier Staff roles require specific government National Security Vetting clearances (such as 'SC') including system administrators with privileged access to IT systems which store or process Customer Data.

8. Assignment and sub-contracting

- 8.1. The Supplier shall not, without the written consent of the Customer, assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its Sub-contractors as though those acts and omissions were its own.
- 8.2. Where the Supplier enters into a Sub-contract for the purpose of performing its obligations under the Agreement, it shall ensure that provisions are included in such Sub-contract which:
 - 8.2.1.contain at least equivalent obligations as set out in the Agreement in relation to the performance of the Services to the extent relevant to such Sub-contract:
 - 8.2.2.contain at least equivalent obligations as set out in the Agreement in respect of confidentiality, information security, data protection, Intellectual Property Rights and compliance with Laws;
 - 8.2.3.contain a prohibition on the Sub-contractor sub-contracting, assigning or novating any of its rights or obligations under such Sub-contract without the prior written approval of the Customer (such approval not to be unreasonably withheld or delayed):
 - 8.2.4.contain a right for the Customer to take an assignment or novation of the Sub-contract (or part of it) upon expiry or earlier termination of the Agreement; and
 - 8.2.5. require payment to be made of all sums due by the Supplier to the Sub-contractor within a specified period not exceeding 30 days from the Receipt of a valid invoice.
- 8.3. Any authority given by the Customer for the Supplier to Sub-contract any of its obligations under this Agreement shall not impose any duty on the Customer to enquire as to the competency of any authorised Sub-contractor. The Supplier shall ensure that any authorised Sub-contractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such Sub-contractor are fully in accordance with the Agreement.
- 8.4. Where the Customer has consented to the placing of Sub-contracts, the Supplier shall, at the request of the Customer, send copies of each Sub-contract, to the Customer as soon as is reasonably practicable.

8.5. The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

9. Intellectual Property Rights

- 9.1. All Foreground IP shall vest in the Customer absolutely, and the Supplier hereby assigns to the Customer, absolutely with full title guarantee (and free from all third party rights), any and all of its rights, title and interest in and to all the existing and future Foreground IP, to the fullest extent permitted by law.
- 9.2. The Supplier hereby grants the Customer a perpetual, royalty-free, irrevocable, worldwide, non-exclusive licence (with a right freely to sub-license to any third party) to use:
 - 9.2.1.all the present and future Background IP that is owned by the Supplier and/or the use of which the Supplier is able to license, including any modifications to or derivative versions of any such Background IP: and
 - 9.2.2.all other relevant Intellectual Property Rights owned by the Supplier and/or the use of which the Supplier is able to license;

to the extent necessary to fulfil the Supplier's obligations under this Agreement and/or which the Customer reasonably requires in order to exercise its rights under and to take the full benefit of the Agreement including the Services provided, including, without limitation, to receive, use, re-use, adapt, modify, reproduce, exploit, produce derivative versions of, supply and/or publish (including as open source software) or deal in any other way with the Deliverables.

- 9.3. Each Party undertakes that it shall promptly execute all documents, make all applications, give all assistance and do or procure the doing of all acts and things as may be necessary or desirable to vest all the Foreground IP in, and to register it in, the name of the Customer and/or to give full effect to the licences granted under this clause 9.
- 9.4. The Supplier:
 - 9.4.1.warrants that the receipt, use, re-use, reproduction, exploitation, supply and/or publication (including as open source software) of the Services or Deliverables by the Customer and its permitted sub-licensees shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
 - 9.4.2. shall indemnify, and keep indemnified, the Customer in full against all costs, expenses, damages and losses (whether direct or indirect), including but not limited to any interest, penalties, and legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use, re-use, reproduction, exploitation, supply and/or publication (including as open source software) of the Services or Deliverables.
- 9.5. All Background IP is and shall remain the exclusive property of the Party owning it (or, where applicable, the third party from whom that Party's right to use the Background IP has derived) and nothing in this Agreement shall operate to transfer any Background IP of one Party to the other.
- 9.6. The Customer hereby grants to the Supplier, for the Term of this Agreement, a non-exclusive, royalty-free, non-transferable licence to use any Foreground IP or any Background IP that is owned by the Customer and/or the use of which the Customer is able to license, to the extent such use is necessary for the purpose of the Supplier performing its obligations under this Agreement and/or providing the Services and Deliverables.
- 9.7. The Supplier shall, unless otherwise stated in Annex 2:
 - 9.7.1.identify any third-party licences for software or other Intellectual Property Rights which are required for the receipt and use of the Services or the Deliverables by the Customer;
 - 9.7.2.procure that the third party owner of such software or Intellectual Property Rights grants to the Customer a non-exclusive licence or, if itself a licensee of those rights, shall grant

to the Customer an authorised sub-licence, to use, reproduce, modify, develop and maintain the software and Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Customer to sub-license, transfer, novate or assign to any other Contracting Authority or to any other third party supplying goods and/or services to the Customer; and

9.7.3. pay any applicable fees for any such licence.

10. Governance and Records

- 10.1. The Supplier shall:
 - 10.1.1. attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and
 - 10.1.2. submit progress reports to the Customer at the times and in the format specified by the Customer.
- 10.2. The Supplier shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Customer. The Supplier shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.
- 10.3. The Supplier shall not charge the Customer for any costs incurred complying with the governance requirements of this Agreement.

11. Confidentiality

- 11.1. Subject to clause 11.2, each Party shall:
 - 11.1.1. treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
 - 11.1.2. not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.
- 11.2. Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:
 - 11.2.1. where disclosure is required by applicable law (including but not limited to FOIA and EIR) or by a court of competent jurisdiction;
 - 11.2.2. to its auditors or for the purposes of regulatory requirements;
 - 11.2.3. on a confidential basis, to its professional advisers;
 - 11.2.4. to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
 - 11.2.5. where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Supplier's confidentiality obligations under the Agreement; and
 - 11.2.6. where the receiving Party is the Customer:
 - a) on a confidential basis to the employees, agents, consultants and contractors of the Customer:
 - b) on a confidential basis to any other Central Government Body, any Contracting Authority, any successor body to a Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;

- c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
- d) in accordance with clause 13,
- and for the purposes of the foregoing, references to disclosure "on a confidential basis" shall mean disclosure subject to a confidentiality agreement or arrangement.
- 11.3. The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

12. Protection of Personal Data and Security of Data

- 12.1. When handling Customer Data (whether or not Personal Data), the Supplier shall ensure the security of the data is maintained in line with the security requirements of the Customer as notified to the Supplier from time to time.
- 12.2. Where any Personal Data are Processed in connection with the exercise of the Parties' rights and obligations under this Agreement, the Parties acknowledge that the Supplier shall be acting as a Processor on behalf of the Customer as the Controller. The only Processing that the Supplier is authorised to do is listed in the Award Letter and may not be determined by the Supplier.
- 12.3. The Supplier shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Customer, include:
 - 12.3.1. a systematic description of the envisaged Processing operations and the purpose of the Processing;
 - 12.3.2. an assessment of the necessity and proportionality of the Processing operations in relation to the Services;
 - 12.3.3. an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 12.3.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 12.4. The Supplier shall, and shall procure that its agents, Sub-Processors and employees shall:
 - 12.4.1. Process the Personal Data only in accordance with instructions from the Customer (which may be specific instructions or instructions of a general nature as set out in this Agreement, or as otherwise notified by the Customer to the Supplier in writing from time to time) and set out in the table in section 6 of the Award Letter, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Customer before Processing the Personal Data unless prohibited by Law;
 - 12.4.2. notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Laws;
 - 12.4.3. ensure that at all times it has in place appropriate technical and organisational measures (which are consistent with Article 32 of the UK GDPR) which the Customer may reasonably reject (but failure to reject shall not amount to approval by the Customer of the adequacy of the technical and organisational measures), to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data, such measures to ensure a level of security commensurate with the risks associated with the Processing having taken account of the:
 - a) nature of the data to be protected;
 - b) harm that might result from a Personal Data Breach;
 - c) state of technological development; and
 - d) cost of implementing any measures;
 - 12.4.4. notify the Customer immediately upon becoming aware of a Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the Customer with sufficient information to meet any obligations to report a Personal Data Breach under the Data Protection Laws. Such notification shall as a minimum:

describe the nature of the Personal Data Breach, the categories and numbers of Data Subjects concerned, and the categories and numbers of Personal Data records concerned:

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

describe the likely consequences of the Personal Data Breach; and

describe the measures taken or proposed to be taken to address the Personal Data Breach:

- 12.4.5. co-operate with the Customer and take such reasonable steps as are directed by the Customer to assist in the investigation, mitigation and remediation of a Personal Data Breach:
- 12.4.6. not disclose the Personal Data to any Supplier Staff unless necessary for the provision of the Services:
- 12.4.7. other than where specifically authorised under this Agreement, not appoint any third party sub-contractor to Process the Personal Data ("**Sub-Processor**") without the prior written consent of the Customer. In all cases where a Sub-Processor is appointed:
 - 1) the contract between the Supplier and the Sub-Processor shall include terms which are substantially the same as those set out in this clause 12;
 - 2) the Supplier shall provide the Customer with such information regarding the Sub-Processor as the Customer may reasonably require;
 - 3) the Supplier shall remain fully liable to the Customer for any failure by a Sub-Processor to fulfil its obligations in relation to the Processing of any Personal Data; and
 - 4) the use of the Sub-Processor shall be otherwise in accordance with clause 12.5;
- 12.4.8. take reasonable steps to ensure the reliability and integrity of any Supplier Staff who have access to the Personal Data, ensuring in each case that access is strictly limited to those individuals who need to access the relevant Personal Data, as strictly necessary to perform the Services in the context of that individual's duties to the Supplier, and ensure that the Supplier Staff:
 - a) are aware of and comply with the Supplier's obligations under this clause 12 together with any obligations pertaining to confidentiality or data protection which are set out in this Agreement;
 - b) are subject to confidentiality undertakings or other contractual or professional or statutory obligations of confidentiality;
 - c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
 - d) have undergone adequate training in the use, care, protection and handling of Personal Data;
- 12.4.9. notify the Customer immediately if it receives:
 - a) from a Data Subject (or third party on their behalf):
 - b) a Data Subject Access Request (or purported Data Subject Access Request);
 - c) a request to rectify any inaccurate Personal Data;
 - d) a request to have any Personal Data erased or blocked;
 - e) a request to restrict the Processing of any Personal Data;
 - f) a request to obtain a portable copy of Personal Data, or to transfer such a copy to any third party; or
 - g) an objection to any Processing of Personal Data;
 - h) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data under this Agreement;
 - i) 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

j) any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws:

(each a "Relevant Communication").

- 12.4.10. taking into account the nature of the Processing, provide the Customer with full cooperation and assistance (within the timescales reasonably required by the Customer, and in any case within sufficient time for the Customer to comply with any relevant timescales prescribed by the Data Protection Laws) in relation to any Relevant Communications (whether received by the Supplier or by the Customer directly) including by implementing such technical and organisational measures as may be reasonably required by the Customer and by promptly providing:
 - the Customer with full details and copies of the Relevant Communication (where received by the Supplier);
 - the Customer, on request by the Customer, with any Personal Data it holds in relation to a Data Subject; and
 - assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office;
- 12.4.11. allow for audits (including inspections) of its data Processing activity by the Customer or the Customer's mandated Auditor, and if requested by the Customer, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this clause 12 and provide to the Customer copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.
- 12.4.12. cease Processing the Personal Data immediately upon the earlier of the (i) termination or expiry of this Agreement, or (ii) the cessation of the Services, and as soon as reasonably practicable thereafter, at the Customer's option, either return, or securely and irrevocably delete from its systems (so that such Personal Data cannot be recovered or reconstructed), the Personal Data and any copies of it or of the information it contains; and
- 12.4.13. designate a data protection officer if required by the Data Protection Laws.
- 12.5. The Supplier shall not Process or otherwise transfer, or permit the transfer, of any Personal Data in or to any Restricted Country without obtaining the prior written consent of the Customer (unless the transfer is required by EU or member state law to which the Supplier is subject, and if this is the case then the Supplier shall inform the Customer of that requirement before Processing the Personal Data, unless a Law prohibits such information being provided on important grounds of public interest).
- 12.6. In respect of any Processing in, or transfer of Personal Data to, any Restricted Country permitted in accordance with clause 12.5, the Supplier shall, when requested by the Customer, promptly enter into an agreement with the Customer including or on such provisions as the Standard Contractual Clauses and/or such variation as a regulator or the Customer might require which terms shall, in the event of any conflict, take precedence over those in this clause 12, and the Supplier shall comply with any reasonable instructions notified to it in advance by the Customer with respect to the transfer of the Personal Data:
- 12.7. Subject to the Customer providing the Supplier with all information reasonably required by the Supplier to comply with this clause 12.6, the Supplier shall create and maintain a register setting out:
 - 12.7.1. the types of Personal Data and categories of Data Subject whose Personal Data are Processed during the provision of the Services; and
 - 12.7.2. a general description of the technical and organisational security measures adopted by the Supplier to protect the Personal Data in accordance with clause 12.4.3.
- 12.8. The Supplier shall use its reasonable endeavours to assist the Customer to comply with any obligations under the Data Protection Laws and shall not perform its obligations under this

- Agreement in such a way as to cause the Customer to breach any of the Customer's obligations under the Data Protection Laws to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.
- 12.9. Both the Customer and the Supplier shall comply with their respective obligations under the UK GDPR in relation to this Agreement, including by adhering to any relevant codes of conduct published pursuant to Article 40 of the UK GDPR.
- 12.10. Notwithstanding clause 22.3 the Customer may, at anytime on not less than 30 Working Days' notice, revise this clause 12 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 Agreement).
- 12.11. Both the Customer and the Supplier shall comply with their respective obligations under any relevant law implementing or otherwise giving effect to the NIS Regulations. In response to the obligations created by any law implementing or otherwise giving effect to the NIS Regulations, the Customer may elect to produce a report setting out the steps to be reasonably followed by both parties in relation to their compliance with the NIS Regulations in the context of the Services, and the Supplier shall comply with the terms of any such report.
- 12.12. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Supplier amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 12.13. If following the date of this Agreement:
 - 12.13.1. any codes of practice, codes of conduct, regulatory guidance, standard clauses and any other related laws arising from the UK GDPR or from the NIS Regulations are published; or
 - 12.13.2. the UK ceases to be a Member State of the European Union, then the Customer may require the Supplier to take such further reasonable actions, or enter into such further contractual terms, in each case as necessary to take account of these developments.
- 12.14. The Supplier shall at all times during and after the expiry of the Agreement, indemnify the Customer and keep the Customer indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Customer arising from any breach of the Supplier's obligations under this clause 12.

13. Transparency and Freedom of Information

- 13.1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, and which shall be determined by the Customer, the content of this Agreement, including any changes to this Agreement agreed from time to time, (the "Transparency Information") is not Confidential Information.
- 13.2. Notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for the Customer to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) ("Transparency Report"). The Customer shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 13.3. The Supplier shall assist and co-operate with the Customer to enable the Customer to publish the Transparency Information, including the preparation of the Transparency Reports.
- 13.4. If the Customer believes that publication of any element of the Transparency Information would be contrary to the public interest, the Customer shall be entitled to exclude such information from publication. The Customer acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Customer acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.

- 13.5. The Customer shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- 13.6. The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Customer on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Customer may disclose such information under the FOIA and the EIRs and may publish such Information. The Supplier shall provide to the Customer within 5 Working Days (or such other period as the Customer may reasonably specify) any such Information requested by the Customer.
- 13.7. The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
 - 13.7.1. provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and EIRs;
 - 13.7.2. transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - 13.7.3. provide the Customer with a copy of all Information held on behalf of the Customer which is requested in a Request for Information and which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
 - 13.7.4. not respond directly to a Request for Information addressed to the Customer unless authorised in writing to do so by the Customer.
- 13.8. The Supplier acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Supplier. The Customer shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Customer shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

14. Liability

- 14.1. The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.
- 14.2. Subject always to clauses 14.4 and 14.5:
 - 14.2.1. the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortuous or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed the Liability Cap; and
 - 14.2.2. except in the case of claims arising under clauses 9.4, 12.14 and 19.3, in no event shall either Party be liable to the other Party for any:
 - a) loss of profits;
 - b) loss of business;
 - c) loss of revenue:
 - d) loss of or damage to goodwill; and/or
 - e) any indirect, special or consequential loss or damage.
- 14.3. The Customer's maximum aggregate liability under this Agreement shall in no event exceed a sum equal to 100% of the Charges paid or payable under the Agreement to the Supplier.

- 14.4. Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:
 - 14.4.1. death or personal injury caused by its negligence or that of its Staff;
 - 14.4.2. fraud or fraudulent misrepresentation by it or that of its Staff; or
 - 14.4.3. any other matter which, by law, may not be excluded or limited.
- 14.5. The Supplier's liability under the indemnities in clauses 9.3, 12.14 and 19.3 shall be unlimited.
- 14.6. Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which that Party is entitled to bring a claim against the other pursuant to the Agreement.

15. Insurance

15.1. During the Term and for a period of 12 months thereafter, the Supplier shall maintain in force, and shall procure that any Sub-contractors maintain in force, with a reputable insurance company insurance sufficient to cover the liabilities that may arise under or in connection with this Agreement, and shall, on the Customer's request, produce both the insurance certificates giving details of cover and the receipts for the current year's premium in respect of each insurance.

16. Force Majeure

Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from a Force Majeure Event. Each Party shall promptly notify the other Party in writing when a Force Majeure Event causes a delay or failure in performance and when it ceases to do so. If a Force Majeure Event continues for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

17. Termination

- 17.1. The Customer may terminate the Agreement at any time by providing notice in writing to the Supplier to take effect on any date falling at least 30 days (or, if the Agreement is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.
- 17.2. Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:
 - 17.2.1. (without prejudice to clause 17.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;
 - 17.2.2. repeatedly breaches any of the terms and conditions of the Agreement 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 and conditions of the Agreement;
 - 17.2.3. is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied:
 - 17.2.4. undergoes a change of Control without the prior written consent of the Customer. The Customer shall be entitled to withhold such consent if, in the reasonable opinion of the Customer, the proposed change of Control will have a material impact on the performance of the Agreement or the reputation of the Customer;
 - 17.2.5. breaches any of the provisions of clauses 7.2, 11, 12, 13 and 18; or
 - 17.2.6. becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 17.2.6) in consequence of debt in any jurisdiction.
- 17.3. The Supplier shall notify the Customer as soon as practicable of any change of Control as referred to in clause 17.2.4 or any potential such change of Control.

- 17.4. The Supplier may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.
- 17.5. Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6, 6.2, 6.7, 6.8, 0, 9, 10.2, 11, 12, 13, 17.6, 18.4.3, 19.3, 20 and 22.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.
- 17.6. Upon termination or expiry of the Agreement, the Supplier shall:
 - 17.6.1. give all reasonable assistance to the Customer and any incoming supplier of the Services; and
 - 17.6.2. return all requested documents, information and data to the Customer as soon as reasonably practicable.

18. Compliance

- 18.1. The Supplier shall, and shall procure that its Sub-contractors and any person under its control, comply with all the Customer policies specified in the Award Letter.
- 18.2. The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Supplier in the performance of its obligations under the Agreement.
- 18.3. The Supplier shall:
 - 18.3.1. comply with all the Customer's health and safety measures while on the Customer's premises; and
 - 18.3.2. notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 18.4. The Supplier shall:
 - 18.4.1. comply, and procure that all Staff comply with all CSR Laws;
 - 18.4.2. require its Sub-contractors and any person under its control, to comply with all CSR Laws;
 - 18.4.3. adopt, and procure that its Sub-contractors and any person under its control adopt, written corporate and social responsibility policies that set out values for relevant activity and behaviour equivalent to those set out in the CSR Policies (including, without limitation, addressing the impact on employees, clients, stakeholders, communities and the environment of the Supplier's business activities); and
 - 18.4.4. notify the Customer in the event that the Supplier's or its Sub-contractors' corporate and social responsibility policies conflict with, or do not cover the same subject matter in an equivalent level of detail as is in, the CSR Policies.
- 18.5. The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of section 182 of the Finance Act 1989.
- 18.6. The Customer may, where it deems appropriate (including but not limited to circumstances where a successor or related project involves a procurement process governed by the Public Contracts Regulations 2015), require the Supplier to put in place steps to ensure due probity including the erection of ethical walls and obligations to provide specific information. In such circumstances, the Supplier shall comply with any such measures reasonably proposed by the Customer.

19. Prevention of Fraud and Corruption

19.1. The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to

- the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
- 19.2. The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 19.3. If the Supplier or the Staff engages in conduct prohibited by clause 19.1 or commits fraud in relation to the Agreement or any other contract with the any Contracting Authority (including the Customer) the Customer may:
 - 19.3.1. terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
 - 19.3.2. recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

20. IR35

- 20.1. This Agreement constitutes a contract for the provision of goods and/or services. Where the Supplier (or its Sub-Contractors) have included one or more people that are non-permanent members of staff that are not on the Supplier's (or its Sub-Contractors) payroll ("Contractor(s)") to fulfil its service obligations under this Agreement, the Supplier shall be fully responsible for and shall indemnify the Customer for:
 - 20.1.1. any proceedings, claims or demands by any third party (including specifically, but without limitation, HMRC and any successor, equivalent or related body pursuant to the IR35 legislation and/or any of the provisions of Income Regulations);
 - 20.1.2. any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the services or any payment or benefit received by the Contractor in respect of the services, where such recovery is not prohibited by law; and all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Customer in connection with or in consequence of any such liability, deduction, contribution, assessment or claim.
- 20.2. The Customer may at its option satisfy such indemnity (in whole or in part) by way of deduction from payments due to the Supplier.
- 20.3. The Supplier warrants that it is not, nor will it prior to the cessation of this Agreement, become a managed service company, within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003.
- 20.4. The Supplier shall monitor the provision of the services and notify the Customer where it considers that the activity of the Customer may impact the Suppliers' (or its Sub-Contractors) IR35 assessment in relation to the Contractors.

21. Dispute Resolution

- 21.1. If there is a dispute in relation to this Agreement, the Party raising the dispute shall serve a notice on the other Party in writing ("Dispute Notice") setting out the details of the dispute. The Parties shall then attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 21.2. If the dispute cannot be resolved by the Parties within one month of the date of the Dispute Notice (being the date it was received) either Party may exercise any remedy it has under applicable law. For the avoidance of doubt, neither Party shall be prevented by this Dispute Resolution process from commencing court proceedings more quickly if it is necessary to comply with a limitation period or if it is necessary to seek an urgent remedy.

21.3. The obligations of the Parties under this Agreement shall not cease, or be suspended or delayed by the reference of a dispute to any dispute resolution process and the Supplier shall, and shall procure that the Staff shall comply fully with the requirements of this Agreement at all times.

22. General

- 22.1. Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 22.2. A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 22.3. Subject to clause 12.10 the Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 22.4. The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 22.5. Any waiver or relaxation, either partly or wholly of any of the terms and conditions of the Agreement, shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 22.6. The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 22.7. Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 22.8. If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

23. Notices

- 23.1. Any notice to be given under the Agreement shall be in writing and shall include the Agreement reference and title. All notices must be served by email, and, subject to clause 23.2, may in addition be served by personal delivery or first class recorded post. All notices must be served using the addresses of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause.
- 23.2. Notices under clauses 16 (Force Majeure) and 17 (Termination) must be served by email and personal delivery or recorded delivery in the manner set out in clause 23.1.
- 23.3. Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.

24. Security of Supplier Staff

24.1. Supplier Staff shall be subject to pre-employment checks that include, as a minimum: verification of identity, employment history, unspent criminal convictions and right to work, as detailed in the

- HMG Baseline Personnel Security Standard (https://www.gov.uk/government/publications/government-baseline-personnel-security-standard), as may be amended or replaced by the Government from time to time.
- 24.2. The Supplier shall agree on a case by case basis which Supplier Staff roles which require specific government National Security Vetting clearances (such as 'SC') including system administrators with privileged access to IT systems which store or process Customer Data.
- 24.3. The Supplier shall prevent Supplier Staff who have not yet received or are unable to obtain the security clearances required by this clause from accessing systems which store, process, or are used to manage Customer Data, or from accessing Customer premises, except where agreed with the Customer in writing. All Supplier Staff that have the ability to access Customer Data or systems holding Customer Data shall undergo regular training on secure information management principles. Unless otherwise agreed with the Customer in writing, this training must be undertaken annually. Where Supplier Staff are granted the ability to access Customer Data or systems holding Customer Data, those Supplier Staff shall be granted only those permissions necessary for them to carry out their duties. When staff no longer need such access or leave the organisation, their access rights shall be revoked within one (1) Working Day.

25. Publicity and Branding

- 25.1. The Supplier shall not:
 - 25.1.1. make any press announcements or publicise this Agreement or its contents in any way; or 25.1.2. use the Customer's name or brand in any promotion or marketing or announcement of orders,
 - without the prior written consent of the Customer.
- 25.2. Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

26. Governing Law and Jurisdiction

26.1. The validity, construction and performance of the Agreement, and all contractual and non contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts.

27. Execution and Counterparts

- 27.1. This Agreement may be executed in any number of counterparts (including by electronic transmission), each of which when executed shall constitute an original but all counterparts together shall constitute one and the same instrument.
- 27.2. Execution of this Agreement may be carried out in accordance with the Electronic Identification and Trust Services for Electronic Transactions Regulations 2016 (SI 2016/696) and the Electronic Communications Act 2000. In the event each Party agrees to sign this Agreement by electronic signature (whatever form the electronic signature takes) it is confirmed that this method of signature is as conclusive of each Party's intention to be bound by this Agreement as if signed by each Party's manuscript signature. In such situation, this Agreement shall be formed on the date on which both Parties have electronically signed the Agreement as recorded in the Customer's electronic contract management system.

Annex 2 – Specification and Solution

The Specification is as set out in the following document:



The Supplier's Tender Questionnaire Response is as set out in the following document:



Annex 3 - Charges

The Charges to complete the Deliverables are £23,550 on a "fixed scope, fixed fee" basis. The Supplier will be entitled to invoice as per the following payment schedule upon confirmation from the Customer that the Deliverables have been supplied to the Customer's reasonable satisfaction, such confirmation not to be unreasonably withheld or delayed.

The payment schedule is:

Stage	Deliverables	Payment due
Milestone 1	Project documentation including project outline and delivery plan 1st draft of report at 25% completion Workshop 1 held	
Milestone 2	Customer's acceptance of all Deliverables including final report and supporting slides	

REQUEST FOR PROPOSAL FOR CONNECTIVITY HUB – Smart Networks

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1. GLOSSARY

- 1.1 In this Request For Proposal the following words and phrases have the following meanings:
 - "Authorised Contact" means the single point of contact within NHS England authorised to send and receive communications related to this Procurement;
 - "Authority" means NHS England, 7&8 Wellington Place, Leeds, LS1 4AP;
 - "Bidder" means a company that submits a Tender in response to the RFP;
 - "Customer" means NHS England;
 - "Marking Scheme" means the range of marks that may be given to a Bidder depending on the quality of its response to a question;
 - "Procurement" means the process used to establish a contract that facilitates the provision of the Connectivity Hub Wi-Fi and Location Services RFP;
 - "Request For Proposal" or "RFP" means this document and all related documents published by the Authority in relation to this Procurement
 - "Tender Questionnaire" means the questionnaire set out in Annex 1 of Appendix C of this RFP;
 - "Tender Questionnaire Response" means the Bidder's response to the Tender Questionnaire;
 - "Regulations" the Public Contract Regulations 2015;
 - "Services" means the services set out in Appendix B of this RFP;
 - "Supplier" means the Bidder with whom the Authority has concluded the Contract;
 - "Tender" means the Bidder's formal offer in response to the RFP;
 - "Tender Clarifications Deadline" means the time and date set out in paragraph 4 for the latest submission of clarification questions;
 - "Tender Submission Deadline" means the time and date set out in paragraph 4 for the latest uploading of Tenders.

2. INTRODUCTION

- 2.1 This Procurement relates to the award of a Connectivity Hub Smart Networks contract to a sole Supplier.
- 2.2 This RFP contains the information and instructions the Bidder needs to participate in this Procurement.
- 2.3 The Authorised Contact for this Procurement is at the Authorised Contact for the Authorised Cont

3. OVERVIEW OF RFP

- 3.1 The following appendices accompany this RFP:
 - 3.1.1 Appendix A Terms of Participation
 - Sets out the terms of participation which apply to the Bidder and the Authority during this Procurement.
 - 3.1.2 Appendix B Specification
 - A detailed description of the Services that the Supplier will be required to supply to the Customer.

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3.1.3 Appendix C – Procurement Questionnaire

The questionnaire created by the Authority, is used to test the suitability of the Bidders to meet necessary criteria in order to provide the required Services.

4. PROCUREMENT TIMETABLE

- 4.1 The timetable for this Procurement is set out in the table below.
- 4.2 The Authority may change this timetable at any time. Bidders will be informed if changes to this timetable are necessary.
- 4.3 The Authority must receive all Tenders before the Tender Submission Deadline.

Tenders received on or after the Tender Submission Deadline may be rejected by the Authority to ensure that all Bidders are treated fairly. The decision whether to reject a Tender received after the Tender Submission Deadline is made entirely at the Authority's discretion.

ACTIVITY	DATE & TIME
Publication of the RFP	22 January 2024
Tender Clarifications Deadline	26 January 2024 17:00
Deadline for the publication of responses to Tender Clarifications questions	31 January 2024 17:00
Tender Submission Deadline	16 February 2024 12:00
Evaluations	19 February 2024
Final decision	24 February 2024

5. QUESTIONS AND CLARIFICATIONS

- 5.1 Bidders may raise questions or seek clarification regarding any aspect of this Procurement at any time prior to the Tender Clarifications Deadline.
- 5.2 Bidders must submit any clarifications to the Authorised Contact only.
- 5.3 Other than the process described in this section 5, the Authority will not enter into discussions regarding the requirements of the RFP with Bidders.
- 5.4 To ensure that all Bidders have equal access to information regarding this Procurement, the Authority will publish all its responses to questions raised by Bidders on an anonymous basis.
- 5.5 Bidders should indicate if a query is of a commercially sensitive nature where disclosure of such query and the answer would or would be likely to prejudice its commercial interests. However, if the Authority at its sole discretion does not either; consider the query to be of a commercially confidential nature or one which all Bidders would potentially benefit from seeing both the query and the Authority's response, The Authority will:
 - 5.5.1 Invite the Bidder submitting the query to either declassify the query and allow the query along with the Authority's response to be circulated to all Bidders; or
 - 5.5.2 request the Bidder, if it still considers the query to be of a commercially confidential nature, to withdraw the query prior to the end of the closing date and time for Bidder clarifications.
- 5.6 Responses will be published in a Questions and Answers document to all Bidders.

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5.7 At times the Authority may issue communications to the email address for the Bidder contact provided in your Tender Questionnaire, therefore please ensure that this mailbox is reviewed on a regular basis.

6. PRICE

6.1 The format of the pricing information required and how that information is taken into account in the evaluation are provided in Appendix C.

7. SUBMITTING A TENDER

- 7.1 Bidders should submit their completed Tender Questionnaire by email to the Authorised Contact.
- 7.2 A Tender must remain valid and capable of acceptance by the Authority for a period of 90 calendar days following the Tender Submission Deadline. A Tender with a shorter validity period may be rejected by the Authority at its sole discretion.

8. TENDER EVALUATION

- 8.1 The contract will be awarded on the basis of most economically advantageous tender ("MEAT").
- 8.2 Tenders will be evaluated in line with the Marking Scheme set out in Appendix C.
- 8.3 The total score available for each question set out in Appendix C is as follows:

QUESTION	TOTAL SCORE AVAILABLE
Company information	Information Only
Bidder Contact	Information Only
Mandatory Questions	Pass / Fail
Quality Questions	
Price	
TOTAL	

- 8.4 As part of the evaluation process and at the discretion of the Authority, Bidders may be required to present their Tender to the Authority evaluation team and to address any queries that team may raise. The details of the presentation will be clearly defined by the Authority and notified to the Bidders.
- 8.5 Clarification questions may be raised by either party during any presentation and/or on the working day immediately following the presentation, the responses to which may be used by the Authority to inform the scoring of the evaluation process. Where clarification questions are raised, the parties will seek to close the same within 24 hours of receipt.
- 8.6 The Bidders will be evaluated against the following criteria:
 - 8.6.1 All quality criteria
 - 8.6.2 Price

9. CONTRACT AWARD

9.1 The Bidder that achieves the highest total score will, subject to the terms set out in Appendix A, be awarded the Contract.

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- 9.2 If two or more Bidders obtain the highest total score, the Bidder with the highest score for the Quality element of the Tender evaluation will be deemed the winner and awarded the Contract.
- 9.3 If the Authority receives only one Tender in relation to this Procurement, the Bidder may be awarded the contract at the Authority's sole discretion.
- 9.4 The Authority reserves the right not to select a Supplier or award a contract to any Bidder.

10. SUPPLIER OUTCOME

- 10.1 Upon contract award, Bidders will be notified of the outcome of the RFP by email.
- 10.2 The Authority will sign a contract with the Supplier that will govern the activities to be performed involved in the production of the deliverables defined in this RFP.
- 10.3 The contract will be based on NHS England's standard terms & conditions which are provided separately.

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APPENDIX A - TERMS OF PARTICIPATION

1. INTRODUCTION

- 1.1 The Terms of the Procurement regulate the conduct of the Bidder and the Authority throughout the Procurement. These terms also grant the Authority specific rights and limit its liability.
- 1.2 In these Terms of the Procurement any reference to 'person' includes, but is not limited to, any person, firm, body or association, corporate or incorporate.

2. CONDUCT

The Bidder agrees to abide by these Procurement terms and any instructions given in the RFP and agrees to ensure that any of its staff, contractors, subcontractors, consortium members and advisers involved or connected with the Procurement abide by the same.

2.1 Contact and Canvassing During the Procurement

The Bidder must not directly or indirectly canvass any Minister, public sector employee or agent regarding this Procurement or attempt to procure any information from the same regarding the Procurement (except where permitted by the RFP). Any attempt to do so may result in the Bidder's disgualification from this Procurement.

2.2 Behaviour

- 2.2.1 The Bidder must not (and shall ensure that your subcontractors, consortium members, advisors or companies within its Group do not):
 - 2.2.1.1 fix or adjust any element of the Tender by agreement or arrangement with any other person;
 - 2.2.1.2 communicate with any person other than the NHS England Authorised Contact about the value, price or rates set out in the Tender; or information which would enable the precise or approximate value, price or rates to be calculated by any other person;
 - 2.2.1.3 enter into any agreement or arrangement with any other person, so that person refrains from submitting a Tender;
 - 2.2.1.4 share, permit or disclose to another person access to any information relating to the Tender (or another Tender to which it is party) with any other person; or
 - 2.2.1.5 offer or agree to pay, give or does pay, give any sum or sums of money, inducement or valuable consideration directly or indirectly to any other person, for doing or having done or causing or having caused to be done in relation to the Tender any other Tender or proposed Tender, any act or omission, except where such prohibited acts are undertaken with persons who are also participants in the Bidder's Tender, such as subcontractors, consortium members, advisors or companies within its group, or where disclosure to such person is made in confidence in order to obtain quotations necessary for the preparation of the Tender or obtain any necessary security.

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- 2.2.2 If the Bidder breaches paragraph 2.2.1, the Authority may (without prejudice to any other criminal or civil remedies available to it) disqualify the Bidder from further participation in the Procurement.
- 2.2.3 The Authority may require the Bidder to put in place any procedures or undertake any such action(s) that the Authority in its sole discretion considers necessary to prevent or curtail any collusive behaviour.

3. COMPLIANCE

The Bidder agrees that in cases where their Tender is deemed non-compliant when compared with the requirements set out within the Procurement (e.g. budget, terms and conditions) you shall be excluded from the Procurement.

4. RIGHT TO CANCEL OR VARY THE PROCUREMENT

- 4.1 The Authority reserves the right:
 - 4.1.1 to amend, clarify, add or withdraw all or any part of the RFP at any time during the Procurement;
 - 4.1.2 to vary the timetable or deadlines set out in the RFP
 - 4.1.3 not to conclude a contract for some or all of the services for which Tenders are invited;
 - 4.1.4 to cancel all or part of the Procurement at any stage at any time
- 4.2 The Bidder accepts and acknowledges that by issuing the RFP, the Authority is not bound to accept a Tender or obliged to conclude a contract with any Bidder at all.

5. COSTS

- 5.1 The Authority will not reimburse any costs incurred by a Bidder (including the costs or expenses of any subcontractors, consortium members or advisors) in connection with preparation and/or submission of a Tender, including (without limit) where:
 - 5.1.1 This Procurement is cancelled, shortened or delayed for any reason (including where such action is necessary due to non-compliance or potential non-compliance with procurement rules and regulations);
 - 5.1.2 all or any part of the RFP is at any time amended, clarified, added to or withdrawn for any reason;
 - 5.1.3 a contract for the Services for which Tenders are invited is not concluded; or
 - 5.1.4 a Bidder and/or its Tender is disqualified from participation in the Procurement for any reason.

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APPENDIX B - SPECIFICATION

1. BACKGROUND TO REQUIREMENT

The purpose of NHS England is to lead the NHS in England to deliver high-quality services for all. NHS England what we do. The Future Connectivity Programme in NHS England formed the Connectivity Hub to work with NHS organisations to address connectivity challenges, share best practice and provide guidance to ensure they are getting the best out of current and emerging technologies. This RFP is conducted by the Connectivity Hub on behalf of all NHS organisations in England, see NHS England was Structure of the NHS for further detail.

The Connectivity Hub conducted a Wi-Fi Challenges survey in 2022, which was sent out to all Trusts in England. As NHS IT networking is designed and procured locally based on local needs, the intention of the survey was to develop NHS England's understanding of the current Wi-Fi availability, how Wi-Fi is supported and maintained and, most importantly, local challenges with getting the best from Trust investments in their infrastructure.

The topic of this RFP will support NHS research and understanding of technologies and applications to support a move towards smart healthcare services, where technology is embedded across clinical pathways to support smarter healthcare delivering better quality, more efficient and safer patient care.

We understand that "Smart Network" as a term has different possible interpretations and meaning can differ between suppliers and vendors, including related terms such as predictive networking, proactive networking, and self-healing networks.

For the purpose of this RFP, we have defined "Smart Network" as the below and will work with the successful supplier to remove any ambiguity and develop a shared understanding of technologies and capabilities in scope of this topic:

A network that is not passive, the whole network (fixed and wireless), using automation to adapt and make decisions on how to run the network most efficiently and effectively via built-in diagnostics, management, fault tolerance and other capabilities.

The supplier must produce a guidance report that can be used by the Connectivity Hub to:

- provide an analysis of the current and future (up to 5 years) state of these capabilities and the marketplace, to inform national and local digital strategies as well as network investment decisions.
- provide a roadmap that promotes consistent understanding and application of these technologies across NHS organisations to increase overall digital maturity.

The target audience of the report is Integrated Care System (ICS) or NHS Trust Chief Information Officers and their Network Managers & Service Managers, as they will be responsible for defining, supporting, and delivering IT strategies for network and connectivity services across the NHS Trusts and ICS Partner organisations.

2. PURPOSE OF THIS RFP

The supplier must produce a report for the Future Connectivity programme to provide guidance that can be used by NHS organisations in England.

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The focus of the report should be on how understanding and investing in Smart Networks can deliver long term cost efficiency and connectivity benefits to the NHS. It should also recognise increasing future digital demand that will be placed on networks as outlined by the NHS England Future Connectivity Programme. (Future Connectivity - NHS Digital)

The purpose of conducting this RFP is for an expert supplier to create meaningful and practical guidance that can be used across the NHS in a consistent way to inform and direct future planning and investment.

There is no intention to create mandatory policy or standards at this stage.

3. OVERVIEW OF REQUIREMENTS

The supplier must produce a report for the Future Connectivity programme to provide guidance that can be used by NHS organisations in England to evaluate and implement "Smart Networking".

The report must consider different NHS environments and potential benefits of Smart Network implementation in each, including remote workers.

Key themes for this report, and all guidance commissioned by the Connectivity Hub, are supporting best use of existing infrastructure, delivering value for money for the NHS and delivering improved patient care outcomes through connectivity and technology.

The Supplier must present the key recommendations and actions for health organisations looking to implement Smart Networking capabilities generally available now and in the short to medium term future (up to 5 years).

The report must not be limited to pure technical metrics but take a holistic approach.

The report should take into account differing levels of local organisations Digital Maturity (<u>NHS England</u> » <u>Digital maturity assessment</u>), user expertise, value for money, sustainability considerations, and how implementing and maintaining a Smart Network could impact these outcomes.

The report should include, but not be limited to:

- An overview of what a Smart Network is, and the potential applications and benefits of a Smart Network, with reference to healthcare environment specific use cases.
- An overview of current technologies and capabilities of Smart Network devices, infrastructure and services including what you can expect from a Smart Network, network capabilities available from vendors now and in the near future (up to 5 years)
- Smart Network implementation and maintenance overview and considerations, guidance on how organisations can best prepare for implementation in the next 5 years.
 - Implementation considerations what organisations need to think about, what are the building blocks needed, interoperability considerations, and what other guidance and information is available on the topic.
 - Device capability requirements, for example what generation of devices support smart networking, what are the minimum specifications for current Smart Networking, what additional equipment you will need? How implementing the Smart Network can tell you some of this- for example by cataloguing and identifying devices in the network that require upgrading.

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- What aspects of Smart Networking are built into current and future Wi-Fi standards and what is managed by standards, software or at device level.
- Where possible the supplier should reference NHS commissioned organisations that have implemented or are implementing Smart Network related technology.
- The supplier should include use cases and case study content relevant to the subject and requirements, where possible from NHS organisations they have worked with.
- Develop a shared understanding of Smart Networks across the NHS to support embedding the concept in digital strategies.
- Getting the best out of existing infrastructure and network investments, maximising value and supporting effective planning for future investments.
- How Smart Networking can support interoperability with existing services and create a flexible platform for emerging technologies.
- Organisational and end user benefits of implementing Smart Networking.
- Risks and dependencies of implementing and maintaining Smart Networking.
- Potential technical, financial, and business impacts of implementing and maintaining a Smart Network.
- Whilst the emphasis of the report should be on the technology layer some consideration should be given to:
 - Impacts on network security and security policies e.g. automation of feeding back on incidents and breaches.
 - Cost implications
 - Security and data (GDPR) considerations of implementing and maintaining a Smart Network and capturing additional data
 - Open standards and considerations when integrating Smart Network outputs with 3rd party applications and devices

To comply with NHS England's internal governance processes please note the following:

- The maximum budget for this requirement is £25k exclusive of VAT.
- To allow for end of financial year processes Milestone 1 achievement must be no later than Monday 25 March 2024.
- Milestone 2 deliverables must be submitted to NHS England in sufficient time to be finalised 11 weeks (55 working days) after contract signature.

4. DELIVERABLES

There are two key deliverables:

- A written report in Microsoft Word format addressing the requirements detailed above.
- A set of supporting slides in Microsoft PowerPoint slides that can be used to present the report.

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5. DELIVERY APPROACH

The process to present these deliverables will be as follows:

Stage	% complete	Process	Format
Workshop 1	25% - content	Supplier to run call or workshop(s) to present	PowerPoint
	level draft	their suggested table of content for the	
		report, explaining the rough outputs and	
		depth of detail for each section	
Workshop 2	60% - draft	Supplier to run call or workshop(s) to present	Word
		their draft report, leaving sufficient scope to	PowerPoint
		develop certain areas of interest.	
Draft	85% complete	Reports delivered in Word & PowerPoint for Word	
		final feedback and comments	
Workshop 3	100% complete	Supplier to run call or workshop to present Word	
		final report	PowerPoint

The workshops referred to above will either be held remotely using Microsoft Teams or will take place in NHS England's offices in Leeds. The decision will be taken jointly by NHS England and the Supplier.

6. PAYMENT SCHEDULE

To allow for end of financial year processes, payment will be split across two milestones, as per the below table. Milestone achievement will be determined by acceptance of deliverables by the Authority.

Stage	Deliverables	Payment due
Milestone 1	Project documentation including project outline and delivery plan. 1st draft of report at 25% completion Workshop 1 held.	
Milestone 2	NHS England acceptance of all deliverables including final report and supporting slides.	

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APPENDIX C - PROCUREMENT QUESTIONNAIRE

1. INTRODUCTION

- 1.1 This Appendix C sets out the questions that will be evaluated as part of this Procurement.
- 1.2 The following information has been provided in relation to each question (where applicable):
 - 1.2.1 Weighting highlights the relative importance of the question;
 - 1.2.2 Guidance sets out information for the Bidder to consider when preparing a response; and
 - 1.2.3 Marking Scheme details the marks available to evaluators during evaluation.
- 1.3 This Appendix C sets out the evaluation methodology applicable to this Procurement and Potential Suppliers are advised to read this appendix before completing their Tender.

2. TENDER QUESTIONNAIRE

- 2.1 Bidders are required to complete the Tender Questionnaire set out in Annex 1 to this Appendix C.
- 2.2 Bidders must provide a response to every question.
- 2.3 Bidders must not submit any additional information with their Tender Questionnaire.

ANNEX 1 – TENDER Questionnaire

The file "CH Smart Networks RFP Questionnaire" sets out the Tender Questionnaire and is provided separately.

3. CRITERIA AND WEIGHTINGS

- 3.1 Any award decision will be made based on the most economically advantageous bid using the following weightings:
 - Quality questions 70% of overall weighting
 - Price –30% of overall weighting
- 3.2 The following weightings have been assigned to the quality questions.

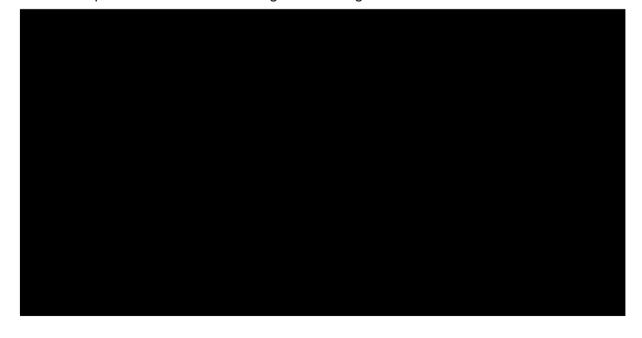
Question	Title	Weighting
4.1	Key dates	20%
4.2	Previous experience	25%
4.3	User needs	20%
4.4	Research process	15%
4.5	Qualifications for success	5%
4.6	Challenges	15%

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3.3 Quality scoring will be based on the following Marking Scheme

Score	Scoring explanation
0	Unsuitable: Failed to provide confidence that requirements within the question will be met and/or limited evidence of understanding of how the question relates to what is being asked. There has been a failure to cover many of the specific points. An unacceptable response with serious reservations.
25	Poor Response: A Poor response with reservations. The response lacks convincing detail with risks that the response will not be successful in meeting all the requirements. Whilst some of the individual points have been covered, others have not. The response is not clear on how the points interrelate and/or how they apply to the overall context.
50	Adequate: An Adequate response is one which just meets the requirements and/or is not particularly strong with respect to the quality of the supporting evidence. Either that and/or the response, whilst adequate, is not strong in terms of demonstrating a relevant understanding within the broader context of the overall requirement. Whilst the points highlighted in the guidance notes have been addressed to an extent, this is either weakly or not in a manner which clearly articulates how the key individual points interrelate.
75	Good: A Good response that meets the requirements with good supporting evidence. Demonstrates good understanding within the broader context of the overall requirement. The majority, but not all, of the points highlighted in the guidance notes have been covered well in a manner which demonstrates how the key individual points interrelate.
100	Excellent: An Excellent comprehensive response that meets the specific requirements very well. All the points highlighted in the guidance notes have been covered extremely well in a cohesive manner. It is considered an excellent response with detailed supporting evidence and no weaknesses, resulting in a high level of confidence.

3.4 The price will be evaluated using the following criteria:



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REQUEST FOR PROPOSAL

FOR

CONNECTIVITY HUB Smart Networks RFP TENDER QUESTIONNAIRE

1. INSTRUCTIONS

- 1.1 Bidders must provide a response to every question in the blue shaded boxes. All responses must be in Arial font, size 11.
- 1.2 Bidders must not alter/amend the document in any way other than as instructed.
- 1.3 Bidders must not submit any additional information with the Tender Questionnaire other than that specifically requested or allowed in this document. Attachments submitted other than as specifically requested or allowed will be disregarded.
- 1.4 Additional information submitted in line with 1.3 should be submitted as attachments with the completed questionnaire not as embedded documents.
- 1.5 Bidders must conform to word limits where specified.
- 1.6 Completed Tender Questionnaires should be saved as "CH Smart Networks RFP Questionnaire [Bidder].docx" please replace [Bidder] with your company name. Bids must be submitted in Microsoft word document format.

2. RESPONSE TEMPLATE

1 COI	1 COMPANY INFORMATION			
1.1	Full company name	FarrPoint Limited		
1.2	Registered office address Exchange Place 2, 5 Semple Stre Edinburgh, EH3 8BL			
1.3	Registered website address	www.farrpoint.com		
1.4	Trading status	Limited Company		
1.5	Company registration number	SC296299		
1.6	Name of parent company if applicable	N/A		

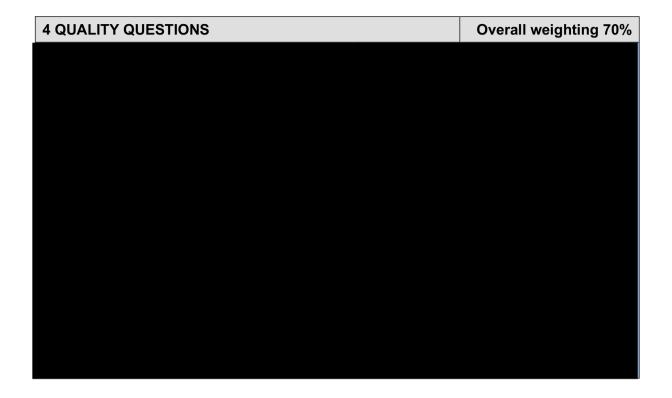
2 BIDDER CONTACT		
2.1	Contact's name	
2.2	Contact's email address	
2.3	Contact's telephone number	

3 MANDATORY QUESTIONS			PASS/FAIL	
is unv	Please note: The following questions are Pass/Fail questions therefore if a Bidder cannot or is unwilling to answer 'Yes' their Tender will be deemed non-compliant and they will be unable to be considered for this requirement.			
The B	The Bidder should confirm by deleting the inappropriate answer.			
3.1	3.1 Do you accept all the obligations set out in this RFP Yes No			
3.2	Do you accept the obligations set out in NHS England's standard terms & conditions referenced in section 10.3 of the RFP document	Yes	No	

4 QUALITY QUESTIONS		Overall weighting 70%	
4.1	4.1 Key dates		Actual weighting 20%
Please provide the following target dates:			
4.1.1	Earliest start date	26/02/24	
4.1.2 Milestone 1 submission date 19/03/24			
4.1.3	4.1.3 Milestone 2 submission date 06/05/24		

Please explain your rationale and any dependencies for the above target dates. (**maximum 200 words**)





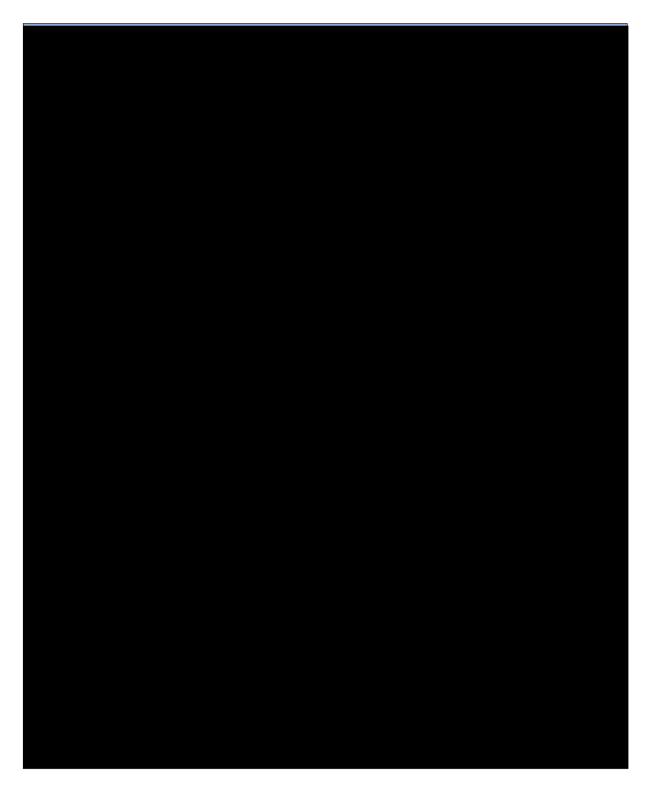
4.2 Previous experience

Actual weighting 25%

Please provide the following details for up to 3 examples of similar work you have performed in the past, explaining how they are relevant to these requirements. Each example can be **maximum 150 words**, stating:

- Client company name;
- · Start date and overall timescales;
- Number of man-days effort required;
- Scope of the project;
- Sample pages of the final report. (If necessary, please provide as a 1-page attachment in Word or PDF format)

Note: The Authority may, at its sole discretion, request contact details and take up references with the clients used to verify the information provided within the Tender.



4.3	User needs	Actual weighting 20%
4.3.1	Please provide details of experience you have working organisations that would demonstrate you understand the specified target audience of this RFP.	
	If you have no experience with NHS organisations, please provide non-NHS examples with an explanation as to why you believe this experience is applicab to an NHS environment. (maximum 300 words)	

4.4	Research process	Actual weighting 15%
4.4.1	Please describe how you would research the key topics of this RFP. (maximum 300 words)	to fulfil the requirements

4.5	Qualifications for success	Actual weighting 5%	
4.5.1	.5.1 Why is your company best placed to meet the requirements of this RFP? (maximum 250 words)		



4.6	Challenges	Actual weighting 15%
4.6.1	What area of this RFP do you perceive as the most difficult to address and why? (maximum 300 words)	

5 PRICE Actual weighting 30%

- Price should be in GBP and exclusive of VAT.
- Please provide a fully costed breakdown of the activities involved in meeting this requirement

