

Customer, the proposed change of Control will have a material impact on the performance of the Agreement or the reputation of the Customer;

20.2.5. breaches any of the provisions of clauses 9.2, 14, 15, 16 and 21; or

20.2.6. 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 20.2.6) in consequence of debt in any jurisdiction.

20.3. The Supplier shall notify the Customer as soon as practicable of any change of Control as referred to in clause 20.2.4 or any potential such change of Control.

20.4. 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.

20.5. 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, 6.1, 7.2, 7.7, 7.8, 8, 12, 13.2, 14, 15, 16, 20.6, 21.4.3, 22.3, 23 and 25.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.

20.6. Upon termination or expiry of the Agreement, the Supplier shall:

20.6.1. give all reasonable assistance to the Customer and any incoming supplier of the Goods and Services; and

20.6.2. return all requested documents, information and data to the Customer as soon as reasonably practicable.

## **21. Compliance**

21.1. 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.

21.2. 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.

21.3. The Supplier shall:

21.3.1. comply with all the Customer's health and safety measures while on the Customer's premises; and

21.3.2. 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.

21.4. The Supplier shall:

21.4.1. comply, and procure that all Staff comply with all CSR Laws;

21.4.2. require its Sub-contractors and any person under its control, to comply with all CSR Laws;

21.4.3. 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

21.4.4. 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.

- 21.5. The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of section 182 of the Finance Act 1989.
- 21.6. 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.

## **22. Prevention of Fraud and Corruption**

- 22.1. 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.
- 22.2. 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.
- 22.3. If the Supplier or the Staff engages in conduct prohibited by clause 22.1 or commits fraud in relation to the Agreement or any other contract with the any Contracting Authority (including the Customer) the Customer may:
  - 22.3.1. 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 Goods and Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
  - 22.3.2. recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

## **23. IR35**

- 23.1. The Customer and the Supplier agree and acknowledge that this Agreement represents a contract for a fully contracted out service and, as a result, the Off-Payroll Working Rules shall not apply to the Customer in relation to the provision of the Services (or any part of them) and / or to any arrangements involving the performance of any services by any Contractor.
- 23.2. Notwithstanding clause 23.1 the Supplier warrants and undertakes to the Customer that, where any Contractor is or will be delivering their services through an Intermediary, prior to the commencement of the delivery of any services by that Contractor, the Supplier will give written notice to the Customer, and shall procure that such Contractor shall not be involved in the delivery of the Services (or any part of them) by the Supplier without the prior written consent of the Customer.
- 23.3. The Supplier warrants and undertakes to the Customer that it shall manage the delivery of the Services (and any part of them) and shall do or not do (as the case may be) all such things as are necessary, in each case, to ensure that the Off-Payroll Working Rules shall not apply to the Customer in relation to the provision of the Services (or any part of them) and / or to any arrangements involving the performance of any services by any Contractor.
- 23.4. The Supplier shall immediately inform the Customer if, at any time, it becomes aware of any new or additional fact, matter or circumstance, or any change in any fact, matter or circumstance, in each case, from which it appears that the Off-Payroll Working Rules could apply to the Customer in relation to the provision of the Services (or any part of them) and / or to any arrangements involving the performance of any services by any Contractor.
- 23.5. Promptly upon request from the Customer, the Supplier shall provide (or procure provision) to the Customer of all such evidence, information and assistance as the Customer reasonably requires:

- 23.5.1. in order to confirm that the warranties and undertakings given by the Supplier in clauses 23.2 and 23.3 are, and remain, true, accurate and correct in all respects; and
  - 23.5.2. in connection with the Off-Payroll Working Rules (including, but not limited to, such information or assistance as the Customer reasonably requires in order to assess whether or not the Off-Payroll Working Rules apply to the provision of the Services (or any part of them) and/or to any arrangements involving the performance of any services by any Contractor or to comply with any other requirement or obligation it may have as a result of or in connection with the application of the Off-Payroll Working Rules).
- 23.6. The Supplier shall, at all times, comply with any and all requirements or obligations it may have as a result of or in connection with the application of the Off-Payroll Working Rules to the provision of the Services (or any part of them) and / or to any arrangements involving the performance of any services by any Contractor, including, but not limited, to any obligation to make any deductions for Tax, and shall procure the compliance of all other parties involved (directly or indirectly) in the supply of the Services (or any part of them).
- 23.7. The Customer shall be entitled to make any deductions in respect of Tax, from any payments to the Supplier, which it reasonably considers are required to be made as a result of, or connection with, the application of the Off-Payroll Working Rules.
- 23.8. The Supplier shall indemnify the Customer, on demand and on an after-Tax basis, against:
- 23.8.1. any and all proceedings, claims or demands by any third party (including, but without limitation, HM Revenue & Customs and any successor, equivalent or related body);
  - 23.8.2. any and all Tax and any other liabilities, losses, deductions, contributions or assessments; and
  - 23.8.3. any and all reasonable costs or expenses and any penalties, fines or interest incurred or payable,
- in each case, which arise as a result of, in consequence of, or otherwise in connection with, (i) the application of the Off-Payroll Working Rules to the provision of the Services (or any part of them) and / or to any arrangements involving the performance of any services by any Contractor and/or (ii) the Supplier, at any time, being in breach of any of the warranties or undertakings given in clauses 23.2, 23.3 and 23.10.
- 23.9. The Customer may at its option satisfy the indemnity given under clause 23.8 (in whole or in part) by way of deduction from payments due to the Supplier.
- 23.10. The Supplier warrants to the Customer 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.

## **24. Dispute Resolution**

- 24.1. 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.
- 24.2. 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.
- 24.3. 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.

## **25. General**

- 25.1. 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.
- 25.2. 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.
- 25.3. Subject to clause 15.10 the Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 25.4. 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.
- 25.5. 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.
- 25.6. 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.
- 25.7. 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.
- 25.8. 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.

## **26. Notices**

- 26.1. 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 26.2, 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.
- 26.2. Notices under clauses 19 (Force Majeure) and 20 (Termination) must be served by email and personal delivery or recorded delivery in the manner set out in clause 26.1.
- 26.3. 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.

## **27. Publicity and Branding**

- 27.1. The Supplier shall not:
  - 27.1.1. make any press announcements or publicise this Agreement or its contents in any way; or
  - 27.1.2. use the Customer's name or brand in any promotion or marketing or announcement of orders,without the prior written consent of the Customer.



- 27.2. 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 Goods and Services) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

## **28. Governing Law and Jurisdiction**

- 28.1. The validity, construction and performance of the Agreement, and all contractual and ~~non~~ contractual/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.

## **29. Execution and Counterparts**

- 29.1. 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.
- 29.2. 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 NHS Digital's electronic contract management system.

## Annex 2 – Specification

Item Category	SKU	Description
Assistive Tech Physical Product	9745359	Dolphin Large Print Keyboard
Assistive Tech Physical Product	9821177	Ruby Handheld Magnifier XL HD
Assistive Tech Software Download	9899356	Dragon Professional Individual 15, UK Download
Assistive Tech Software Download	9846027	ZoomText Magnifier Reader ESD – Single Licence
Backsupports & Seating Wedges	9731003	Portable Adjustable Lumbar Support
Chair Accessories and Parts	0361605	4Q Gas Stem Silver
Chair Accessories and Parts	10002188	Adapt 200/500/600/700 Adapted Armrest Brackets
Chair Accessories and Parts	10002196	Adapt 200/500/600/700 Movement Lock (inc holster)
Chair Accessories and Parts	10002149	Adapt 600 4D Arms
Chair Accessories and Parts	10002155	Adapt 600 Coccyx Cut-out - Approx 120 x 100 mm
Chair Accessories and Parts	10002147	Adapt 600 HAA Arms + Retractable Pad
Chair Accessories and Parts	10002177	Adapt 600 Heated Pads - Set of 3 (inc holster)
Chair Accessories and Parts	10002133	Adapt 600 Neck Curve
Chair Accessories and Parts	10002142	Adapt 600 Reduced Back Width (min 410 mm)
Chair Accessories and Parts	10002159	Adapt 600 Reduced Seat Depth (min 340 mm)
Chair Accessories and Parts	10002159	Adapt 600 Reduced Seat Depth (min 340 mm)
Chair Accessories and Parts	10002158	Adapt 600 Reduced Seat Width (min 410 mm)
Chair Accessories and Parts	10002199	Adapt 600 Swivel Lock - New Style
Chair Accessories and Parts	9825442	Adapt 700 - Reduce Seat Width
Chair Accessories and Parts	10002217	Adapt 700 4D Arms
Chair Accessories and Parts	10002214	Adapt 700 Height Adjustable Arms - PU Pad
Chair Accessories and Parts	10002219	Adapt 700 Reduced Seat Depth (min 420 mm)
Chair Accessories and Parts	9825292	Adapt XXXL Seat
Chair Accessories and Parts	8807001	Armazing Memory Foam Arm Pads (pair)
Chair Accessories and Parts	9787106U	Positiv Inflatable Lumbar

Chair Accessories and Parts	9784919	Positiv ME Foldaway Arms
Chair Accessories and Parts	9784902	Positiv Me Height and Depth Adjustable Arms
Chair Accessories and Parts	9784905	Positiv ME Inflatable Lumbar(Me100, 300, 400, 600)
Chair Accessories and Parts	9787102U	Positiv Retractable Armrests
Chair Accessories and Parts	9787105U	Positiv Seat Slide
Desking	070114110	DeskRite 300 Elec Map/Sil 140x80
Desking	090113110	DeskRite 500 Writing Desk MAP/SIL 120x80
Desking	9899905	Rectangular Fixed Height FT2 Desk 1000 x 800 Maple
Desking Accessories	9778017	Daylight PL Desk Lamp - White
Desking Accessories	9820571	DeskRite Anti-Fatigue Mat
Desking Accessories	8885001	SuperVisor Anti Glare Screen with Clamp Fixing
Desking Accessories	8885002	SuperVisor Anti Glare Screen with Solid Base
Desking Accessories	8873003	VARIDESK Mat
Document Holders	9820800	DocuRite
Document Holders	1058CLE	Posturite Document Slope Clear
Evacuation Chair & Accessories	MKV101	EvacuRite Evacuation Chair
Footrests & Legrests	8844001	Footmate Footrest
Footrests & Legrests	5765	HAG Quickstep Footrest
Footrests & Legrests	9789013BLA	Positiv Double Height Adj Leg Rest BL Castors
Footrests & Legrests	5774	Posturite Adjustable Footrest
Footrests & Legrests	5751	Score 952 Height Adjustable Footrest
Footrests & Legrests	5752011	Score Pro 952 Footrest
Footrests & Legrests	5752001	Score Pro 959 Footrest
Footrests & Legrests	9820300	TriRite Adjustable Footrest
Headsets & Phones	7151	Plantronics Blackwire C325 Bin USB/3.5mm Headset
Keyboards	9820650	Ark Keyboard RF Black
Keyboards	4401205	Contour Balance Keyboard Black
Keyboards	9735000	Ergostars Saturnus Silver Keyboard
Keyboards	9745375	Microsoft Sculpt Keyboard and Number pad
Keyboards	8821019	Penclic Mini Keyboard KB3 Bluetooth - Pro Black