



Schedule 7A

**Order Form for Standard Goods and Services – Direct Award**

**Call-Off Contract under the HealthTrust Europe LLP Framework Agreement for the Enterprise Level Information Communication Technology (ICT) Digital Technology Solutions 2023 (ComIT 3 – Complete IT 3) (reference number: 2023/S 000-007857) dated 2<sup>nd</sup> January 2024.**

**For the supply of CAID Licences and Support Dated 21/08/2025.**

<b>The Authority</b>	<b>Home Office</b> , whose registered address is at 2 Marsham St, London SW1P 4DF
<b>The Supplier</b>	<b>Specialist Computer Centres PLC</b> with company number 01428210 whose registered office is at James House, Warwick Road, Birmingham, B11 2LE
<b>HealthTrust Europe Contract Reference</b>	<b>HTE-011009</b>
<b>SCC Contract Reference</b>	<b>OR-0325325</b>

The Supplier and the Authority hereby agree as follows:

1. The Authority wishes to enter into a Contract in respect of the Services pursuant to the framework agreement between Health Trust Europe LLP and Supplier dated 02.01.2024 (the “**Framework Agreement**”).
2. The Contract incorporates, and the Supplier agrees to abide by, the following documents:
  - (a) The Specification of the Authority’s requirements as appended at Appendix 1 overleaf;
  - (b) the Contract Price, as appended at Appendix 2 overleaf; and
  - (c) the Call-Off Terms and Conditions set out at Appendix A to the Framework Agreement (including the front page and all Schedules thereto).
3. Where the Call-Off Terms and Conditions set out at **Error! Reference source not found.** of Appendix A to the Framework Agreement apply, the Authority acknowledges and agrees to the HealthTrust Europe Key Provisions, in particular as stated below for the avoidance of doubt:

- (a) The Authority acknowledges and agrees that the Supplier is subject to an activity based income (ABI) management charge in relation to any Orders placed by the Authority under the Framework Agreement.
- (b) The Authority and the Supplier agree that (in addition to the Authority's right to enforce the Contract) HealthTrust Europe may enforce any term of the Contract as principal in respect of ABI and Management Information and as agent on behalf of the Authority in respect of all other terms.

## **Annex 1 - Standard Terms**

### **1 Commencement Date and Term**

1.1 The Commencement Date of this Contract shall be **14/07/2025**.

1.2 The Term of this Contract shall be **One (1) year** from the Commencement Date and may be extended in accordance with Clause 15.2 of Schedule 2 of these Call-off Terms and Conditions provided that the duration of this Contract shall be no longer than **Seven (7) years** in total.

### **2 Data Protection**

This Clause 2 only applies if this box is checked ☒

2.1 The Authority and the Supplier acknowledge and agree that it is their responsibility to carry out a data protection impact assessment ("DPIA"), **where deemed applicable**, in accordance with the Data Protection Legislation and provided the DPIA confirms that the Supplier's systems and processes adequately provide the necessary guarantees to implement appropriate technical and organisational measures to comply with the Data Protection Legislation, they shall enter into the relevant data protection agreement.

2.2 The parties further acknowledge and agree that HealthTrust Europe will not be involved in or be responsible for the conduct of DPIAs and the supply of any data protection agreements (including a data protection protocol) required for Processing Personal Data under the Contract. For the avoidance of doubt, HealthTrust Europe accepts no responsibility in relation to any issues or claims related to the Processing of Personal Data by the Supplier for the Authority in pursuance of the Contract.

2.3 The Parties warrant that they have read, understood, and agree to the data protection provisions set out in Schedule 3 (Information and Data Provisions) of the Call Off Terms and Conditions.

The parties agree to comply with the Data Protection Protocol set out within Appendix 13.

The parties further acknowledge and agree that HealthTrust Europe will not be involved in or be responsible for the conduct of DPIAs and the supply of any data protection agreements (including a data protection protocol) required for Processing Personal Data under the Contract. For the avoidance of doubt, HealthTrust Europe accepts no responsibility in relation to any issues or claims related to the Processing of Personal Data by the Supplier for the Authority in pursuance of the Contract.

2.4 The Parties warrant that they have read, understood, and agree to the data protection provisions set out in Schedule 3 (Information and Data Provisions) of the Call Off Terms and Conditions.

The parties agree to comply with the Data Protection Protocol set out within Appendix 13.

### **3 Payment Terms**

3.1 The payment profile for this Contract shall be as per Appendix 2

### **4 Termination**

4.1 The Participating Authority may terminate this Contract forthwith by notice to the Supplier at any time on three (3) months' written notice. Such notice shall not be served within One (1) Year of the Commencement Date.

### **5 Locations**

The Services shall be provided, and Goods delivered by the Supplier at the Premises and Locations listed below:

UK Home Office ACE  
Home Office  
Colgate Lane  
Salford Quays  
Salford  
Great Manchester, England, M5 3LZ  
United Kingdom

### **6 Use of Subcontractors**

This Clause 6 only applies if this box is checked ☒

6.1 The Participating Authority grants permission for the Supplier to Sub-contract any of its obligations/ specific obligations under this Framework Agreement. This shall not impose any duty on the Participating Authority to enquire as to the competency of any authorised Subcontractor. 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 Framework Agreement.

6.2 Where the Supplier sub-contracts the provision of any Goods and/or Services in pursuance of its contractual obligations under this Contract, the Supplier warrants and represents to the Participating Authority and to HealthTrust Europe that in addition to all other requirements related to subcontracting stated within the Framework Agreement, it shall remain the single point of contact and be responsible to HealthTrust Europe and the Participating Authority for all acts or omissions of the Sub-contractor or substitute Sub-contractor as though they were the Supplier's own acts or omissions for all elements of any Solution, including but not limited to Software and Equipment; and it shall ensure and shall procure that that its Sub-contractor(s) will deliver the Goods and/or Services in accordance with the terms of the Contract and in so doing, the Supplier shall:

- 6.2.1 strictly adherence to all KPI's and performance standards of the Contract and to all elements of the Specification;
- 6.2.2 immediately inform HealthTrust Europe and the Participating Authority in the event a Sub-Contractor fails, or becomes unable to meet any element of the Specification;
- 6.2.3 provide a list of all Sub-Contractors appointed at the Commencement Date as an annex to the Contract in the format set out below at Annex A of Appendix 11 (Subcontractors);
- 6.2.4 seek the prior written approval of the Participating Authority by following the Change Control Process if at any time during the Term the need arises to replace a Sub-Contractor listed in Annex A of Appendix 11 (Subcontractors), or to appoint a new Sub-Contractor.

6.3 The Supplier acknowledges and agrees that any proposed amendment to Annex A of Appendix 11 (Sub-contractors) shall be reserved as a right to the Participating Authority to: (i) consider any such amendment as a material variation of the Contract; (ii) reject the proposed change of Sub-Contractor; (iii) not accept Goods and/or Services from the any proposed new subcontractor; (iv) consider its option to re-tender for its requirements; and (v) without prejudice to any other rights reserved under the Contract terminate the Contract. The Participating Authority's approval shall not be unreasonably withheld or delayed.

6.4 The Supplier undertakes, warrants, and agrees that in order to meet its obligations under this Framework Agreement, it shall enter into contracts with its Sub-contractors that mirror the terms and conditions essential to perform the whole or the part(s) of its obligations which form the basis of the sub-contract. In any event, the Supplier shall ensure and shall procure that, as a minimum, its Sub-contractor will:

- 6.4.1 perform its obligations in accordance with the terms and conditions identical to those contained in the relevant contract with the Participating Authority;

6.4.2 acquire and maintain the same types and levels of insurance that will cover the risks required for performing under the relevant Contract;

6.4.3 where there will be Processing of Personal Data, the Supplier and the Subcontractor will first conduct a data protection impact assessment (DPIA) on the operations of the Sub-contractor to ensure it has in place the appropriate security, technical and organisational measures to address the risks and ensure protection of personal data which demonstrate compliance with the data protection laws; and

6.4.4 cooperate fully in any audit or investigation undertaken by HealthTrust Europe or the Participating Authority in accordance with the call-off contract and the Framework Agreement.

6.5 In addition to all other rights reserved by HealthTrust Europe under the Framework Agreement, HealthTrust Europe hereby also reserves the right to conduct audits to: (i) ensure DPIAs are undertaken; (ii) review the due diligence process undertaken by the Supplier in relation to appointing Sub-contractors; and (iii) all other sub-contracting processes or changes thereto are compliantly undertaken. In this regard, the Supplier acknowledges and agrees that to ensure adherence to the terms and conditions of the Framework Agreement and any calloff contracts, it shall cooperate fully and procure that its Sub-contractor will cooperate fully in any such audits. Such audits will be conducted by HealthTrust Europe or its nominated agent(s), as and when deemed necessary, in the reasonable opinion of HealthTrust Europe, but in any event no more than once in a twelve (12) month period.

6.6 The bidding model that includes members of the supply chain, the percentage of work being delivered by each Sub-contractor and the key contract deliverables for which each Subcontractor will be responsible are also detailed in Appendix 11 (Subcontractors).

## **7 Contract Management**

The Contract Managers at the commencement of this Contract are:

7.1 For the Participating Authority:

[REDACTED]

7.2 For the Supplier:

[REDACTED]

## **8 Notices**

Notices served under this Contract are to be delivered to:

(a) For the Participating Authority:

[REDACTED]

(b) For the Supplier:

[REDACTED]

[REDACTED]

9 In this Contract, unless the context otherwise requires, all capitalised words and expressions shall have the meanings ascribed to them by the Framework Agreement and/or Call-Off Terms and Conditions.

10 The following Annexes are incorporated within this Contract:

<b>Annex 1</b>	Standard Terms
<b>Annex 2</b>	Additional Key Provisions to Appendices 3 to 13 – Optional –
<b>Annex 3</b>	Optional Terms for Software and related Services –

11 The following Appendices are incorporated within this Contract:

Appendix 1	Participating Authority Specification
Appendix 2	Contract Price
Appendix 3	Change Control
Appendix 4	Implementation Plan
Appendix 5	Locations subject to lease and/or licence
Appendix 6	Step In Rights
Appendix 7	Termination
Appendix 8	TUPE Transfer
Appendix 9	Software and End User License Agreement (EULA)
Appendix 10	Key Performance Indicators
Appendix 11	Subcontractors
Appendix 12	Social Value
Appendix 13	Data Protection Protocol Form

**Signed by the authorised representative of THE PARTICIPATING AUTHORITY**

<b>Name:</b>	[REDACTED]	<b>Signature:</b>	[REDACTED]
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Position:		Date:	
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**AND**

**Signed by the authorised representative of THE SUPPLIER**

Name:		Signature:	
Position:		Date:	

### **Appendix 1**

#### **Authority Specification**

SCC and the Authority hereby acknowledge and agree the following with respect to the provisions of the Order Form

The following provisions of the Call-Off Terms and Conditions are not relevant to the Services to be provided by the Supplier and shall not apply to this Contract:

- (a) Schedule 1, Section 8 (Application of TUPE at the commencement of the provision of Services)
- (b) Schedule 1, Pharmaceutical Products
- (c) Schedule 1, Section 13 (Installation and Commissioning Services)
- (d) Schedule 1, Section 14 (Maintenance Services) Support is detailed as per Appendix 10, which does apply
- (e) Schedule 1, Section 18 (Warranties). This would be covered by the EULA
- (f) Schedule 1, Section 19 (Training / Support Services / Help Desk) As per Appendix 10
- (g) Schedule 1, Exhibit A (Key Performance Indicators) As per Appendix 10
- (h) Schedule 2, Section 3 (Inspection, rejection, return and recall of the Goods)
- (i) Schedule 2, Section 4 (Operation of the Services)
- (j) Schedule 2, Section 5 (Staff and Life Science Industry Accredited Credentialing Register)
- (k) Schedule 2, Section 10 (Warranties) As per Appendix 9
- (l) Schedule 2, Section 11 (Intellectual Property) As per Appendix 9
- (m) Schedule 2, Section 16.4

- (n) Schedule 2, Section 17 (Staff information and the application of TUPE at the end of the Contract) As per Appendix 8
- (o) Schedule 2, Section 18 (Packaging, identification, end of us and coding requirements)
- (p) Schedule 2, Subsection 20.4 – As per Appendix 9
- (q) Schedule 3, Subsections 2.3, 2.4, and 2.6 (Data Protection) (amended)
- (r) Schedule 5 (Installation and Commissioning Services)
- (s) Schedule 5A (Maintenance Services) As per Appendix 10
- (t) Schedule 6, Section 2 (Implementation Services)
- (u) Schedule 6, Section 3 (Implementation)
- (v) Schedule 6, Section 4 (Testing)
- (w) Schedule 6, Section 5 (Key Staff)
- (x) Schedule 6, Section 7 (Additional Termination & Exit Provisions)
- (y) Schedule 6, Section 10 (Service Levels) As per Appendix 10
- (z) Schedule 6, Section 12 (Solution Compatibility, Updates & Upgrades) As per Appendix 9
- (aa) Schedule 6, Section 13 (Hosting, Back-up & Disaster Recovery)
- (bb) Schedule 6, Subsection 15.2
- (cc) Schedule 6, Section 16 (Escrow)
- (dd) Schedule 7 (Pharmaceuticals)

The Parties agree that the following provisions of the Call-Off Terms and Conditions shall be modified as follows:

- (a) Schedule 2, Section 12 (Indemnity) shall be amended by deleting subsections 12.1.3 and 12.1.4. Would need Home Office to agree

The Supplier shall provide the Authority with the below Goods/Services:

Part Code	Description	Qty
[REDACTED]	[REDACTED]	1
[REDACTED]	[REDACTED] [REDACTED]	1
[REDACTED]	[REDACTED]	1
[REDACTED]	[REDACTED]	1
[REDACTED]	[REDACTED]	1

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**Appendix 2**  
**Contract Price**

The Contract Price shall be as follows:

As per QT-4435987 v2 below, the Authority shall pay the Supplier £1,144,034.01 (Excl VAT) associated with the Authority Specification above.

Part Code	Description	Qty	Price	Total
<b>CAID Renewal 14/07/25 - 13/07/26 (Magnet Forensics)</b>				
[REDACTED]	[REDACTED]	1	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	1	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	1	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	1	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	1	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	1	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	1	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	1	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	1	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	1	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	1	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	1	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	1	[REDACTED]	[REDACTED]
			<b>Total ex. VAT</b>	<b>£ 1,144,034.01</b>
			<b>VAT</b>	<b>£ 228,806.80</b>

Product	Type	Qty	Unit Price per 12 months	Total 12 months
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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Payment profile:**

To be paid annually in advance and within 30 days of receipt of a valid invoice.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Appendix 3**  
**Change Control**

**CHANGE CONTROL NOTE (CCN)**  
**FOR CALL-OFF CONTRACT UNDER THE HEALTHTRUST EUROPE COMIT 3 FRAMEWORK AGREEMENT**

*This CCN relates solely to the Contract entered into between the Authority and the Supplier dated [ enter call-off contract date ] pursuant to the ICT Solutions 2023 Digital Technology Framework (ComIT 3 – Complete IT) Issued in accordance with the Call-Off Terms and Conditions.*

CCN Number : .....  
Contract Reference : .....  
CCN Title : .....  
Date change first proposed: .....

**The Supplier:** Specialist Computer Centres PLC  
**The Authority:** [to be completed]

**Contract change full details:**  
*[insert details here]*  
**Contract change cost implications:**  
*[insert details here]*  
**Effective date of CCN:** *[insert date]*

- IT IS AGREED** as follows:
1. With effect from the Effective Date the Contract shall be amended as set out above.
  2. Save as herein amended, all other terms and conditions of the Contract inclusive of any previous CCNs shall remain in full force and effect.

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

**By** .....  
**Name** .....  
**Title** .....  
**Date** .....

Signed for and on behalf of the Supplier

By .....  
Name ..... Title  
..... Date  
.....

**Appendix 4**

**Implementation Plan Not Used**

**Appendix**

**5**

**Lease and/or Licence to access Premises and Locations**

**Not used**

**Appendix**

**6**

**Step In Rights Not used**

**Appendix 7**

**Termination Sum Not used**

## **Appendix 8**

### **Staff Transfer**

The Parties believe that the Transfer of Undertakings (Protection of Employment) Regulations 2006 and any provisions replacing or amending those provisions (the “Transfer Regulations”) do not apply to the transactions which are the subject matter of this Contract.

Notwithstanding the above, the Authority shall indemnify the Supplier against any costs, claims, demands or expenses (including reasonable legal and other professional expenses) and all losses, damages, compensation and other liabilities including those incurred by or attributed to any subcontractor of the Supplier (which shall include any incurred as a result of an indemnity or warranty given, or to be given by the Supplier to a sub-contractor) which arise out of or in connection with (and which arise during the term of the Contract or on or after the expiry or termination of the Contract):

- 1.1.1 the employment (if it is subsequently determined by a court or tribunal of competent jurisdiction that the Transfer Regulations do apply to a service transfer which arises in connection with this Contract), or termination of employment of former employees of the Authority and/or any the Authority’s contractors, including for the avoidance of doubt any claims for breach of statutory duty, any claims for damages for breach of contract and/or compensation for unfair or wrongful dismissal or redundancy arising from any such employees having ceased for any reason to be employed;
- 1.1.2 any obligation to contribute to a pension scheme (whether an occupational pension scheme, personal pension scheme, stakeholder pension scheme, or public service pension scheme) where the required contribution exceeds the minimum level of contribution by an employer pursuant to sections 257 and 258 of the Pensions Act 2004 (and regulations under those sections);
- 1.1.3 to the extent it exceeds the obligation set out in sub-paragraph (b) above, any obligation to provide benefits in connection with:
  - (a) New Fair Deal;
  - (b) Old Fair Deal;
  - (c) Best Value Direction; and
  - (d) any other form of pension protection (whether or not on a statutory or overriding basis) including (on a non-exhaustive basis and without prejudice to the generality of the foregoing):
    - (i) the Railway Pensions (Protection and Designation of Schemes) Order 1994;

- (ii) the Franchising Schemes and Enhanced Partnership Schemes (Pension Protection) (England) Regulations 2017;
- (iii) the Electricity (Protected Persons) (England and Wales) Pension Regulations 1990;
- (iv) Schedule 8 to the Energy Act 2004;

1.1.4 to the extent it exceeds the obligation set out in sub-paragraph (b) above, any obligation to provide benefits where such obligation transfers pursuant to [the Transfer Regulations] including (on a non-exhaustive basis and without prejudice to the generality of the foregoing):

- (a) benefits which are not old age, invalidity or survivor benefits;
- (b) benefits payable on redundancy or early retirement;
- (c) benefits which derive from the legal principles of *Beckmann v Dynamco*, *Whicheloe Macfarlane*, *Martin v South Bank University*, *Procter & Gamble v SCA*;
- (d) benefits which transfer by reference to the [Transferring Employee's] contract or terms of employment;

and a reference to "benefits" in this paragraph includes, without prejudice to the generality of the foregoing, benefits payable by way of a pension or lump sum and whether payable to the applicable employee, their dependants, relations or other connected beneficiary."

Definitions:

**"Best Value Direction"** means the Best Value Authorities Staff Transfers (Pensions) Direction 2007 or the Welsh Authorities Staff Transfers (Pensions) Direction 2012 (as appropriate);

**"New Fair Deal"** means the revised Fair Deal position set out in the HM Treasury guidance: *"Fair Deal for staff pensions: staff transfer from central government"* issued in October 2013 including:

any amendments to that document; and any  
similar protection required by the [Contract];

**"Old Fair Deal"** means HM Treasury and/or Cabinet Office guidance: *"Staff Transfers from Central Government: A Fair Deal for Staff Pensions"* issued in June 1999 including the supplementary guidance *"Fair Deal for Staff pensions: Procurement of Bulk Transfer Agreements and Related Issues"* issued in June 2004;

**Appendix 9**

**Software and End-User Licence Agreement (EULA)**

The Authority agrees to be bound by the terms and conditions of the End User Licence Agreement embedded below and attached:

[Magnet Forensics - EULA \(Version 20250623\) web](#)

**Appendix 10**

**Key Performance Indicators (KPIs)**

	ESSENTIAL SUPPORT	PREMIUM SUPPORT
<div>██████████</div> <div>████████████████████</div> <div>████████████████████</div> <div>████████████████████</div>	<div>██████</div>	<div>██████</div>
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**Appendix 11**  
**Subcontractors**

**Annex A List of Sub-Contractors**

Sub-contractor Name	The percentage (%) of work being delivered by the Sub-contractor
Magnet Forensics Inc	100%

**Appendix 12**  
**Social Value**

The Supplier agrees to the Net Zero and Social Value commitments of the Framework T&Cs

**Appendix 13**

**DATA PROTECTION PROTOCOL**

**Table A – Processing, Personal Data and Data Subjects**

This Table A shall be completed by the Authority, who may take account of the view of the Supplier, however the final decision as to the content of this Table A shall be with the Authority at its absolute discretion.

**Table A – Processing, Personal Data and Data Subjects**

Description	Details
Subject matter of the Processing	<div></div> <div></div>
Duration of the Processing	<div></div>
Nature and purposes of the Processing	<div></div> <div></div> <div></div>
Type of Personal Data	<div></div>
Categories of Data Subject	<div></div> <div></div>

Plan for return and destruction of the data once the Processing is complete UNLESS requirement under union or member state law to preserve that type of data	
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### Definitions

The definitions and interpretative provisions at Schedule 4 (Definitions and Interpretations) of the Contract shall also apply to this Protocol. For example, the following terms are defined in Schedule 4 of the Contract: “Authority”, “Data Protection Legislation”, “UK GDPR”, “Process” and “Processor” and “Supplier” are defined in Schedule 4 of the Contract. Additionally, in this Protocol the following words shall have the following meanings unless the context requires otherwise:

<b>“Controller”</b>	shall have the same meaning as set out in the UK GDPR;
<b>“Data Protection Impact Assessment”</b>	means an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
<b>“Data Protection Officer”</b>	shall have the same meaning as set out in the UK GDPR;
<b>“Data Recipient”</b>	means that Controller who receives the relevant Personal Data;
<b>“Data Subject”</b>	shall have the same meaning as set out in the UK GDPR;
<b>“Data Subject Request”</b>	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
<b>“Data Transferor”</b>	means that Controller who transfers the relevant Personal Data;
<b>“Information Commissioner”</b>	means the Information Commissioner in the UK;

<b>“Joint Controllers”</b>	means where two or more Controllers jointly determine the purposes and means of Processing;
<b>“Personal Data Breach”</b>	shall have the same meaning as set out in the UK GDPR;
<b>“Processor”</b>	shall have the same meaning as set out in the UK GDPR;
<b>“Protocol” or “Data Protection Protocol”</b>	means this Data Protection Protocol;
<b>“Sensitive Data”</b>	shall mean the types of data set out in Article 9(1) or 10 of the UK GDPR;
<b>“Sub-processor”</b>	means any third Party appointed to Process Personal Data on behalf of that Processor related to this Contract.

## **1. Supplier as data processor**

### **1.1 Purpose and scope**

- 1.1.1 The purpose of this Clause 1 is to ensure compliance with Article 28(3) and (4) of the UK GDPR.
- 1.1.2 This Clause 1 applies to the Processing of Personal Data as specified in Table A.
- 1.1.3 Table A is an integral part of this Clause 1.
- 1.1.4 This Clause 1 is without prejudice to obligations to which the Controller is subject by virtue of the UK GDPR.
- 1.1.5 This Clause 1 does not by itself ensure compliance with obligations related to international transfers in accordance with Chapter V of the UK GDPR.

## **1.2 Invariability of Clause 1**

1.2.1 The Parties undertake not to modify Clause 1, except for adding information to Table A or updating information in it.

1.2.2 This does not prevent the Parties from including the standard contractual clauses laid down in this Clause 1 in a broader contract, or from adding other clauses or additional safeguards provided that they do not directly or indirectly contradict Clause 1 or detract from the fundamental rights or freedoms of Data Subjects.

## **1.3 Interpretation**

1.3.1 Where this Clause 1 uses the terms defined in the UK GDPR, those terms shall have the same meaning as in the UK GDPR.

1.3.2 This Clause 1 shall be read and interpreted in the light of the provisions of the UK GDPR.

1.3.3 This Clause 1 shall not be interpreted in a way that runs counter to the rights and obligations provided for in the UK GDPR or in a way that prejudices the fundamental rights or freedoms of the Data Subjects.

## **1.4 Hierarchy**

1.4.1 In the event of a contradiction between this Clause 1 and the provisions of the Contract and/or related agreements between the Parties existing at the time when this Clause 1 is agreed or entered into thereafter, this Clause 1 shall prevail.

## **1.5 Description of the processing**

1.5.1 The details of the Processing operations, in particular the categories of Personal Data and the purposes of Processing for which the Personal Data is Processed on behalf of the Controller, are specified in Table A.

## **1.6 Obligations of the Parties**

1.6.1 Instructions

- (i) The Processor shall Process Personal Data only on documented instructions from the Controller, unless required to do so by Law to which the Processor is subject. In this case, the Processor shall inform the Controller of that legal requirement before Processing, unless the Law prohibits this on important grounds of public interest. Subsequent instructions may also be given by the Controller throughout the duration of the Processing of Personal Data. These instructions shall always be documented.
- (ii) The Processor shall immediately inform the Controller if, in the Processor's opinion, instructions given by the Controller infringe the UK GDPR.

#### 1.6.2 Purpose Limitation

- (i) The Processor shall Process the Personal Data only for the specific purpose(s) of the Processing, as set out in Table A, unless it receives further instructions from the Controller.

#### 1.6.3 Duration of the Processing of Personal Data

- (i) Processing by the Processor shall only take place for the duration specified in Table A.

#### 1.6.4 Security of Processing

- (i) The Processor shall at least implement the technical and organisational measures specified in Table A to ensure the security of the Personal Data. This includes protecting the data against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access to the data. In assessing the appropriate level of security, the Parties shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purposes of Processing and the risks involved for the Data Subjects.
- (ii) The Processor shall grant access to the Personal Data undergoing Processing to members of its personnel only to the extent strictly necessary for implementing, managing and monitoring of the Contract. The Processor shall ensure that persons authorised to Process the Personal Data received have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

#### 1.6.5 Sensitive Data

- (i) If the Processing involves Sensitive Data as set out in Table A, or data relating to criminal convictions and offences, the Processor shall apply specific restrictions and/or additional safeguards as agreed between the Parties in Table A.

#### 1.6.6 Documentation and compliance

- (i) The Parties shall be able to demonstrate compliance with this Clause 1.
- (ii) The Processor shall deal promptly and adequately with inquiries from the Controller about the Processing of data in accordance with this Clause 1.
- (iii) The Processor shall make available to the Controller all information necessary to demonstrate compliance with the obligations that are set out in this Clause 1 and stem directly from the UK GDPR. At the Controller's request, the Processor shall also permit and contribute to audits of the Processing activities covered by this Clause 1, at reasonable intervals or if there are indications of non-compliance. In deciding on a review or an audit, the Controller may take into account relevant certifications held by the Processor.
- (iv) The Controller may choose to conduct the audit by itself or mandate an independent auditor. Audits may also include inspections at the premises or physical facilities of the Processor and shall, where appropriate, be carried out with reasonable notice.
- (v) The Parties shall make the information referred to in this Clause 1, including the results of any audits, available to the Information Commissioner on request.

#### 1.6.7 Use of Sub-processors

- (i) The Processor shall not subcontract any of its Processing operations performed on behalf of the Controller in accordance with this Clause 1 to a Sub-processor, without the Controller's prior specific written authorisation. The Processor shall submit the request for specific authorisation at least fourteen (14) days prior to the engagement of the Sub-processor in question, together with the information necessary to enable the Controller to decide on the authorisation.
- (ii) Where the Processor engages a Sub-processor for carrying out specific Processing activities (on behalf of the Controller), it shall do so by way of a

contract which imposes on the Sub-processor, in substance, the same data protection obligations as the ones imposed on the Processor in accordance with this Clause 1. The Processor shall ensure that the Sub-processor complies with the obligations to which the Processor is subject pursuant to this Clause 1 and to the UK GDPR.

- (iii) At the Controller's request, the Processor shall provide a copy of such a Subprocessor agreement and any subsequent amendments to the Controller. To the extent necessary to protect business secret or other confidential information, including Personal Data, the Processor may redact the text of the agreement prior to sharing the copy.
- (iv) The Processor shall remain fully responsible to the Controller for the performance of the Sub-processor's obligations in accordance with its contract with the Processor. The Processor shall notify the Controller of any failure by the Sub-processor to fulfil its contractual obligations.
- (v) The Processor shall agree a third party Customer clause with the Subprocessor whereby - in the event the Processor has factually disappeared, ceased to exist in law or has become insolvent - the Controller shall have the right to terminate the Sub-processor contract and to instruct the Subprocessor to erase or return the Personal Data.

#### 1.6.8 International Transfers

- (i) Any transfer of data to a third country or an international organisation by the Processor shall be done only on the basis of documented instructions from the Controller or in order to fulfil a specific requirement under Law to which the Processor is subject and shall take place on the basis of an adequacy regulation (in accordance with Article 45 of the UK GDPR) or standard data protection clauses (in accordance with Article 46 of the UK GDPR). All transfers shall comply with Chapter V of the UK GDPR and any other applicable Data Protection Legislation.
- (ii) The Controller agrees that where the Processor engages a Sub-processor in accordance with Clause 1.6.7. for carrying out specific Processing activities (on behalf of the Controller) and those Processing activities involve a transfer of Personal Data within the meaning of Chapter V of GDPR, the Processor and the Sub-processor can ensure compliance with Chapter V of the UK GDPR by using standard contractual clauses adopted by the Information Commissioner in accordance with Article 46(2) of the UK GDPR, provided the conditions for the use of those standard contractual clauses are met.

## 1.7 Assistance to the Controller

1.7.1 The Processor shall promptly notify the Controller if it receives a Data Subject Request. It shall not respond to the request itself, unless authorised to do so by the Controller.

1.7.2 The Processor shall assist the Controller in fulfilling its obligations to respond to Data Subject Requests to exercise their rights, taking into account the nature of the Processing. In fulfilling its obligations in accordance with Clauses 1.7.1 and

1.7.2 Processor shall comply with the Controller's instructions.

1.7.3 In addition to the Processor's obligation to assist the Controller pursuant to Clause 1.7.2, the Processor shall furthermore assist the Controller in ensuring compliance with the following obligations, taking into account the nature of the data Processing and the information available to the Processor:

- (i) the obligation to carry out a Data Protection Impact Assessment where a type of Processing is likely to result in a high risk to the rights and freedoms of natural persons;
- (ii) the obligation to consult the Information Commissioner prior to Processing where a Data Protection Impact Assessment indicates that the Processing would result in a high risk in the absence of measures taken by the Controller to mitigate the risk;
- (iii) the obligation to ensure that Personal Data is accurate and up to date, by informing the Controller without delay if the Processor becomes aware that the Personal Data it is Processing is inaccurate or has become outdated; and
- (iv) the obligations in Article 32 of the UK GDPR.

1.7.4 The Parties shall set out in Table A the appropriate technical and organisational measures by which the Processor is required to assist the Controller in the application of this Clause 1.7 as well as the scope and the extent of the assistance required.

## 1.8 Notification of Personal Data Breach

1.8.1 In the event of a Personal Data Breach, the Processor shall co-operate with and assist the Controller to comply with its obligations under Articles 33 and 34 of the UK GDPR, where applicable, taking into account the nature of Processing and the information available to the Processor.

1.8.2 Personal Data Breach concerning data Processed by the Controller

(i) In the event of a Personal Data Breach concerning data Processed by the Controller, the Processor shall assist the Controller:

- (A) in notifying the Personal Data Breach to the Information Commissioner, without undue delay after the Controller has become aware of it, where relevant (unless the Personal Data Breach is unlikely to result in a risk to the rights and freedoms of natural persons);
- (B) in obtaining the following information which, pursuant to Article 33(3) of the UK GDPR, shall be stated in the Controller's notification, and must at least include:
  - 1) the nature of the Personal Data including where possible, the categories and approximate number of Data Subjects concerned and the categories and approximate number of Personal Data records concerned;
  - 2) the likely consequences of the Personal Data Breach; and
  - 3) the measures taken or proposed to be taken by the Controller to address the Personal Data Breach, including, where appropriate, measures to mitigate its possible adverse effects. Where, and insofar as, it is not possible to provide all this information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.
- (C) in complying, pursuant to Article 34 of the UK GDPR, with the obligation to communicate without undue delay the Personal Data Breach to the Data Subject, when the Personal Data Breach is likely to result in a high risk to the rights and freedoms of natural persons.

### 1.8.3 Personal Data Breach concerning data Processed by the Processor

- (i) In the event of a Personal Data Breach concerning data Processed by the Processor, the Processor shall notify the Controller without undue delay after the Processor having become aware of the breach. Such notification shall contain, at least:

- (A) a description of the nature of the breach (including, where possible, the categories and approximate number of Data Subjects and data records concerned);
- (B) the details of a contact point where more information concerning the Personal Data Breach can be obtained; and
- (C) its likely consequences and the measures taken or proposed to be taken to address the breach, including to mitigate its possible adverse effects.

Where, and insofar as, it is not possible to provide all this information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.

- (ii) The Parties shall set out in Table A all other elements to be provided by the Processor when assisting the Controller in the compliance with the Controller's obligations under Articles 33 and 34 of the UK GDPR.

#### 1.9 ***Non-compliance with Clause 1 and termination***

1.9.1 Without prejudice to any provisions of the UK GDPR, in the event that the Processor is in breach of its obligations under this Clause 1, the Controller may instruct the Processor to suspend the Processing of Personal Data until the latter complies with this Clause 1 or the Contract is terminated. The Processor shall promptly inform the Controller in case it is unable to comply with this Clause 1 for whatever reason.

1.9.2. The Controller shall be entitled to terminate the Contract insofar as it concerns Processing of Personal Data in accordance with this Clause 1 if:

- (i) the Processing of Personal Data by the Processor has been suspended by the Controller pursuant to Clause 1.9.1 and if compliance with this Clause 1 is not restored within a reasonable time and in any event within one month following suspension;
- (ii) the Processor is in substantial or persistent breach of this Clause 1 or its obligations under the UK GDPR;
- (iii) the Processor fails to comply with a binding decision of a competent court or the Information Commissioner regarding its obligations pursuant to this Clause 1 or to the UK GDPR.

1.9.3 The Processor shall be entitled to terminate the Contract insofar as it concerns Processing of Personal Data under this Clause 1 where, after having informed the Controller that its instructions infringe applicable legal requirements in accordance with Clause 1.6.1(ii), the Controller insists on compliance with the

instructions (provided that the Processor has clearly demonstrated the infringement by the provision of a legal opinion provided by a solicitor or barrister that both Parties can rely upon).

- 1.9.4 Following termination of the Contract, the Processor shall, at the choice of the Controller, delete all Personal Data Processed on behalf of the Controller and certify to the Controller that it has done so, or, return all the Personal Data to the Controller and delete existing copies unless the Law requires storage of the Personal Data. Until the data is deleted or returned, the Processor shall continue to ensure compliance with this Clause 1.

## **2. Parties as joint controllers**

- 2.1. Where in Table A the Parties acknowledge that, for the purposes of the Data Protection Legislation, the Authority and the Supplier are Joint Controllers, this Clause 2 shall apply. The only Processing that a Joint Controller is authorised to do is listed in Table A of this Protocol by the Authority and may not be determined by the Supplier.
- 2.2. The Parties shall, in accordance with Article 26 of the UK GDPR, enter into a Joint Controller agreement based on the terms outlined in Annex 1.

## **3. Both data controllers**

- 3.1. To the extent that the nature of the Supplier's obligations under the Contract means that the Parties are acting both as Controllers (as may be referred to in Table A), each Party undertakes to comply at all times with its obligations under the Data Protection Legislation and shall:
  - 3.1.1. implement such measures and perform its obligations (as applicable) in compliance with the Data Protection Legislation; and
  - 3.1.2. be responsible for determining its data security obligations taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the Processing as well as the risk of varying likelihood and severity for the rights and freedoms of the Data Subjects, and shall implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and accidental destruction or loss and ensure the protection of the rights of the Data Subject, in such a manner that Processing will meet the requirements of the Data Protection Legislation where Personal Data has been transmitted by it, or while the Personal Data is in its possession or control.
- 3.2. Where Personal Data is shared between the Parties, each acting as Controller:

- 3.2.1. the Data Transferor warrants and undertakes to the Data Recipient that such Personal Data has been collected, Processed and transferred in accordance with the Data Protection Legislation and this Clause 1;
- 3.2.2. the Data Recipient will Process the Personal Data in accordance with the Data Protection Legislation and this Clause 1; and
- 3.2.3. where the Data Recipient is in breach of its obligations under this Protocol and the Data Protection Legislation, the Data Transferor may suspend the transfer of the Personal Data to the Data Recipient either on a temporary or permanent basis, depending on the nature of the breach.

#### ***4. Changes to this protocol***

- 4.1 Any change or other variation to this Protocol shall only be binding once it has been agreed in writing and signed by an authorised representative of

#### **Table A – Processing, Personal Data and Data Subjects**

This Table A shall be completed by the Authority, who may take account of the view of the Supplier, however the final decision as to the content of this Table A shall be with the Authority at its absolute discretion.

### Definitions

The definitions and interpretative provisions at Schedule 4 (Definitions and Interpretations) of the Contract shall also apply to this Protocol. For example, the following terms are defined in Schedule 4 of the Contract: “Authority”, “Data Protection Legislation”, “UK GDPR”, “Process” and “Processor” and “Supplier” are defined in Schedule 4 of the Contract. Additionally, in this Protocol the following words shall have the following meanings unless the context requires otherwise:

<b>“Controller”</b>	shall have the same meaning as set out in the UK GDPR;
<b>“Data Protection Impact Assessment”</b>	means an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
<b>“Data Protection Officer”</b>	shall have the same meaning as set out in the UK GDPR;
<b>“Data Recipient”</b>	means that Controller who receives the relevant Personal Data;
<b>“Data Subject”</b>	shall have the same meaning as set out in the UK GDPR;
<b>“Data Subject Request”</b>	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
<b>“Data Transferor”</b>	means that Controller who transfers the relevant Personal Data;
<b>“Information Commissioner”</b>	means the Information Commissioner in the UK;
<b>“Joint Controllers”</b>	means where two or more Controllers jointly determine the purposes and means of Processing;

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<b>“Personal Data Breach”</b>	shall have the same meaning as set out in the UK GDPR;
<b>“Processor”</b>	shall have the same meaning as set out in the UK GDPR;
<b>“Protocol” or “Data Protection Protocol”</b>	means this Data Protection Protocol;
<b>“Sensitive Data”</b>	shall mean the types of data set out in Article 9(1) or 10 of the UK GDPR;
<b>“Sub-processor”</b>	means any third Party appointed to Process Personal Data on behalf of that Processor related to this Contract.

**1. Supplier as data processor****1.10 Purpose and scope**

1.1.1 The purpose of this Clause 1 is to ensure compliance with Article 28(3) and (4) of the UK GDPR.

1.1.2 This Clause 1 applies to the Processing of Personal Data as specified in Table A.

1.1.3 Table A is an integral part of this Clause 1.

1.1.4 This Clause 1 is without prejudice to obligations to which the Controller is subject by virtue of the UK GDPR.

1.1.5 This Clause 1 does not by itself ensure compliance with obligations related to international transfers in accordance with Chapter V of the UK GDPR.

**1.11 Invariability of Clause 1**

1.2.1 The Parties undertake not to modify Clause 1, except for adding information to Table A or updating information in it.

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1.2.2 This does not prevent the Parties from including the standard contractual clauses laid down in this Clause 1 in a broader contract, or from adding other clauses or additional safeguards provided that they do not directly or indirectly contradict Clause 1 or detract from the fundamental rights or freedoms of Data Subjects.

#### 1.12 **Interpretation**

1.3.1 Where this Clause 1 uses the terms defined in the UK GDPR, those terms shall have the same meaning as in the UK GDPR.

1.3.2 This Clause 1 shall be read and interpreted in the light of the provisions of the UK GDPR.

1.3.3 This Clause 1 shall not be interpreted in a way that runs counter to the rights and obligations provided for in the UK GDPR or in a way that prejudices the fundamental rights or freedoms of the Data Subjects.

#### 1.13 **Hierarchy**

1.4.1 In the event of a contradiction between this Clause 1 and the provisions of the Contract and/or related agreements between the Parties existing at the time when this Clause 1 is agreed or entered into thereafter, this Clause 1 shall prevail.

#### 1.14 **Description of the processing**

1.5.1 The details of the Processing operations, in particular the categories of Personal Data and the purposes of Processing for which the Personal Data is Processed on behalf of the Controller, are specified in Table A.

#### 1.15 **Obligations of the Parties**

##### 1.6.1 Instructions

- (iii) The Processor shall Process Personal Data only on documented instructions from the Controller, unless required to do so by Law to which the Processor is subject. In this case, the Processor shall inform the Controller of that legal requirement before Processing, unless the Law prohibits this on important grounds of public interest. Subsequent

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instructions may also be given by the Controller throughout the duration of the Processing of Personal Data. These instructions shall always be documented.

- (iv) The Processor shall immediately inform the Controller if, in the Processor's opinion, instructions given by the Controller infringe the UK GDPR.

#### 1.6.2 Purpose Limitation

- (i) The Processor shall Process the Personal Data only for the specific purpose(s) of the Processing, as set out in Table A, unless it receives further instructions from the Controller.

#### 1.6.3 Duration of the Processing of Personal Data

- (ii) Processing by the Processor shall only take place for the duration specified in Table A.

#### 1.6.4 Security of Processing

- (iii) The Processor shall at least implement the technical and organisational measures specified in Table A to ensure the security of the Personal Data. This includes protecting the data against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access to the data. In assessing the appropriate level of security, the Parties shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purposes of Processing and the risks involved for the Data Subjects.
- (iv) The Processor shall grant access to the Personal Data undergoing Processing to members of its personnel only to the extent strictly necessary for implementing, managing and monitoring of the Contract. The Processor shall ensure that persons authorised to Process the Personal Data received have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

#### 1.6.5 Sensitive Data

- (ii) If the Processing involves Sensitive Data as set out in Table A, or data relating to criminal convictions and offences, the Processor shall apply specific restrictions and/or additional safeguards as agreed between the Parties in Table A.

#### 1.6.6 Documentation and compliance

- (vi) The Parties shall be able to demonstrate compliance with this Clause 1.
- (vii) The Processor shall deal promptly and adequately with inquiries from the Controller about the Processing of data in accordance with this Clause 1.
- (viii) The Processor shall make available to the Controller all information necessary to demonstrate compliance with the obligations that are set out in this Clause 1 and stem directly from the UK GDPR. At the Controller's request, the Processor shall also permit and contribute to audits of the Processing activities covered by this Clause 1, at reasonable intervals or if there are indications of non-compliance. In deciding on a review or an audit, the Controller may take into account relevant certifications held by the Processor.
- (ix) The Controller may choose to conduct the audit by itself or mandate an independent auditor. Audits may also include inspections at the premises or physical facilities of the Processor and shall, where appropriate, be carried out with reasonable notice.
- (x) The Parties shall make the information referred to in this Clause 1, including the results of any audits, available to the Information Commissioner on request.

#### 1.6.7 Use of Sub-processors

- (vi) The Processor shall not subcontract any of its Processing operations performed on behalf of the Controller in accordance with this Clause 1 to a Sub-processor, without the Controller's prior specific written authorisation. The Processor shall submit the request for specific authorisation at least fourteen (14) days prior to the engagement of the Sub-processor in question, together with the information necessary to enable the Controller to decide on the authorisation.
- (vii) Where the Processor engages a Sub-processor for carrying out specific Processing activities (on behalf of the Controller), it shall do so by way of

a contract which imposes on the Sub-processor, in substance, the same data protection obligations as the ones imposed on the Processor in accordance with this Clause 1. The Processor shall ensure that the Subprocessor complies with the obligations to which the Processor is subject pursuant to this Clause 1 and to the UK GDPR.

- (viii) At the Controller's request, the Processor shall provide a copy of such a Sub-processor agreement and any subsequent amendments to the Controller. To the extent necessary to protect business secret or other confidential information, including Personal Data, the Processor may redact the text of the agreement prior to sharing the copy.
- (ix) The Processor shall remain fully responsible to the Controller for the performance of the Sub-processor's obligations in accordance with its contract with the Processor. The Processor shall notify the Controller of any failure by the Sub-processor to fulfil its contractual obligations.
- (x) The Processor shall agree a third party Customer clause with the Subprocessor whereby - in the event the Processor has factually disappeared, ceased to exist in law or has become insolvent - the Controller shall have the right to terminate the Sub-processor contract and to instruct the Sub-processor to erase or return the Personal Data.

#### 1.6.8 International Transfers

- (iii) Any transfer of data to a third country or an international organisation by the Processor shall be done only on the basis of documented instructions from the Controller or in order to fulfil a specific requirement under Law to which the Processor is subject and shall take place on the basis of an adequacy regulation (in accordance with Article 45 of the UK GDPR) or standard data protection clauses (in accordance with Article 46 of the UK GDPR). All transfers shall comply with Chapter V of the UK GDPR and any other applicable Data Protection Legislation.
- (iv) The Controller agrees that where the Processor engages a Subprocessor in accordance with Clause 1.6.7. for carrying out specific Processing activities (on behalf of the Controller) and those Processing activities involve a transfer of Personal Data within the meaning of Chapter V of GDPR, the Processor and the Sub-processor can ensure compliance with Chapter V of the UK GDPR by using standard contractual clauses adopted by the Information

Commissioner in accordance with Article 46(2) of the UK GDPR, provided the conditions for the use of those standard contractual clauses are met.

**1.16 Assistance to the Controller**

1.7.1 The Processor shall promptly notify the Controller if it receives a Data Subject Request. It shall not respond to the request itself, unless authorised to do so by the Controller.

1.7.2 The Processor shall assist the Controller in fulfilling its obligations to respond to Data Subject Requests to exercise their rights, taking into account the nature of the Processing. In fulfilling its obligations in accordance with Clauses 1.7.1 and 1.7.2 Processor shall comply with the Controller's instructions.

1.7.3 In addition to the Processor's obligation to assist the Controller pursuant to Clause 1.7.2, the Processor shall furthermore assist the Controller in ensuring compliance with the following obligations, taking into account the nature of the data Processing and the information available to the Processor:

- (v) the obligation to carry out a Data Protection Impact Assessment where a type of Processing is likely to result in a high risk to the rights and freedoms of natural persons;
- (vi) the obligation to consult the Information Commissioner prior to Processing where a Data Protection Impact Assessment indicates that the Processing would result in a high risk in the absence of measures taken by the Controller to mitigate the risk;
- (vii) the obligation to ensure that Personal Data is accurate and up to date, by informing the Controller without delay if the Processor becomes aware that the Personal Data it is Processing is inaccurate or has become outdated; and
- (viii) the obligations in Article 32 of the UK GDPR.

1.7.4 The Parties shall set out in Table A the appropriate technical and organisational measures by which the Processor is required to assist the Controller in the application of this Clause 1.7 as well as the scope and the extent of the assistance required.

## 1.17 Notification of Personal Data Breach

1.8.1 In the event of a Personal Data Breach, the Processor shall co-operate with and assist the Controller to comply with its obligations under Articles 33 and 34 of the UK GDPR, where applicable, taking into account the nature of Processing and the information available to the Processor.

1.8.2 Personal Data Breach concerning data Processed by the Controller

(i) In the event of a Personal Data Breach concerning data Processed by the Controller, the Processor shall assist the Controller:

(D) in notifying the Personal Data Breach to the Information Commissioner, without undue delay after the Controller has become aware of it, where relevant (unless the Personal Data Breach is unlikely to result in a risk to the rights and freedoms of natural persons);

(E) in obtaining the following information which, pursuant to Article 33(3) of the UK GDPR, shall be stated in the Controller's notification, and must at least include:

- 1) the nature of the Personal Data including where possible, the categories and approximate number of Data Subjects concerned and the categories and approximate number of Personal Data records concerned;
- 2) the likely consequences of the Personal Data Breach; and
- 3) the measures taken or proposed to be taken by the Controller to address the Personal Data Breach, including, where appropriate, measures to mitigate its possible adverse effects.

Where, and insofar as, it is not possible to provide all this information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.

(F) in complying, pursuant to Article 34 of the UK GDPR, with the obligation to communicate without undue delay the Personal Data Breach to the Data Subject, when the Personal Data Breach

is likely to result in a high risk to the rights and freedoms of natural persons.

### 1.8.3 Personal Data Breach concerning data Processed by the Processor

(iii) In the event of a Personal Data Breach concerning data Processed by the Processor, the Processor shall notify the Controller without undue delay after the Processor having become aware of the breach. Such notification shall contain, at least:

- (A) a description of the nature of the breach (including, where possible, the categories and approximate number of Data Subjects and data records concerned);
- (B) the details of a contact point where more information concerning the Personal Data Breach can be obtained; and
- (C) its likely consequences and the measures taken or proposed to be taken to address the breach, including to mitigate its possible adverse effects.

Where, and insofar as, it is not possible to provide all this information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.

(iv) The Parties shall set out in Table A all other elements to be provided by the Processor when assisting the Controller in the compliance with the Controller's obligations under Articles 33 and 34 of the UK GDPR.

### 1.18 ***Non-compliance with Clause 1 and termination***

1.9.1 Without prejudice to any provisions of the UK GDPR, in the event that the Processor is in breach of its obligations under this Clause 1, the Controller may instruct the Processor to suspend the Processing of Personal Data until the latter complies with this Clause 1 or the Contract is terminated. The Processor shall promptly inform the Controller in case it is unable to comply with this Clause 1 for whatever reason.

2.11.2. The Controller shall be entitled to terminate the Contract insofar as it concerns Processing of Personal Data in accordance with this Clause 1 if:

- (iv) the Processing of Personal Data by the Processor has been suspended by the Controller pursuant to Clause 1.9.1 and if compliance with this Clause 1 is not restored within a reasonable time and in any event within one month following suspension;
- (v) the Processor is in substantial or persistent breach of this Clause 1 or its obligations under the UK GDPR;
- (vi) the Processor fails to comply with a binding decision of a competent court or the Information Commissioner regarding its obligations pursuant to this Clause 1 or to the UK GDPR.

1.9.3 The Processor shall be entitled to terminate the Contract insofar as it concerns Processing of Personal Data under this Clause 1 where, after having informed the Controller that its instructions infringe applicable legal requirements in accordance with Clause 1.6.1(ii), the Controller insists on compliance with the instructions (provided that the Processor has clearly demonstrated the infringement by the provision of a legal opinion provided by a solicitor or barrister that both Parties can rely upon).

1.9.4 Following termination of the Contract, the Processor shall, at the choice of the Controller, delete all Personal Data Processed on behalf of the Controller and certify to the Controller that it has done so, or, return all the Personal Data to the Controller and delete existing copies unless the Law requires storage of the Personal Data. Until the data is deleted or returned, the Processor shall continue to ensure compliance with this Clause 1.

## ***2. Parties as joint controllers***

3.1. Where in Table A the Parties acknowledge that, for the purposes of the Data Protection Legislation, the Authority and the Supplier are Joint Controllers, this Clause 2 shall apply. The only Processing that a Joint Controller is authorised to do is listed in Table A of this Protocol by the Authority and may not be determined by the Supplier.

3.2. The Parties shall, in accordance with Article 26 of the UK GDPR, enter into a Joint Controller agreement based on the terms outlined in Annex 1.

## ***4. Both data controllers***

4.1. To the extent that the nature of the Supplier's obligations under the Contract means that the Parties are acting both as Controllers (as may be referred to in Table A), each

Party undertakes to comply at all times with its obligations under the Data Protection Legislation and shall:

- 4.1.1. implement such measures and perform its obligations (as applicable) in compliance with the Data Protection Legislation; and
  - 4.1.2. be responsible for determining its data security obligations taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the Processing as well as the risk of varying likelihood and severity for the rights and freedoms of the Data Subjects, and shall implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and accidental destruction or loss and ensure the protection of the rights of the Data Subject, in such a manner that Processing will meet the requirements of the Data Protection Legislation where Personal Data has been transmitted by it, or while the Personal Data is in its possession or control.
- 4.2. Where Personal Data is shared between the Parties, each acting as Controller:
- 4.2.1. the Data Transferor warrants and undertakes to the Data Recipient that such Personal Data has been collected, Processed and transferred in accordance with the Data Protection Legislation and this Clause 1;
  - 4.2.2. the Data Recipient will Process the Personal Data in accordance with the Data Protection Legislation and this Clause 1; and
  - 4.2.3. where the Data Recipient is in breach of its obligations under this Protocol and the Data Protection Legislation, the Data Transferor may suspend the transfer of the Personal Data to the Data Recipient either on a temporary or permanent basis, depending on the nature of the breach.

#### ***4. Changes to this protocol***

4.1 Any change or other variation to this Protocol shall only be binding once it has been agreed in writing and signed by an authorised representative of both Parties.

#### **Annex 2 - Optional Terms for Key Provisions**

Call off Contract ☐ (only applicable to the Contract if the box is checked and the standards or requirements are listed)

**1 Provision of Goods and Services - Delivery Standards** ☐

**1.1 In-house Services by Supplier** - Time is of the essence as to any delivery dates under this Contract. If the Supplier fails to meet any delivery date this shall be deemed to be a breach incapable of remedy for the purposes of Clause 15.4.(i) of Schedule 2 of these Call-off Terms and Conditions.

**1.2 Goods and Services by Sub-contractors, manufacturers or third parties** – The Supplier shall use reasonable endeavours to meet any performance dates specified in the Order Form or in this Contract. If the Supplier fails to do so, the Participating Authority may without prejudice to any other rights it may have under the Contract:

- (a) terminate the Order in whole or in part without liability to the Supplier;
- (b) refuse to accept any subsequent delivery of the Goods or performance of the Services (as the case may be);
- (c) purchase substitute Goods and/or Services from another supplier; and
- (d) hold the Supplier accountable for any losses and additional costs incurred.

**2 Provision of Goods – Inspection of Goods** ☐

**2.1** For the purposes of Clause [insert] of [insert Schedule], the Participating Authority shall visually inspect the Goods within [insert **time period** during which any inspection must be carried out] of the date of delivery of the relevant Goods.

**3 Provision of Services - (Long Stop Date(s))\*** ☐

***[\*only use if the Services are to start at a different date following the Commencement Date].***

**3.1** The Services Commencement Date shall be [insert date]

**3.2** The Long Stop Date for the commencement of provision of the Services shall be [insert date].

**4 Training, Support Services and/or Help Desk** ☐

**4.1** The Supplier or its Sub-contractor shall as soon as reasonably practicable after delivery of the Goods or Services to the Participating Authority, provide a suitably qualified professional to deliver a thorough training programme about the features and benefits of the Goods and Services the Participating Authority.

**4.2** The Supplier shall provide as much training and support to the Participating Authority as the Participating Authority may reasonably require throughout the Term. Such training shall be carried out within the Contract Price and any associated costs shall be absorbed in full by the Supplier.

**4.3** The Supplier shall at its own expense provide the Participating Authority with copies of all training materials and resources, such materials to include a [insert]with sufficient detail to enable trained [clinical or applicable] staff within the Participating Authority to train others.

## **5 Implementation and Acceptance Testing of Goods and Services – Implementation Plan** ☐

5.1 The Supplier shall implement the Services in accordance with the Implementation Plan appended at Appendix 4.

## **6 Implementation and Acceptance Testing of Goods and Services – Pre-Acceptance Criteria** ☐

6.1 The parties agree to adhere to the Pre-Acceptance Criteria detailed within [insert]

## **7 Implementation and Acceptance Testing of Goods and Services – Provisional Acceptance Criteria** ☐

7.1 The parties agree to adhere to the Provisional Acceptance Criteria detailed within [insert]

## **8 Implementation and Acceptance Testing of Goods and Services – Final Acceptance Criteria** ☐

8.1 The parties agree to adhere to the Final Acceptance Criteria detailed within [insert].

8.2 Once the Supplier has completed all elements of delivery and installation/ implementation of the Goods and/or Services and has notified the Participating Authority in writing of such, the Participating Authority shall have, as a minimum, **[insert]** Business Days to conduct Final Acceptance Testing and review the implemented Goods and/or Services to ensure they conform with the Acceptance Criteria.

8.3 The Supplier agrees to assist the Participating Authority, as requested, in the performance of such testing and review and to cooperate with **[other suppliers and employees of the Participating Authority]** in the conducting of such testing and review.

## **9 Implementation and Acceptance Testing of Goods and Services – Final Acceptance Criteria** ☐

9.1 The Supplier is required to issue Test Certificates as detailed within Appendix 1 of the Specification.

9.2 If any of the **[Pre-Acceptance Criteria]; [Provisional Acceptance Criteria]; and/or the [Final Acceptance Criteria]** are not met in their entirety following completion of the relevant testing the Participating Authority may nevertheless at its discretion elect to provide its signature of any test certificates subject to rectification of any minor faults or errors. In such circumstances, the Supplier shall use all reasonable endeavours to rectify such faults or errors within the time period as specified in the applicable test certificate or, if no time period is so specified, within fourteen (14) days of the date of signature of the relevant test certificate.

**10 Locations subject to lease and/or licence** ☐

10.1 The provision of access by the Participating Authority to the Supplier to the Premises and Locations shall be subject to the lease and/or license appended at Appendix 5.

**11 Change Control Process** ☐

11.1 Any changes to this Contract, including to the Services and Goods, may only be agreed in accordance with the Change Control Process set out in Appendix 3.

**12 TUPE** ☐

12.1 Notwithstanding Key Provision 8 of the Contract Terms and Conditions, the Parties agree that the commencement of the provision of the Services under this Contract shall give rise to a relevant transfer as defined in TUPE and the provisions of Appendix 8 shall apply to such transfer.

**13 Termination Sum** ☐

13.1 Should the Participating Authority terminate this Contract in accordance with this Clause 13, then the Participating Authority shall pay to the Supplier the termination sum calculated in accordance with Appendix 7.

**14 Step In Rights** ☐

14.1 If the Supplier is unable to provide the Services, then the Participating Authority shall be entitled to exercise Step In Rights set out in Appendix 6.

**15 Key Performance Indicators** ☐

15.1 The KPI's and Service Credits applicable to the Contract are detailed in Appendix 10.

**16 End User License Agreement (EULA)** ☒

16.1 The Participating Authority is licensed to use such Goods and Service(s) in accordance with the EULA applicable to those Goods, and by entering into these Terms and any Contract pursuant to them, the Participating Authority agrees to enter into and comply with the terms of such EULA(s).

16.2 The EULA applicable to the relevant Software Product, as stipulated by the manufacturer of the Goods is appended at Appendix 9.

16.3 The Supplier hereby grants (or shall procure the grant in the case of rights owned by third parties) to the Participating Authority, and the Participating Authority hereby accepts from the Supplier, a [world-wide, non-exclusive, irrevocable, perpetual, transferrable, licence (with the right to freely grant sub-licences)] to use and exploit (and to permit its sub-licensees to freely use and exploit) the Goods and the Consumables. No fee shall be payable for the grant of this licence other than the charges detailed in

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Appendix 2 (Contract Pricing). The foregoing license(s) shall be: [CPU License/ Desktop License/

Server License/ Site License / Enterprise License/ Concurrent User License/ MIPS License]

16.4 The Supplier shall deliver all Software electronically.

## 17 Intellectual Property Rights ☐

17.1 The Supplier confirms and agrees that [all/ specific detail on] Intellectual Property Rights in and to the deliverables, material and any other output developed by the Supplier as part of the Services in accordance with the Specification, shall be owned by the Participating Authority. The Supplier hereby assigns with full title guarantee by way of present and future assignment all Intellectual Property Rights in and to such deliverables, material and other outputs. The Supplier shall ensure that all Staff assign any Intellectual Property Rights they may have in and to such deliverables, material and other outputs to the Supplier to give effect to this Clause and that such Staff absolutely and irrevocably waive their moral rights in relation to such deliverables, material and other outputs.

This Clause shall continue notwithstanding the expiry or earlier termination of this Contract.

## 18 Social Value ☐

18.1 The Supplier will comply with the Social Value [insert e.g., commitments, measures] detailed within Appendix 12.

## 19 New Technologies ☐

19.1 During the Term, if any new product or new technology related to the Goods (each a “**New Technology Product**”) becomes available from the Supplier and it is obligatory for the Participating Authority to accept such Goods, the Supplier will replace the existing Goods pursuant to the Framework Agreement and shall not be permitted to increase the Contract Price in respect of such product(s).

19.2 In the event that the Participating Authorities are given the option to replace existing Goods supplied pursuant to the Contract with a New Technology Product (i.e., such replacement is not obligatory), the Supplier may increase the Contract Price to reflect that the Participating Authorities have opted to purchase such New Technology Product(s) provided always that such replacement produce and increased price is in accordance with Law. In the case of the latter situation, the Supplier shall provide the Authority and the Participating Authorities with full details of the New Technology Product and the additional costs (if any) associated with such products (applying discounts comparable to those applicable to the existing Goods under the Framework Agreement) in order for the Participating Authorities to make an informed decision as to whether to replace the existing Goods with the New Technology Product(s).

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19.3 The Supplier shall notify the Authority and the Participating Authorities in writing of such at least thirty (30) days prior to the New Technology Products being made available for purchase through commercial/public release.

19.4 During the Term, if the Authority is notified of a New Technology Product pursuant to Clause 19.3 the Authority may request and the Supplier shall agree to supply the New Technology Product solely to the Participating Authority for a period of [insert number] months, prior to such New Technology Product being made available for purchase through commercial/public release.

## **20 Pricing for Goods ☐**

20.1 The Prices detailed within Appendix 2 are inclusive of the costs of packaging, insurance and carriage of the Goods.

20.2 Arrangement for export shall be made by the Supplier and any applicable freight and shipping expenses, tariffs, customs, duties, or fees shall be paid for by the Supplier.

20.3 The Supplier shall use best endeavours to assist the Participating Authority with any issues with a carrier or insurer for mis-delivery or loss or damage to Goods. The Supplier will pay any excess costs due to failure to follow applicable shipping instructions.

## **Annex 3 - Optional Terms for Software and Services**

### **1. Pricing for Services – Total Cost ☐**

1.1 The total Price for the Services shall be the amount set out in the Call off Contract.

### **2. Pricing for Services – Instalments ☐**

2.1 The total Price shall be paid to the Supplier in instalments. The Supplier shall invoice the Participating Authority for the charges that are then payable as detailed in Appendix 2.

### **3 Pricing for Services – Maintenance and Support Services ☐**

3.1 The Supplier shall invoice the fees for Maintenance and Support Services in advance annually.

### **4 Pricing for Services – Fixed Pricing ☐**

4.1 Any fixed price and daily rate contained in the Participating Authority Schedule excludes: the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably and properly incurred by members of the supplier's team in connection with the Services.

4.2 The cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Supplier for the supply of the Services. Such expenses, materials and third-party services shall be invoiced by the Supplier at cost. The Supplier

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shall obtain the Participating Authority's written approval before incurring any such expense, material or service exceeding £[insert].

4.3 The Supplier shall obtain and maintain at its own expense any and all necessary consents, licenses, approvals and permits required for its provision of Services.

## 5 Implementation of Software ☐

5.1 If the implemented Goods and Services function with any Errors or fail to conform to the Acceptance Criteria as defined in the applicable Contract, the Participating Authority may reject such Goods or Services, and the related implementation services, by providing the Supplier with written notice specifying such Errors and/or failures.

5.2 Upon receipt of such notice referred to above, the Supplier shall correct all such Errors and/or failures as soon as practicable, but no later than **[insert business days/ months]** from the date of Participating Authority's notice of rejection.

5.3 Upon receipt of such notice above the Supplier shall provide a remediation plan and schedule. Upon receipt of the remediation plan, the Participating Authority shall then have, at a minimum, **[insert]** Business Days to test and review the corrected Goods and Services according to the Acceptance Criteria.

5.4 If the Supplier is unable to correct the Error(s), the Participating Authority may elect to [terminate the Contract, without prejudice to any other rights to which it is entitled or resubmit a notice of rejection to the Supplier for a second and final opportunity to correct such Error and/or failure].

5.5 For avoidance of doubt, any approval by the Participating Authority under this section shall not limit or alleviate or absolve the Supplier's responsibilities, representations, warranties, and obligations otherwise set forth in the Contract

## 6 Software Errors ☒

6.1 The Supplier shall promptly notify the Participating Authority of any material defects or malfunctions in the Vendor Software or Documentation as soon as reasonably practicable. The Supplier, its agents or Sub-contractors shall promptly correct, or have corrected, any material defects or malfunctions in the Vendor Software or Documentation discovered and provide the Participating Authority with corrected copies of same, without additional charge.

6.2 The Suppliers obligation hereunder will not be deemed to affect any other liability that it may have to the Participating Authority.

6.3 If the Participating Authority notifies the Supplier in writing that the Vendor Software has failed to perform in accordance with the applicable Documentation or to conform to Vendors representations and warranties, the Supplier shall, **at its own cost and expense** and within **30** days of such written notice, either correct each deficiency or provide the Participating Authority with a plan, for its approval, for correcting the deficiency.

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## 7 Supplier Quality Commitments for Software Licenses ☒

7.1 The Supplier shall use reasonable endeavours to ensure that all Vendor Software licensed pursuant to this Contract:

- shall operate in conformance with the Documentation.
- will not disable or interfere with any other process, system or technology of Participating Authority
- complies with applicable Laws.

## 8 Supplier Quality Commitments for Software – Dispute Resolution ☐

8.1 The Supplier, its agents or Sub-contractors shall not remove, alter, disable, corrupt, or interfere with the Vendor Software for purposes of preventing the Participating Authority from using the Vendor Software, or otherwise intentionally rendering the Vendor Software inoperable as the result of any dispute under this Contract. In the event of dispute or delayed payment, either party may refer the dispute in accordance with Clause 22 (Dispute Resolution).

## 9 Supplier Quality Commitments for Software-as-a-Service ☐

9.1 The Supplier shall use reasonable endeavours to ensure that the Software-as-a-Service (SaaS) shall be performed:

- in a timely, high quality and professional manner, using only qualified agents.
- in conformance with generally acceptable industry standards.
- in compliance with all applicable Laws.
- in compliance with any accreditation standards applicable to the Supplier.

## 10 Maintenance and Support Services for Software ☐

10.1 The Supplier shall provide to the Participating Authority, without additional charge, copies of the Documentation revised to reflect any Improvement to the Vendor Software made during the Maintenance and Support Services period.

10.2 At the Participating Authority's request, the Supplier shall prepare and submit to the Participating Authority a detailed report describing all of the Maintenance and Support Services provided to it by the Supplier under the Contract during the [prior year or quarter].

10.3 The Supplier shall provide, [at its own expense], [Telephone, email, and internet-based] support for advice and assistance to the Participating Authority on the use of Vendor Software, **(namely: basic information and instructions, including assistance with the general use of the Vendor Software, optimisation of the available functions, installation of the Vendor Software, research problems reported by the Participating Authority, and any expected future modifications, new releases, fixes, updates, revisions, enhancements, and changes "Improvements" to the Vendor Software.**

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10.4 The Supplier will provide the Maintenance and Support Services for **[all releases]** on the Vendor's support matrix, but in no event less than the most current release of the Vendor Software. These Maintenance and Support Services are **[free of charge/ priced as per Appendix 2]**

#### **11 Maintenance and Support Services for Software - Remote dial-in access** ☐

11.1 The Participating Authority shall maintain a direct telephone line or Virtual Private Network (VPN )connection to assist the Supplier and its Sub-contractors in providing remote dial-in access. The Participating Authority shall use reasonable efforts to inform the Supplier of any username and password changes pertaining to any VPN connections.

#### **12 Deliverables created pursuant to the terms of this Contract** ☐

12.1 The Supplier agrees that the Participating Authority shall own all rights, title and interest to all Intellectual Property in any and all Deliverables created pursuant to the terms of this Contract (together the **"Foreground IP"**) and shall deliver to the Participating Authority the Deliverables in the Supplier's possession promptly upon request. For the avoidance of doubt, the Supplier will retain ownership of all Prior Inventions.

12.2 The Supplier hereby:

- irrevocably assigns absolutely with full title guarantee to the Participating Authority all rights, title and interest to the Deliverables and any Foreground IP;
- agrees to execute all documents and do all things necessary to vest ownership of all Deliverables and Foreground IP in the Participating Authority as sole beneficial owner; and
- agrees to waive (or procure the waiver of as the case may be) all moral rights in respect of any Deliverables; and
- irrevocably appoints the Participating Authority as its agent in its name and on its behalf to execute any such document or do any such thing necessary for the purpose of giving to the Participating Authority the full benefit of the rights described in this Clause and perfecting such ownership interests of the Participating Authority, such right being coupled with an interest.

12.3 Deliverables are deemed to be the Participating Authority's Confidential Information hereunder and, except as permitted herein, shall not be used or disclosed by the Supplier for any purpose without the Participating Authority's express written approval.

12.4 The Supplier shall obtain the Participating Authority's prior written consent before incorporating any third-party materials into any Deliverables. If Deliverables contain materials the Supplier or others previously developed, patented or copyrighted and which were not developed as a result of providing the Goods and Services under this Contract, the

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Supplier hereby grants the Participating Authority and the Participating Authority hereby accepts, an irrevocable, perpetual, world-wide, royalty-free transferrable license to use, copy, modify, distribute, display, perform, import, manufacture, have made, and sublicense such materials for the purpose of exercising the Participating Authority's rights, title and interest in the Deliverable, to the extent Supplier has the right to grant such a licence.

12.5 The Supplier agrees that if, in the course of performing, delivering or otherwise providing the Services, the Supplier or its agents and Sub-contractors incorporate into any Deliverable or otherwise use any Prior Inventions, then the Supplier will provide the Participating Authority with prior written notice and the Participating Authority is hereby granted a royalty-free, perpetual, irrevocable, transferrable, sub-licenseable, worldwide license to make, have made, use, import, offer for sale, sell, reproduce, distribute, modify, adapt, prepare derivative works of, display, perform, and otherwise exploit such Prior Inventions, without restriction for any and all purposes to the extent reasonably required in connection with the Participating Authority's receipt or use of the Services or Deliverables. All other rights in and to the Prior Inventions are expressly reserved by the Supplier.

### 13 New Releases of Software ☒

13.1 During the term of this Contract, the Supplier agrees it shall provide the Participating Authority with [all] new releases of software which are modifications to the Vendor Software, fixes, updates, revisions, improvements, enhancements, and other changes ("**Improvements**") to such Vendor Software that are generally offered to the Supplier's customers.

13.2 The Participating Authority may, at its sole discretion, approve or reject any Improvement. Any Improvement approved by the Participating Authority shall be deemed to be Vendor Software and subject to the terms and conditions of the EULA Contract.

### 14 Subsequent Versions of Software ☒

14.1 The Supplier will make available to the Participating Authority all subsequent versions "**Subsequent Versions**" of the Vendor Software. Subsequent Versions are modifications or upgrades to the Vendor Software that add significant functionality and may be supplied for an additional cost. The Supplier will send any release notes related to Improvements or Subsequent Versions in the manner and to the location specified by Participating Authority in the Specification (Appendix 1).

### 15 Software-as-a –Service (SaaS) ☐

15.1 The Supplier will provide all SaaS Services (including, without limitation, configuration and implementation of the SaaS Services, [and consulting services]) subject to the Contract, as necessary to enable the Participating Authority and its authorised users to access and use the Software, the SaaS Services, and all associated data and information

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(including, without limitation, the Data) over a secure web-enabled connection, in accordance with the Participating Authority's requirements, Specifications, and minimum acceptable service levels.

## 15.2 As part of the SaaS Services, the Supplier shall:

- procure and maintain the infrastructure (including hardware, Software, networks, connectivity, security, tools and other resources) as necessary to securely host the SaaS application and deliver the SaaS Services.
- ensure that the SaaS Application and all Data shall be maintained on secure servers located in **[at least two (2)]** Data Centres.

15.3 The Supplier and/or its Sub-contractor shall ensure that fully redundant mirrored image copies of the SaaS Application, the related infrastructure and Data simultaneously reside in a backup server(s) (capable of operating as a hot site with no fail-over elapsed time), physically located in another Data Centre (**"Back-Up Data Centre"**). The Supplier shall ensure its system backups and shall procure that its Sub-contractor's system backups will ensure that the Data is encrypted in transit and at rest (including at the Back-Up Data Centre).

15.4 The Supplier shall ensure and shall procure that its Sub-contractor will ensure that all Data is logically segregated from other data, including the Supplier's other Participating Authorities' data, and shall secure and restrict access to Data solely to the Participating Authority and its Authorized Users and ensure that the SaaS Services are otherwise provided in compliance with any applicable data processing agreement, and all applicable Laws.

15.5 The Supplier has provided the name and locations of its hosting site(s) in Appendix 1 (Specification) of the Call off Contract and the Data Protection Protocol.

15.6 In the event of any change of the location(s) of the Data Center(s), the Supplier shall provide the Participating Authority with prior written notice of said change and disclose the address of the new Data Center.

15.7 The Supplier shall provide the SaaS Services at least in accordance with the Minimum Agreed Service Levels (MASL), detailed within Appendix 1 (Specification) of the Call off Contract.

The Supplier shall provide the Participating Authority with all necessary technical changes and any configuration and implementation procedures required for the Participating Authority to access and use the SaaS Services.

## 16 Data Ownership ☐

16.1 The Supplier acknowledge and agree that the Participating Authority is the exclusive owner of all right, title and interest in and to the Data. The Supplier may only use Data in strict performance of its obligations under the Contract, unless otherwise agreed in writing with the Participating Authority. **17 Participating Authority Obligations (SaaS)** ☐ 17.1 The Participating Authority shall not:

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- disclose, disseminate, reproduce or publish any portion of the SaaS Services in any manner or permit the same;
- use the SaaS Services to create derivative products or other derivative works;
- or • disassemble, decompile, manipulate or reverse engineer any portion of the SaaS Services.

[List any other relevant restrictions imposed by the third-party SaaS supplier.]

## **Appendix A**

### **Call-off Terms and Conditions for the Supply of Goods and the Provision of Services– Public Sector**

#### **HealthTrust Europe Recitals**

##### **1.19 *Background to Framework Agreement***

(A) HealthTrust Europe provides Procurement Services to the Customers on a call-off basis.

(B) HealthTrust Europe procured the Framework Agreement for the benefit of the Customers, and the Customer wishes to enter into a call-off Contract pursuant to such Framework Agreement.

##### **1.20 *Definitions***

The following defined terms are used within this call-off Contract, such terms differing from those used within the Framework Agreement:

(A) HealthTrust Europe shall be referred to as “**HealthTrust Europe**”; and

(B) the Customer shall be referred to as the “**Authority**”.

**NOW IT IS AGREED** as follows:

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

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

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

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

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

### **Schedules**

Schedule 1 of these Call-off Terms and Conditions	Key Provisions
Schedule 2 of these Call-off Terms and Conditions	General Terms and Conditions
Schedule 3 of these Call-off Terms and Conditions	Information and Data Provisions
Schedule 4 of these Call-off Terms and Conditions	Definitions and Interpretations
Schedule 5 of these Call-off Terms and Conditions	Installation and Commissioning Services
Schedule 5A Maintenance Services	Maintenance Services
Schedule 6 of these Call-off Terms and Conditions	Additional Contract Terms relating to Provision of ICT Solutions
Schedule 7 of these Call-off Terms and Conditions	Pharmaceuticals – Not used

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## **Schedule 1 of these Call-off Terms and Conditions**

### **Key Provisions**

#### **Standard Key Provisions**

#### **1 Application of the Key Provisions**

1.1 The standard Key Provisions at Clauses 1 to 8 of this Schedule 1 of these Call-off Terms and Conditions shall apply to this Contract.

1.2 Extra Key Provisions shall only apply to this Contract where such provisions are set out as part of the Order Form.

#### **2 Term**

2.1 This Contract shall commence on the Commencement Date.

2.2 The Term of this Contract shall be as set out in the Order Form.

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

#### **3 Contract Managers**

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

#### **4 Names and addresses for notices**

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

#### **5 Management levels for escalation and dispute resolution**

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

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

## 6 **Order of precedence**

6.1 Subject always to Clause 1.10 of Schedule 4 of these Call-off Terms and Conditions, should there be a conflict between any other parts of this Contract the order of priority for construction purposes shall be:

- 6.1.1 the Order Form;
- 6.1.2 the applicable provisions of the Framework Agreement other than the Specification and Tender Response Document;
- 6.1.3 the provisions on the front page of these Terms and Conditions for the Supply of Goods and the Provision of Services (Purchase Order Version);
- 6.1.4 Schedule 1 of these Call-Off Terms and Conditions: Key Provisions
- 6.1.5 the Specification and Tender Response Document (but only in respect of the requirements);
- 6.1.6 Schedule 2 of these Call-off Terms and Conditions: General Terms and Conditions;
- 6.1.7 the End-User Software License Agreement (EULA) (but only to the extent of any conflict between the EULA any other Schedules of Contract or the Framework Agreement in which case the EULA shall take precedence only where the conflict relates to the Goods or Services licenced under the EULA).
- 6.1.8 Schedule 3 of these Call-off Terms and Conditions: Information Governance Provisions;

- 6.1.9 Schedule 4 of these Call-off Terms and Conditions: Definitions and Interpretations;
- 6.1.10 Schedule 5 of these Call-off Terms and Conditions: Installation and Commissioning Services;
- 6.1.11 Schedule 5A Maintenance Services: Maintenance Services;
- 6.1.12 Schedule 7 of these Call-off Terms and Conditions: Pharmaceutical Products; and
- 6.1.13 the order in which all subsequent schedules, if any, appear; and
- 6.1.14 any other documentation forming part of the Contract in the date order in which such documentation was created with the more recent documentation taking precedence over older documentation to the extent only of any conflict.

**7 Participating Authorities' Obligations** ☐ *(only applicable to the Contract if this box is checked)*

**7.1 Compliance Level**

- 7.1.1 Subject to any exceptions expressly stated in this Call-Off Contract, for each twelve-month period commencing on the Commencement Date, the Authority shall meet or exceed the Compliance Level. For the purposes of this clause Compliance Level shall mean “in respect of all Goods and Services in each Lot purchased by the Authority, at least eighty percent (80%) of such purchases (as measured by volume) shall be made pursuant to this Call-Off Contract”.
- 7.1.2 Failure to meet the Compliance Level by 10% or less shall not constitute a breach of this Call-Off Contract. If the Authority fails to meet the compliance level by more than 10% the Authority and Supplier shall follow the Dispute Resolution Procedure set out in Clause 22 of Schedule 2 of these Call-off Terms and Conditions.

**7.2 Data**

- 7.2.1 The Authority shall supply a full set of its accounts payable and purchase order data within 7 days of the end of each quarter during the Term so as to enable HealthTrust Europe to calculate the Compliance Level at the end of each year. HealthTrust Europe shall use the said data to provide each Participating Authority with intelligence regarding its progress towards meeting the Compliance Level for each year.

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

8.1 The Parties agree that at the commencement of the provision of Services by the Supplier, TUPE and the Cabinet Office Statement shall not apply so as to transfer the employment of any employees of the Authority or a Third Party to the Supplier.

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

8.2.1 the Supplier will, within seven (7) days of becoming aware of that fact, give notice in writing to the Authority;

8.2.2 the Authority or Third Party may offer employment to such person within twenty-eight (28) days of the notification by the Supplier;

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

8.2.4 if after that period specified in Clause 8.2.2 of this Schedule 1 of these Call-off Terms and Conditions has elapsed, no offer of employment has been made by the Authority or Third Party, or such offer has been made by the Authority or Third Party but not accepted within a reasonable time, the Supplier or SubContractor shall employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person and shall (where relevant) be bound to apply Fair Deal for Staff Pensions in respect of any such person in accordance with the requirements of Part D of Schedule 7 of the NHS Terms and Conditions for the Provision of Services (Contract Version) (August 2022).

## **9 Net Zero and Social Value Commitments**

### Supplier carbon reduction plans and reporting

9.1 The Supplier shall put in place, maintain and implement a board approved, publicly available, carbon reduction plan in accordance with the requirements and timescales set out in the NHS Net Zero Supplier Roadmap (see Greener NHS »Suppliers (england.nhs.uk) (<https://www.england.nhs.uk/greenernhs/get-involved/suppliers/>)), as may be updated from time to time.

- 9.2 A supplier assessment for benchmarking and reporting progress against the requirements detailed in the Net Zero Roadmap will be available in 2023 (“**Evergreen Supplier Assessment**”). The Supplier shall report its progress through published progress reports and continued carbon emissions reporting through the Evergreen Supplier Assessment once this becomes available and as may be updated from time to time.
- 9.3 The Supplier has appointed Alexander.groves@scc.com (“**Supplier Net Zero Corporate Champion**”) who shall be responsible for overseeing the Supplier’s compliance with Clauses 9.1 and 9.2 of this Schedule 1 of these Call-off Terms and Conditions and any net zero requirements forming part of any Contracts. Without prejudice to the Authority’s other rights and remedies under this Framework Agreement, if the Supplier fails to comply with Clauses 9.1 and 9.2 of this Schedule 1 of these Call-off Terms and Conditions, the Authority may escalate such failure to the Supplier Net Zero Corporate Champion who shall within ten (10) Business Days of such escalation confirm in writing to the Authority the steps (with associated timescales) that the Supplier will be taking to remedy such failure. The Supplier shall then remedy such failure by taking such confirmed steps by such timescales (and by taking any other reasonable additional steps that may become necessary) to ensure that such failure is remedied by the earliest date reasonably possible.

*Net zero and social value in the delivery of the contract*

- 9.4 The Supplier shall deliver its net zero and social value contract commitments in accordance with the requirements and timescales set out in the Specification and Tender Response Document forming part of this Contract (“**Net Zero and Social Value Contract Commitments**”).
- 9.5 The Supplier shall report its progress on delivering its Net Zero and Social Value Contract Commitments through progress reports, as set out in the Specification and Tender Response Document forming part of this Contract.
- 9.6 The Supplier has appointed a relevant person (as designated in Schedule 1, Clause 9.6 of the Framework Agreement) (“**Supplier Net Zero and Social Value Champion**”) who shall be responsible for overseeing the Supplier’s compliance with Clauses 9.4 and 9.5 of this Schedule 1 of these Call-off Terms and Conditions of these Call-off Terms and Conditions. Without prejudice to the Authority’s other rights and remedies under this Contract, if the Supplier fails to comply with Clauses 9.4 and 9.5 of this Schedule 1 of these Call-off Terms and Conditions, the

Authority may escalate such failure to the Supplier Net Zero and Social Value Champion who shall within ten (10) Business Days of such escalation confirm in writing to the Authority the steps (with associated timescales) that the Supplier will be taking to remedy such failure. The Supplier shall then remedy such failure by taking such confirmed steps by such timescales (and by taking any other reasonable additional steps that may become necessary) to ensure that such failure is remedied by the earliest date reasonably possible.

## **10 Performance of the Services and Supply of Goods**

- 10.1 The Supplier shall provide at its own expense all staff, equipment, tools, appliances, materials or items required for the provision of the Services and Supply of Goods to the Contract Standard.
- 10.2 To the extent that the Order Form, Specification and Tender Response Document include the Turnaround Times, format and method of delivery of the Services and Deliverables and/or the applicable performance measures, performance due-by dates, minimum performance levels and methods of performance measurement in respect of the Services and Goods, the Supplier will abide by the same.
- 10.3 Where detailed within an Order Form, time shall be of the essence with regard to the obligations of the Supplier under the Contract.
- 10.4 The Authority and the Supplier will co-operate with each other in good faith and will take all reasonable action as is necessary for the efficient transmission of information and instructions and to enable the Authority to derive the full benefit of the Contract. At all times in the performance of the Services, the Supplier will co-operate fully with any other Suppliers appointed by the Authority in connection with other services and Goods.
- 10.5 In addition to any more specific obligations imposed by the terms of the Contract, it shall be the duty of the Supplier to notify the Authority's Contract Manager of all significant changes to staffing, rates of pay or conditions of employment, or hours of work or other technological changes at least one month prior to the implementation of any such revised arrangements, to the extent that such changes relate to and impact the Services.
- 10.6 The Supplier shall provide information in a format, medium and at times specified by the Authority, related to the performance of the Services and Supply of Goods as may be reasonably required.
- 10.7 In providing the Services and supplying the Goods, the Supplier shall use Good Industry Practice to ensure that any computer systems and/or related hardware and/or software it uses are free from corrupt data, viruses, worms and any other computer programs which might cause harm or disruption to the Authority's hospital information systems, or any other relevant information systems of the Authority.

10.8 If at any time the Supplier becomes aware of any act or omission or any proposed act or omission by the Authority or by any member, official or employee of the Authority which prevents or hinders or may prevent or hinder the Supplier from providing the Services and/or supplying the Goods in accordance with the Contract then the Supplier shall immediately inform the Authority's Contract Manager of that fact. For the avoidance of doubt, the Supplier's compliance with this Clause shall not in any way relieve the Supplier of any of its obligations under the Contract.

10.9 The Supplier will immediately notify the Authority's Contract Manager of any actual or potential problems relating to the Supplier's own suppliers or subcontractors (including approved subcontractors) that affects or might affect his ability to provide the Services and/or supply the Goods.

10.10 The Supplier will be responsible for providing and maintaining the Services to the Contract Standard and KPIs at all times and will ensure continuity of supply of the

Services and Goods (at no extra cost to the Authority) in accordance with the Specification and KPIs. The Supplier must have in place contingency plans and arrangements which are approved by the Authority to ensure continuity of supply of the Services and Goods.

10.11 The Supplier will immediately notify the Authority's Contract Manager of any actual or potential industrial action, including strike action, whether such action be of his own staff or others, that affects or might affect his ability at any time to provide the Services or supply the Goods.

10.12 The Supplier will be responsible for providing and maintaining the Services to the Contract Standard and Supplying Goods during industrial action, at no additional cost to the Authority. The Supplier must have in place contingency plans and arrangements which are approved by the Authority.

10.13 In the event of a major incident the Supplier shall perform the Services and Supply the Goods, together with such disaster recovery services as the Authority may require, in accordance with the relevant section of the Specification and the business continuity provisions of Clause 6 of Schedule 2 of these Call-off Terms and Conditions.

## **11 Change Control Process**

11.1 Any changes to this Contract, including to the Services and Goods, shall only be agreed in accordance with the Change Control Process set out in Schedule 8.

## **12 HealthTrust Europe Key Provisions**

HealthTrust Europe LLP acts as principal in respect of the following provisions:

12.1 Notwithstanding anything to the contrary herein, the Parties acknowledge HealthTrust Europe was selected by the Authority to provide procurement services and entered into the MSE Framework to provide such procurement services to the Customers and that pursuant to the MSE Framework, HealthTrust Europe procures, manages and facilitates agreements on behalf of the Customers including this Call-Off Contract and that the Authority appoints HealthTrust Europe LLP to carry out the Ancillary Activities with the intention of easing the Authority's contract management burden and to enhance the quality of the Provider's Services and to achieve efficient business process and administrative efficiencies. In this Clause Ancillary Activities means carrying out the following ancillary responsibilities on behalf of the Trust:

12.1.1 managing call off level and procurement and contract notices, extensions and variations; and

12.1.2 such other actions as are required from time to time to enable the Provider to satisfy its obligations towards the Authority under the Framework Agreement.

12.2 Accordingly, references in this Call Off Contract to the Authority in relation to the above will be interpreted to mean to HealthTrust Europe where the context duly requires. If the Supplier is in any doubt regarding such interpretation, it shall be the responsibility of the Supplier to seek confirmation from HealthTrust Europe whereby such confirmation will be given by HealthTrust Europe without unreasonable delay.

12.3 The Authority acknowledges and agrees that the Supplier is subject to an activity based income (ABI) management charge in relation to any Orders placed by the Authority under the Framework Agreement.

12.4 The Authority and the Supplier agree that (in addition to the Authority's right to enforce the Contract) HealthTrust Europe may enforce any term of the Contract.

**Pharmaceutical Products** ☐

**13** *Installation and Commissioning Services* ☐ *(only applicable to the Contract if this box is checked)*

**14** *Maintenance Services* ☐ *(only applicable to the Contract if this box is checked)*

**15**

**Not used**

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## **16** **Not used**

## **17** **Delivery Options**

- 17.1 It is understood that there will be circumstances where Suppliers delivery options and lead times will be dependent upon manufacturers, vendors and subcontractors, however the Supplier shall make reasonable endeavours to deliver according to the Authority's requirements.
- 17.2 As a minimum, and where applicable, delivery options available to the Authority shall include:
  - 17.2.1 **Next Day** - Provided that the Authority places its order for the Goods with the Supplier before 1:00 pm on any Business Day, the Supplier shall, without any additional charge guarantee delivery of the Goods to the Authority on the following Business Day.
  - 17.2.2 **Free Delivery** - The Supplier shall, without charge, deliver the Goods to such locations as may reasonably be required by the Authority within an agreed period of days or weeks from the date the Authority places the Order with the Supplier.
- 17.3 If the Supplier for any reason anticipates difficulty in complying with any agreed delivery timescales, the Supplier shall promptly notify the Authority of the delay, and reason for such delay. If the Supplier cannot not comply with agreed delivery schedule the Authority may in some circumstances require delivery of the Goods by the fastest means available and charges resulting from any such premium transportation to be fully pre-paid and absorbed by the Supplier.

## **18** **Warranties**

- 18.1 The Supplier warrants to the Authority that the Goods supplied under the Calloff Contract, whether supplied directly by Supplier or via a Sub-Contractor, shall be:
  - 18.1.1 new, unadulterated and not used, remanufactured or reconditioned (unless specified in the Order and pre-approved by the Authority)

- 18.1.2 free from defects in design, whether patent or latent, materials and workmanship; and
- 18.1.3 fit and sufficient for all purposes for which such Goods are used, or to be used and for any particular purpose made known to the Supplier by HealthTrust Europe or the Authority.
- 18.2 The above warranties shall, apply for a period of [insert number] months from the date that ownership of the Goods passes to the Authority in accordance with Clause 3 of Schedule 2 of these Call-off Terms and Conditions.
- 18.3 Any repaired or replaced Goods, or part thereof, shall carry warranties on the same terms as set out above, with the warranty period being the greater of the original unexpired warranty or [insert number] months after repair or replacement.

## **19** Training/ Support Services/ Help Desk

- 19.1 Where agreed within a Contract (Order Form), the Supplier shall as soon as reasonably practicable after delivery of the Goods to the Authority, provide a suitably qualified professional to deliver a thorough training programme about the features and benefits of the Goods the Authority. The Supplier shall provide as much training and support to the Authority as the Authority may reasonably require throughout the Term; such training shall be carried out within the Contract Price and any associated costs shall be absorbed in full by the Supplier. The Supplier shall at its own expense provide the Authority with copies of all training materials and resources, such materials to include a suitable “train the trainer” programme with sufficient detail to enable trained clinical staff to train others.
- 19.2 Where agreed within a Contract (Order Form), the Supplier shall provide the Authority with details of the customer service and support telephone line within 2 days after delivery of the Goods to the Authority. Unless agreed otherwise within an Order Form, the Supplier shall ensure that the customer telephone support line is manned between the hours of 9:00am and 5:00 pm, Monday to Friday, by suitably qualified personnel able to resolve all day to day queries that the Authority may have in relation to the Goods.

## 19 Data Protection

Clause a) below only applies if this box is checked ☐

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- (a) The Authority and the Supplier acknowledge it is their responsibility to carry out a data protection impact assessment as amended or modified (“**DPIA**”) in accordance with the GDPR and they shall enter into the necessary data protection related agreement if the DPIA determines they need to. For the avoidance of doubt, HealthTrust Europe’s services do not extend to work involving DPIA’s and **data protection agreements arising thereunder and HealthTrust Europe accepts no responsibility in relation to the data protection issues between the Parties.** It is the responsibility of each the Authority and the Supplier to ensure they are legally compliant with Data Protection Legislation and not HealthTrust Europe.
- (b) The Parties acknowledge they have read, understood and agree to the data protection provisions set out in Schedule 3 Information and Data Provisions of Appendix A Call Off Terms and Conditions for the Provision of Services – Public Sector.

## 20 Definitions

20.1 For the purposes of this Contract, in addition to the definitions set out in Schedule 4 of these Call-off Terms and Conditions, the following terms shall have the following meanings:

<b>“Actual Services Commencement Date”</b>	means the date the Supplier actually commences delivery of all of the Services;
<b>“Customer”</b>	means Mid and South Essex NHS Foundation Trust and other Participating Authorities that are entitled to use the Framework Agreement pursuant to the MSE Framework;
<b>“Cabinet Office Statement”</b>	the Cabinet Office Statement of Practice – Staff Transfers in the Public Sector 2000 (as revised 2013) as may be amended or replaced;
<b>“Change Control Process”</b>	means the change control process, if any, referred to in any Key Provisions and/or the Order Form;

<b>“Convictions”</b>	means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by Section 1(1) of the Rehabilitation of Offenders Act 1974 or any replacement or amendment to that Act);
<b>“E-Auctions”</b>	means an online electronic bid event or process in accordance with Regulation 35(1) (a) of the PCR to determine a Supplier offering a best price element;
<b>“E-Auction Portal”</b>	means a portal for Parties to participate in the E- Auction and where the terms of using this Portal are set out in Schedule 11;
<b>“E-Auction User Terms”</b>	Means terms and conditions applicable to Parties to participate in an E-Auction;
<b>“Employment Liabilities”</b>	means all claims, demands, actions, proceedings, damages, compensation, tribunal awards, fines, costs (including but not limited to reasonable legal costs), expenses and all other liabilities whatsoever;
<b>“HealthTrust Europe”</b>	means HealthTrust Europe LLP;
<b>“Implementation Plan”</b>	means the implementation plan, if any, referred to in any Key Provisions and/or the Order Form;

<b>“Interested Party”</b>	means any organisation which has a legitimate interest in providing services of the same or similar nature to the Services in immediate or proximate succession to the Supplier or any subcontractor and who had confirmed such interest in writing to the Authority;

## HealthTrust Europe Enterprise Level Information Communication Technology (ICT) Solutions 2023 Digital Technology Framework Agreement (ComIT 3 – Complete IT 3)

<b>“Long Stop Date”</b>	means the date, if any, specified in the Order Form;
<b>“MSE”</b>	means Mid and South Essex NHS Foundation Trust;
<b>“MSE Framework”</b>	means the framework agreement between MSE and HealthTrust Europe for the provision of Procurement Services.
<b>“Mini-Competition Response Document”</b>	means, in the case of Competed Goods and Services (as defined in the Framework Agreement), the document appended as Appendix 2 to the Order Form for Competed Goods and Services set out at Schedule 7A of the Framework Agreement;
<b>“Mini-Competition Specification”</b>	means, in the case of Competed Goods and Services (as defined in the Framework Agreement), the document appended as Appendix 1 to the Order Form for Competed Goods and Services set out at Schedule 7A of the Framework Agreement;
<b>“Premises and Locations”</b>	has the meaning given under Clause 2.1 of Schedule 7 of these Call-off Terms and Conditions;
<b>“Procurement Services”</b>	means the provision of core purchasing, strategic sourcing and other services by HealthTrust Europe pursuant to the MSE Framework;
<b>“Services”</b>	means the services set out in this Contract;
<b>“Services Commencement Date”</b>	means the date delivery of the Services shall commence as specified in the Order Form. If no date is specified in the Order Form, the services commencement date shall be the Commencement Date;

<b>“Services Information”</b>	means information concerning the Services as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 20 of
	Schedule 2 of these Call-off Terms and Conditions for inclusion in the Authority's services catalogue from time to time;
<b>“Sub-contractor”</b>	means a person including legal persons engaged by the Supplier under a contract to perform its obligations in whole or in part under the Framework Agreement and any resulting calloff contracts. For the purposes of this Framework Agreement, a Sub-contractor includes any supplier, manufacturer, vendor, or any such provider of hardware, software or services or services to or for a value-added reseller. For the avoidance of doubt a distributor of hardware is not classified as a Subcontractor;
<b>“Subsequent Transfer Date”</b>	means the point in time, if any, at which services the same as or of a similar nature to the Services (either in whole or in part) are first provided by a Successor or the Authority, as appropriate, giving rise to a relevant transfer under TUPE;
<b>“Subsequent Transferring Employees”</b>	means any employee, agent, consultant and/or contractor who, immediately prior to the Subsequent Transfer Date, is wholly or mainly engaged in the performance of services the same as or of a similar nature to the Services (either in whole or in part) which are to be undertaken by the Successor or Authority, as appropriate;
<b>“Successor”</b>	means any third party who provides services the same as or of a similar nature to the Services (either in whole or in part) in immediate or subsequent succession to the Supplier upon the expiry or earlier termination of this Contract;
<b>“Supplier Personnel”</b>	means any employee, agent, consultant and/or contractor of the Supplier or subcontractor who is either partially or fully engaged in the performance of the Services;

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<b>“Third Party”</b>	means any supplier of the Services or services of the same or similar nature to the Services (either in whole or in part) immediately before the Transfer Date;
<b>“Transfer Date”</b>	means the Actual Services Commencement Date;
<b>"TUPE"</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006/246) and/or any other regulations enacted for the purpose of implementing the Acquired Rights Directive (77/187/EEC, as amended by Directive 98/50 EC and consolidated in 2001/23/EC) into English law.

**Exhibit A** Not used**Schedule 2 of these Call-off Terms and Conditions****General Terms and Conditions Contents**

1. Supply of Goods and the provision of Services
2. Delivery of the Goods and passing of risk and ownership in the Goods
3. Inspection, rejection, return and recall of the Goods
4. Operation of the Services
5. Staff and Life Science Industry Accredited Credentialing Register
6. Business continuity
7. The Authority's obligations
8. Contract management
9. Price and payment
10. Warranties
11. Intellectual property 12. Indemnity
13. Limitation of liability
14. Insurance
15. Term and termination
16. Consequences of expiry or early termination of this Contract
17. Staff information and the application of TUPE at the end of the Contract
18. Packaging, identification, end of use and coding requirements

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19. Modern Slavery and environmental, social and labour laws
20. Electronic product and services information
21. Change management
22. Dispute resolution
23. Force majeure
24. Records retention and right of audit
25. Conflicts of interest and the prevention of fraud
26. Equality and human rights
27. Notice
28. Assignment, novation and Sub-contracting
29. Prohibited Acts
30. General

## 1 Supply of Goods and the provision of Services

1.1 The Supplier shall supply the Goods ordered by the Authority and provide the Services under this Contract:

- 1.1.1 promptly and in any event within any time limits as may be set out in this Contract;
- 1.1.2 in accordance with all other provisions of this Contract;
- 1.1.3 with reasonable skill and care and in accordance with the provisions of the Framework Agreement as applicable and/or the provisions of the Order Form;
- 1.1.4 in accordance with the Law and with Guidance;
- 1.1.5 in accordance with Good Industry Practice;
- 1.1.6 in accordance with the Policies; and
- 1.1.7 in a professional and courteous manner.

In complying with its obligations under this Contract, the Supplier shall, and shall procure that all Staff shall, act in accordance with the NHS and/or public sector defined values as set out in the NHS Constitution, or associated guidance from time to time.

1.2 The Supplier shall comply with the Implementation Requirements (if any) in accordance with any timescales as may be set out in the Specification and Tender Response Document. Without limitation to the foregoing provisions of this Clause 1.2 of this Schedule 2 of these Call-off Terms and Conditions the Supplier shall, if specified in the Order Form, carry out all implementation activities fully in accordance with the Implementation Plan. If the

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Implementation Plan is an outline plan, the Supplier shall, as part of implementation, develop the outline plan into a full plan and agree this with the Authority. Once this is agreed, the Supplier shall comply with the full Implementation Plan.

1.3 Where the Supplier is providing services, the Supplier shall commence delivery of the Services on the Services Commencement Date.

1.4 The Supplier shall comply fully with its obligations set out in the Specification and

Tender Response Document and/or the Order Form, including, without limitation, the KPIs and all obligations in relation to the quality, performance characteristics, supply, delivery, installation and training in relation to the Goods or Services and their use).

1.5 Unless otherwise agreed by the Parties in writing, the Goods shall be new, consistent with any sample, and shall comply with any applicable specification set out in this Contract (to include, without limitation, the provisions of the Authority's requirements set out in the Specification and Tender Response Document and the Supplier's response to such requirements) and any applicable manufacturers' specifications.

1.6 The Supplier shall ensure that all relevant consents, authorisations, licences and accreditations:

1.6.1 required to supply the Goods are in place prior to the delivery of any Goods to the Authority; and

1.6.2 required to provide the Services are in place at the Actual Services Commencement Date and are maintained throughout the Term.

1.7 If there are any incidents that in any way relate to or involve the use of the Goods by the Authority, or the use of the Services by the Authority, the Supplier shall cooperate fully with the Authority in relation to the Authority's application of the Policies on reporting and responding to all incidents, including serious incidents requiring investigation, and shall respond promptly to any reasonable and proportionate queries, questions and/or requests for information that the Authority may have in this context in relation to the Goods or the Services.

1.8 If there are any quality, performance and/or safety related reports, notices, alerts or other communications issued by the Supplier or any regulatory or other body in relation to the Goods or the Services, the Supplier shall promptly provide the Authority with a copy of any such reports, notices, alerts or other communications.

1.9 Upon receipt of any such reports, notices, alerts or other communications pursuant to Clause 1.8 of this Schedule 2 of these Call-off Terms and

Conditions, the Authority shall be entitled to request further information from the Supplier and/or a meeting with the Supplier, and the Supplier shall cooperate fully with any such request.

## 2 Delivery of the Goods and passing of risk and ownership in the Goods

- 2.1 The Supplier shall deliver the Goods in accordance with any delivery timescales, delivery dates and delivery instructions (to include, without limitation, as to delivery location and delivery times) set out in the Specification and Tender Response Document, the Order Form or as otherwise agreed with the Authority in writing.
- 2.2 Delivery shall be completed when the Goods have been unloaded at the location specified by the Authority and such delivery has been received by a duly authorised agent, employee or location representative of the Authority. The Authority shall procure that such duly authorised agent, employee or location representative of the Authority is at the delivery location at the agreed delivery date and times in order to accept such delivery. Any arrangement by which the Goods are collected by the Authority in return for a discount on the Contract Price shall be agreed by the Parties in writing (where due to an emergency such arrangements cannot be committed to writing prior to collection, the Parties shall confirm such arrangements in writing as soon as possible following collection). Where the Authority collects the Goods, collection is deemed delivery for the purposes of the Contract.
- 2.3 The Supplier shall ensure that a delivery note shall accompany each delivery of the Goods. Such delivery note shall contain the information specified in the Specification and Tender Response Document or as otherwise agreed with the Authority in writing. Where such information requirements as to the content of delivery notes are not specified or separately agreed, such delivery notes shall, as a minimum, contain the Authority's order number, the name and address of the Authority, a description and quantity of the Goods, and shall show separately any extra agreed charges for containers and/or any other item not included in the Contract Price or, where no charge is made, whether the containers are required to be returned.
- 2.4 Part deliveries and/or deliveries outside of the agreed delivery times/dates may be refused unless the Authority has previously agreed in writing to accept such

deliveries. Where delivery of the Goods is refused by the Authority in accordance with this Clause 2.4 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall be responsible for all risks, costs and expenses associated with the re-delivery of the Goods in accordance with the agreed delivery times/dates. Where the Authority accepts delivery more than five (5) days before the agreed delivery date, the Authority shall be entitled to charge the Supplier for the costs of insurance and storage of the Goods until the agreed date for delivery.

- 2.5 Unless otherwise set out in the Specification and Tender Response Document or agreed with the Authority in writing, the Supplier shall be responsible for carriage, insurance, transport, all relevant licences, all related costs, and all other costs associated with the delivery of the Goods to the delivery location and unloading of the Goods at that location. Without limitation to the foregoing provision of this Clause 2.5 of this Schedule 2 of these Call-off Terms and Conditions, unless otherwise stated in the Specification and Tender Response Document or agreed with the Authority in writing, the Supplier shall be responsible for obtaining all export and import licences for the Goods and shall be responsible for any delays to the delivery time due to such licences not being available when required. In the case of any Goods supplied from outside the United Kingdom, the Supplier shall ensure that accurate information is provided to the Authority as to the country of origin of the Goods and shall be liable to the Authority for any extra duties or taxes for which the Authority may be accountable should the country of origin prove to be different from that set out in the Specification and Tender Response Document.
- 2.6 All third party carriers engaged to deliver the Goods shall at no time be an agent of the Authority and accordingly the Supplier shall be liable to the Authority for the acts and omissions of all third party carriers engaged to deliver the Goods to the Authority.
- 2.7 Risk in the Goods shall pass to the Authority when the Goods are delivered as specified in this Contract or, in the case of Goods which require installation by the Supplier, when that installation process is complete.

- 2.8 Ownership of the Goods shall pass to the Authority on the earlier of:

- 2.8.1 full payment for such Goods; or

- 2.8.2 where the goods are consumables or are non-recoverable (e.g., used in clinical procedures), at the point such Goods are taken into use. For the avoidance of doubt, where ownership passes in accordance with this Clause 2.8.2 of this Schedule 2 of these Call-off Terms and Conditions, then the full Contract Price for such Goods shall be recoverable by the Supplier from the Authority as a debt if there is non-payment of a valid undisputed invoice issued by the Supplier to the Authority in relation to such Goods.
- 2.9 All tools, equipment and materials of the Supplier required in the performance of the Supplier's obligations under this Contract shall be and remain at the sole risk of the Supplier, whether or not they are situated at a delivery location.
- 3 Inspection, rejection, return and recall of the Goods
- 3.1 As relevant and proportionate to the Goods in question and subject to reasonable written notice, the Supplier shall permit any person authorised by the Authority, to inspect work being undertaken in relation to the Goods and/or the storage facilities used in the storage of the Goods at all reasonable times at the Supplier's premises or at the premises of any Sub-Contractor or agent of the Supplier in order to confirm that the Goods stored in accordance with Good Industry Practice and in compliance the requirements of this Contract and/or that stock holding and quality assurance processes are in accordance with the requirements of this Contract.
- 3.2 Without prejudice to the provisions of Clause 3.6 of this Schedule 2 of these Calloff Terms and Conditions and subject to Clause 3.7 of this Schedule 2 of these Call-off Terms and Conditions, the Authority shall visually inspect the Goods within a reasonable time following delivery (or such other period as may be set out as part of the Authority's requirements in the Specification and Tender Response Document, if any) and may by written notice reject any Goods found to be damaged or otherwise not in accordance with the requirements of this Contract ("**Rejected Goods**"). The whole of any delivery may be rejected if a reasonable sample of the Goods taken indiscriminately from that delivery is found not to conform in all material respects to the requirements of the Contract.
- 3.3 Without prejudice to the provisions of Clause 3.5 of this Schedule 2 of these Calloff Terms and Conditions, upon the rejection of any Goods in accordance

with Clauses 3.2 and/or 3.6 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall at the Authority's written request:

- 3.3.1 collect the Rejected Goods at the Supplier's risk and expense within ten (10) Business Days of issue of written notice from the Authority rejecting the Goods; and
- 3.3.2 without extra charge, promptly (and in any event within twenty (20) Business Days or such other time agreed by the Parties in writing acting reasonably) supply replacements for the Rejected Goods to the Authority subject to the Authority not cancelling its purchase obligations in accordance with Clause 3.5 of this Schedule 2 of these Call-off Terms and Conditions.

If the Supplier requests and the Authority accepts that the Rejected Goods should be disposed of by the Authority rather than returned to the Supplier, the Authority reserves the right to charge the Supplier for the costs associated with the disposal of the Rejected Goods and the Supplier shall promptly pay any such costs.

- 3.4 Risk and title in respect of any Rejected Goods shall pass to the Supplier on the earlier of: (a) collection by the Supplier in accordance with Clause 3.3 of this Schedule 2 of these Call-off Terms and Conditions; or (b) immediately following the expiry of ten (10) Business Days from the Authority issuing written notification rejecting the Goods. If Rejected Goods are not collected within ten (10) Business Days of the Authority issuing written notification rejecting the Goods, the Authority may return the Rejected Goods at the Supplier's risk and expense and charge the Supplier for the cost of storage from the expiry of ten (10) Business Days from the date of notification of rejection.
- 3.5 Where the Authority rejects any Goods in accordance with Clauses 3.2 and/or 3.6 of this Schedule 2 of these Call-off Terms and Conditions and the Authority no longer requires replacement Goods, the Authority may by written notice cancel its purchase obligations in relation to such quantity of Rejected Goods. Should the Authority have paid for such Rejected Goods the Supplier shall refund such payment to the Authority within thirty (30) days of the Authority cancelling such purchase obligations and informing the Supplier that the Authority does not require replacements for such Rejected Goods.

- 3.6 Without prejudice to any other provisions of this Contract or any other warranties or guarantees applicable to the Goods supplied and subject to Clause 3.7 of this Schedule 2 of these Call-off Terms and Conditions, if at any time following the date of the delivery of any Goods, all or any part of such Goods are found to be defective or otherwise not in accordance with the requirements of this Contract (“**Defective Goods**”), the Supplier shall, at the Authority’s discretion:
- 3.6.1 upon written request and without charge, promptly (and in any event within twenty (20) Business Days or such other time agreed by the Parties in writing acting reasonably) remedy the deficiency by repairing such Defective Goods; or
  - 3.6.2 upon written notice of rejection from the Authority, treat such Defective Goods as Rejected Goods in accordance with Clauses 3.2 to 3.5 of this Schedule 2 of these Call-off Terms and Conditions.
- 3.7 The Supplier shall be relieved of its liabilities under Clauses 3.2 to 3.5 (inclusive) and/or Clause 3.6 of this Schedule 2 of these Call-off Terms and Conditions to the extent only that the Goods are damaged, there are defects in the Goods and/or the Goods fail to comply with the requirements of this Contract due, in each case, to any acts or omissions of the Authority.
- 3.8 The Authority’s rights and remedies under Clause 3.6 of this Schedule 2 of these Call-off Terms and Conditions shall cease within a reasonable period of time from the date on which the Authority discovers or might reasonably be expected to discover that the Goods are Defective Goods or within such other period as may be set out as part of the requirements in the Specification and Tender Response Document, if any. For the avoidance of doubt, Goods not used before their expiry date shall in no event be considered Defective Goods following the date of expiry provided that at the point such Goods were delivered to the Authority they met any shelf life requirements set out in the Specification and Tender Response Document.
- 3.9 Where the Supplier is required by Law, Guidance, and/or Good Industry Practice to order a product recall (“**Requirement to Recall**”) in respect of the Goods, the Supplier shall:
- 3.9.1 promptly (taking into consideration the potential impact of the continued use of the Goods on patients, service users and the Authority as well as compliance by the Supplier with any regulatory

- requirements) notify the Authority in writing of the recall together with the circumstances giving rise to the recall;
- 3.9.2 from the date of the Requirement to Recall treat the Goods the subject of such recall as Defective Goods in accordance with Clause 3.6 of this Schedule 2 of these Call-off Terms and Conditions;
- 3.9.3 consult with the Authority as to the most efficient method of executing the recall of the Goods and use its reasonable endeavors to minimise the impact on the Authority of the recall; and
- 3.9.4 indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the Authority as a result of such Requirement to Recall.

#### 4 Operation of the Services

- 4.1 The Services shall be provided at such Authority premises and at such locations within those premises, as may be set out in the Order Form or as otherwise agreed by the Parties in writing (“**Premises and Locations**”).
- 4.2 Subject to the Supplier, its Staff and Sub-contractors complying with all relevant Policies applicable to such Premises and Locations, the Authority shall grant reasonable access to the Supplier, its Staff and Sub-contractors to such Premises and Locations to enable the Supplier to provide the Services.
- 4.3 Subject to Clause 4.4 of this Schedule 2 of these Call-off Terms and Conditions, any access granted to the Supplier and its Staff under Clause 4.2 of this Schedule 2 of these Call-off Terms and Conditions shall be non-exclusive and revocable. Such access shall not be deemed to create any greater rights or interest than so granted (to include, without limitation, any relationship of landlord and tenant) in the Premises and Locations. The Supplier warrants that it shall carry out all such reasonable further acts to give effect to this Clause 4.3 of this Schedule 2 of these Call-off Terms and Conditions.
- 4.4 Where, in order to provide the Services, the Supplier requires any greater rights to use or occupy any specific Premises and Locations over and above such reasonable access rights granted in accordance with Clause 4.2 and Clause 4.3 of this Schedule 2 of these Call-off Terms and Conditions, such further rights shall be limited to any rights granted to the Supplier by the Authority in accordance with any licence and/or lease entered into by the Supplier as referred to in any Order Form.
  - 4.4.1 The rights and licences afforded to the Supplier by Clause 4.4 of this Schedule 2

of Call-off Terms and Conditions shall be expanded to give to the Supplier's Subcontractors rights to use or occupy of any specific Premises and Location necessary to perform the Services or any part thereof for which the Subcontractor is engaged by and on behalf of the Supplier.

4.5 Where it is provided for by a specific mechanism set out in the Specification and Tender Response Document and/or the Order Form, the Authority may increase, reduce or otherwise vary the Premises and Locations in accordance with such mechanism subject to the provisions of any licence or lease entered into by the Parties as referred to at Clause 4.4 of this Schedule 2 of these Call-off Terms and Conditions. Where there is no such specific mechanism set out in the Specification and Tender

Response Document and/or the Order Form, any variations to the Premises and Locations where the Services are to be provided shall be agreed by the Parties in accordance with Clause 21 of this Schedule 2 of these Call-off Terms and Conditions. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the dispute resolution process set out in Clause 5 of the Key Provisions and Clause 22.3 of this Schedule 2 of these Call-off Terms and Conditions.

4.6 Unless otherwise set out in the Specification and Tender Response Document or otherwise agreed by the Parties in writing, any equipment or other items provided by the Authority for use by the Supplier:

4.6.1 shall be provided at the Authority's sole discretion;

4.6.2 shall be inspected by the Supplier in order that the Supplier can confirm to its reasonable satisfaction that such equipment and/or item is fit for its intended use and shall not be used by the Supplier until it has satisfied itself of this;

4.6.3 must be returned to the Authority within any agreed timescales for such return or otherwise upon the request of the Authority; and

4.6.4 shall be used by the Supplier at the Supplier's risk and the Supplier shall upon written request by the Authority reimburse the Authority for any loss or damage relating to such equipment or other items caused by the Supplier (fair wear and tear exempted).

4.7 If the Services, or any part of them, are regulated by any regulatory body, the Supplier shall ensure that at the Actual Services Commencement Date it has in place all relevant registrations and shall maintain such registrations during the Term. The Supplier shall notify the Authority forthwith in writing of any changes to such registration or any other matter relating to its registration that would affect the delivery or the quality of Services.

4.8 The Supplier shall notify the Authority forthwith in writing:

- 4.8.1 of any pending inspection of the Services, or any part of them, by a regulatory body immediately upon the Supplier becoming aware of such inspection; and
- 4.8.2 of any failure of the Services, or any part of them, to meet the quality standards required by a regulatory body, promptly and in any event within two (2) Business Days of the Supplier becoming aware of any such failure. This shall include without limitation any informal feedback received during or following an inspection raising concerns of any nature regarding the provision of the Services.

4.9 Following any inspection of the Services, or any part of them, by a regulatory body, the Supplier shall provide the Authority with a copy of any report or other communication published or provided by the relevant regulatory body in relation to the provision of the Services.

4.10 Upon receipt of notice pursuant to Clause 4.8 of this Schedule 2 of these Calloff Terms and Conditions or any report or communication pursuant to Clause 4.9 of this Schedule 2 of these Call-off Terms and Conditions, the Authority shall be entitled to request further information from the Supplier and/or a meeting with the Supplier, and the Supplier shall cooperate fully with any such request.

4.11 Where applicable, the Supplier shall implement and comply with the Policies on reporting and responding to all incidents and accidents, including serious incidents requiring investigation, shall complete the Authority's incident and accident forms in accordance with the Policies and provide reasonable support and information as requested by the Authority to help the Authority deal with any incident or accident relevant to the Services. The Supplier shall ensure that its Contract Manager informs the Authority's Contract Manager in writing forthwith upon (a) becoming aware that any serious incidents requiring investigation and/or notifiable accidents have occurred; or (b) the Supplier's Contract Manager having reasonable cause to believe any serious incidents and/or notifiable accidents requiring investigation have occurred. The Supplier shall ensure that its Contract Manager informs the Authority's Contract Manager in writing within forty-eight (48) hours of all other incidents and/or accidents that have or may have an impact on the Services.

- 4.12 The Supplier shall, as reasonably required by the Authority, cooperate with any other service providers to the Authority and/or any other third parties as may be relevant in the provision of the Services.
- 4.13 To the extent relevant to the Services, the Supplier shall have in place and operate a complaints procedure which complies with the requirements of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.
- 4.14 Each Party shall inform the other of all complaints from or on behalf of patients or other service users arising out of or in connection with the provision of the Services within twenty-four (24) hours of receipt of each complaint and shall keep the other Party updated on the manner of resolution of any such complaints.
- 4.15 The Supplier shall be relieved from its obligations under this Contract to provide the Services to the extent that it is prevented from complying with any such obligations due to any acts, omissions or defaults of the Authority. To qualify for such relief, the Supplier must notify the Authority promptly (and in any event within five (5) Business Days) in writing of the occurrence of such act, omission, or default of the Authority together with the potential impact on the Supplier's obligations.

## 5 Staff and Life Science Industry Accredited Credentialing Register

- 5.1 Subject to the requirements of this Contract and any Law, the Supplier shall be entirely responsible for the employment and conditions of service of Staff. The Supplier shall ensure that such conditions of employment are consistent with its obligations under this Contract.
- 5.2 The Supplier will employ sufficient Staff to ensure that it complies with its obligations under this Contract. This will include, but not be limited to, the Supplier providing a sufficient reserve of trained and competent Staff to supply the Goods and/or provide the Services during Staff holidays or absence.
- 5.3 The Supplier shall use reasonable endeavours to ensure the continuity of all Staff in the provision of the Services and, where any member of Staff is designated as key to the provision of the Services as set out in the Specification and Tender Response Document, the Order Form or as otherwise agreed between the Parties in writing, any redeployment and/or replacement of such

member of Staff by the Supplier shall be subject to the prior written approval of the Authority, such approval not to be unreasonably withheld or delayed.

5.4 The Supplier shall ensure that all Staff are aware of, and at all times comply with, the Policies.

5.5 The Supplier shall:

5.5.1 employ only those Staff who are careful, skilled and experienced in the duties required of them;

5.5.2 ensure that every member of Staff is properly and sufficiently trained and instructed;

5.5.3 ensure all Staff have the qualifications to carry out their duties;

5.5.4 maintain throughout the Term all appropriate licences and registrations with any relevant bodies (at the Supplier's expense) in respect of the Staff; and

5.5.5 ensure all Staff comply with such registration, continuing professional development and training requirements or recommendations appropriate to their role including those from time to time issued by the Department of Health and Social Care or any relevant regulatory body or any industry body in relation to such Staff; and

5.5.6 comply with the Authority's staff vetting procedures and other staff protocols, as may be relevant to this Contract and which are notified to the Supplier by the Authority in writing.

5.6 The Supplier shall not deploy in the provision of the Services any person who has suffered from, has signs of, is under treatment for, or who is suffering from any medical condition which is known to, or does potentially, place the health and safety of the Authority's staff, patients, service users or visitors at risk unless otherwise agreed in writing with the Authority.

5.7 The Supplier shall ensure that all potential Staff or persons performing any of the Services during the Term who may reasonably be expected in the course of performing any of the Services under this Contract to have access to or come into contact with children or other vulnerable persons and/or have access to or come into contact with persons receiving health care services:

5.7.1 are questioned concerning their Convictions; and

5.7.2 obtain appropriate disclosures from the Disclosure and Barring

Service (or other appropriate body) as required by Law and/or the Policies before the Supplier engages the potential staff or persons in the provision of the Services.

- 5.8 The Supplier shall take all necessary steps to ensure that such potential staff or persons obtain standard and enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) and shall ensure all such disclosures are kept up to date. The obtaining of such disclosures shall be at the Supplier's cost and expense.
- 5.9 The Supplier shall ensure that no person is employed or otherwise engaged in the provision of the Services without the Authority's prior written consent if:
  - 5.9.1 the person has disclosed any Convictions upon being questioned about their Convictions in accordance with Clause 5.7.1 of this Schedule 2 of these Calloff Terms and Conditions;
  - 5.9.2 the person is found to have any Convictions following receipt of standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) in accordance with Clause 5.7.2 of this Schedule 2 of these Call-off Terms and Conditions; or
  - 5.9.3 the person fails to obtain standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) upon request by the Supplier in accordance with Clause 5.7.2 of this Schedule 2 of these Calloff Terms and Conditions.
- 5.10 In addition to the requirements of Clause 5.7 to Clause 5.9 of this Schedule 2 of these Call-off Terms and Conditions, where the Services are or include regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 the Supplier:
  - 5.10.1 warrants that it shall comply with all requirements placed on it by the Safeguarding Vulnerable Groups Act 2006;
  - 5.10.2 warrants that at all times it has and will have no reason to believe that any member of Staff is barred in accordance with the Safeguarding Vulnerable Groups Act 2006; and
  - 5.10.3 shall ensure that no person is employed or otherwise engaged in the provision of the Services if that person is barred from carrying out, or whose previous conduct or records indicate that they would not be suitable to carry out, any regulated activities as defined by the

Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person.

- 5.11 The Supplier shall ensure that the Authority is kept advised at all times of any member of Staff who, subsequent to their commencement of employment as a member of Staff receives a Conviction or whose previous Convictions become known to the

Supplier or whose conduct or records indicate that they are not suitable to carry out any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person. The Supplier shall only be entitled to continue to engage or employ such member of Staff with the Authority's written consent and with such safeguards being put in place as the Authority may reasonably request. Should the Authority withhold consent the Supplier shall remove such member of Staff from the provision of the Services forthwith.

- 5.12 The Supplier shall immediately provide to the Authority any information that the Authority reasonably requests to enable the Authority to satisfy itself that the obligations set out in Clause 5.7 to Clause 5.11 of this Schedule 2 of these Call-off Terms and Conditions have been met.

- 5.13 The Authority may at any time request that the Supplier remove and replace any member of Staff from the provision of the Services, provided always that the Authority will act reasonably in making such a request. Prior to making any such request the Authority shall raise with the Supplier the Authority's concerns regarding the member of Staff in question with the aim of seeking a mutually agreeable resolution. The Authority shall be under no obligation to have such prior discussion should the Authority have concerns regarding patient or service user safety.

- 5.14 Unless otherwise confirmed by the Authority in writing, the Supplier shall ensure full compliance (to include with any implementation timelines) with any Guidance issued by the Department of Health and Social Care and/or any requirements and/or Policies issued by the Authority (to include as may be set out as part of any procurement documents leading to the award of this Contract) in relation to the adoption of, and compliance with, any scheme or schemes to verify the credentials of

Supplier representatives that visit NHS premises (to include use of the Life Science Industry Accredited Credentialing Register). Once compliance with any notified implementation timelines has been achieved by the Supplier, the Supplier shall, during

the Term, maintain the required level of compliance in accordance with any such Guidance, requirements and Policies.

## 6 Business continuity

6.1 Throughout the Term, the Supplier will, and will procure that its Subcontractors will, ensure their respective Business Continuity Plan provides for continuity during a

Business Continuity Event. The Supplier confirms and agrees any such Business Continuity Plan details and will continue to detail robust arrangements that are reasonable and proportionate to:

6.1.1 the criticality of this Contract to the Authority; and

6.1.2 the size and scope of the Supplier's and the Sub-contractor's business operations,

regarding continuity of the supply of the Goods and the provision of the Services during and following a Business Continuity Event.

6.2 The Supplier shall, and shall procure that its Sub-contractor will, test their respective Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Contract to the Authority and the size and scope of the Supplier's business operations. The Supplier shall promptly provide to the Authority, at the Authority's written request, copies of its Business Continuity Plan (or Business Continuity Plan of its Sub-contractor, where relevant), reasonable and proportionate documentary evidence that the Supplier and its Subcontractor test their Business Continuity Plans in accordance with the requirements of this Clause 6.2 of this Schedule 2 of these Call-off Terms and Conditions and reasonable and proportionate information regarding the outcome of such tests. The

Supplier shall provide to the Authority a copy of any updated or revised Business Continuity Plan within fourteen

(14) Business Days of any material update or revision to the Business Continuity Plan.

6.3 Should a Business Continuity Event occur at any time, the Supplier shall, and shall procure that its Sub-contractor will, implement and comply with their respective Business Continuity Plan and provide regular written reports to the Authority on such implementation.

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

## 7 The Authority's obligations

- 7.1 Subject to the Supplier supplying the Goods and providing the Services in accordance with this Contract, the Authority will pay the Supplier for the Goods and/or Services in accordance with Clause 9 of this Schedule 2 of these Call-off Terms and Conditions.
- 7.2 The Authority shall, as appropriate, provide copies of or give the Supplier access to such of the Policies that are relevant to the supply of the Goods and the provision of the Services.
- 7.3 The Authority shall comply with the Authority's Obligations.
- 7.4 The Authority shall provide the Supplier with any reasonable and proportionate cooperation necessary to enable the Supplier to comply with its obligations under this Contract. The Supplier shall at all times provide reasonable advance written notification to Authority of any such cooperation necessary in circumstances where such cooperation will require the Authority to plan for and/or allocate specific resources in order to provide such cooperation.

## 8 Contract management

- 8.1 Each Party shall appoint and retain a Contract Manager who shall be the primary point of contact for the other Party in relation to matters arising from this Contract. Should the Contract Manager be replaced, the Party replacing the Contract Manager shall promptly inform the other Party in writing of the name and contact details for the new Contract Manager. Any Contract Manager appointed shall be of sufficient seniority and experience to be able to make decisions on the day-to-day operation of the Contract. The Supplier confirms and agrees that it will be expected to work closely and cooperate fully with the Authority's Contract Manager.
- 8.2 Each Party shall ensure that its representatives (to include, without limitation, its Contract Manager) shall attend review meetings on a regular basis to review the performance of the Supplier under this Contract and to discuss matters

arising generally under this Contract. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day-to-day operation of the Contract. Review meetings shall take place at the frequency specified in the Specification and Tender Response Document. Should the Specification and Tender Response Document not state the frequency, then the first such meeting shall take place on a date to be agreed on or around the end of the first month after the Commencement Date. Subsequent meetings shall take place at monthly intervals or as may otherwise be agreed in writing between the Parties.

- 8.3 Two weeks prior to each review meeting (or at such time and frequency as may be specified in the Specification and Tender Response Document) the Supplier shall provide a written contract management report to the Authority regarding the supply of the Goods, the provision of the Services and the operation of this Contract. Unless otherwise agreed by the Parties in writing, such contract management report shall contain:

- 8.3.1 details of the performance of the Supplier, and each of its Subcontractors, when assessed in accordance with the KPIs since the last such performance report;
- 8.3.2 details of any complaints by the Authority regarding the supply of Goods or provision of Services and any complaints from or on behalf of patients or other service users, their nature and the way in which the Supplier has responded to such complaints since the last review meeting written report;
- 8.3.3 the information specified in the Specification and Tender Response Document;
- 8.3.4 a status report in relation to the implementation of any current Remedial Proposals by either Party; and
- 8.3.5 such other information as reasonably required by the Authority.

- 8.4 Unless specified otherwise in the Specification and Tender Response Document, the Authority shall take minutes of each review meeting and shall circulate draft minutes to the Supplier within a reasonable time following such review meeting. The Supplier shall inform the Authority in writing of any suggested amendments to the minutes within five (5) Business Days of receipt of the draft minutes. If the Supplier does not respond to the Authority within such five (5) Business Days, the minutes will be deemed to be approved. Where there are any differences in interpretation of the minutes, the Parties will use their reasonable endeavours to reach agreement. If agreement cannot

be reached the matter shall be referred to, and resolved in accordance with, the dispute resolution process set out in Clause 5 of the Key Provisions and Clause 22.3 of this Schedule 2 of these Call-off Terms and Conditions.

- 8.5 The Supplier shall provide such management information as the Authority may request from time to time within seven (7) Business Days of the date of the request. The Supplier shall supply the management information to the Authority in such form as may be specified by the Authority and, where requested to do so, the Supplier shall also provide such management information to another Contracting Authority, whose role it is to: (a) analyse such management information in accordance with UK government policy (to include, without limitation, for the purposes of analysing public sector expenditure and planning future procurement activities); or (b) manage the Framework Agreement with the Supplier ("**Third Party Body**"). The Supplier confirms and agrees that the Authority may itself provide the Third-Party Body with management information relating to the Goods and Services purchased, any payments made under this Contract, and any other information relevant to the operation of this Contract.
- 8.6 Upon receipt of management information supplied by the Supplier to the Authority and/or the Third-Party Body, or by the Authority to the Third-Party Body, the Parties hereby consent to the Third Party Body and the Authority:
- 8.6.1 storing and analysing the management information and producing statistics; and
  - 8.6.2 sharing the management information or any statistics produced using the management information with any other Contracting Authority.
- 8.7 If the Third Party Body and/or the Authority shares the management information or any other information provided under Clause 8.6 of this Schedule 2 of these Call-off Terms and Conditions, any Contracting Authority receiving the management information shall, where such management information is subject to obligations of confidence under this Contract and such management information is provided direct by the Authority to such Contracting Authority, be informed of the confidential nature of that information by the Authority and shall be requested by the Authority not to disclose it to any body that is not a Contracting Authority (unless required to do so by Law).

- 8.8 The Authority may make changes to the type of management information which the Supplier is required to supply and shall give the Supplier at least one (1) month's written notice of any changes.

## 9 Price and payment

- 9.1 The Contract Price shall be calculated in accordance with the provisions of the Framework Agreement, as confirmed in the Order Form.

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

9.2.1 shall remain fixed during the Term; and

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

- (i) packaging, packing materials, addressing, labelling, loading, delivery to and unloading at the delivery location, the cost of any import or export licences, all appropriate taxes (excluding VAT), duties and tariffs, any expenses arising from import and export administration, any installation costs and associated works, the costs of all associated documentation and information supplied or made accessible to the Authority in any media, and any training in relation to the use, storage, handling or operation of the Goods;
- (ii) any royalties, licence fees or similar expenses in respect of the making, use or exercise by the Supplier of any Intellectual Property Rights for the purposes of performing this Contract, and any licence rights granted to the Authority in accordance with Clause 11 of this Schedule 2 of these Call-off Terms and Conditions; and
- (iii) costs and expenses in relation to supplies and materials used by the Supplier or any third party in the manufacture of the Goods, and any other costs incurred by the Supplier in association with the manufacture, supply or installation of the Goods; and

9.2.3 in respect of the Services:

- (i) shall be payable from the Actual Services Commencement Date; and
- (ii) is the entire price payable by the Authority to the Supplier in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation

expenses, the cost of Staff and all appropriate taxes (excluding VAT), duties and tariffs and any expenses arising from import and export administration.

- 9.2.4 Where the Contract and/ or Order Form specifies an amount as being payable for the provision of any Services (including any Implementation Services) then, unless the Contract and/ or Order Form specifically states that that amount is only an estimate, that amount shall be treated as either:
- (i) the maximum capped fee payable for the Services concerned if the Contract and/ or Order Form states that the fees payable for those Services are to be charged on a time and materials basis; or (ii) a fixed fee for the Services concerned in all other cases.
- 9.2.5 Any estimates proposed by the Supplier for the cost of any Services and equipment must be clearly detailed and identified as ‘estimates’ within the Contract and/ or Order Form. Any estimates made for the cost of any Services and equipment shall be estimates only.
- 9.2.6 Where estimated prices are quoted and agreed in writing by the Participating Authority for the commencement of Services, the Supplier shall use all reasonable efforts to perform the relevant Services at the agreed estimated price and in no event shall such estimates constitute a fixed price or a not-to exceed price agreement unless expressly stated otherwise in the Contract or quotation.
- 9.2.7 Services charged on a time and materials basis shall be properly accounted for by way of detailed internal recording of time spent and materials used in the form of signed-off timesheets for worked time according to named Supplier staff or agent and with details of other costs incurred in connection with the provision of the Services (such records to be available to the Participating Authority for inspection on reasonable request).
- 9.2.8 Where Services are charged on a time and materials basis the Supplier shall not be entitled to charge for the full day, for part days worked by the Suppliers team, unless it has sought and obtained the Participating Authority’s prior written consent to do so.

- 9.3 For the avoidance of doubt in respect of services, charges shall not be payable for time spent:
- 9.3.1 remedying any breach of the Supplier's obligations;
  - 9.3.2 attending Participating Authority relationship or management meetings,  
dealing with disputes or other Participating Authority relationship matters or in producing standard management reports;
  - 9.3.3 by replacement staff getting up to speed with progress on the project Services and their related responsibilities under it; or
  - 9.3.4 carrying out any of the Supplier's other obligations unrelated to the Services to be provided under this Framework Agreement or under the relevant Contract that do not constitute the supply of Services.
  - 9.3.5 In the event there is a dispute in relation to pricing, either party may refer such dispute in accordance with Clause 22 (Dispute Resolution) of Schedule 2 (General Terms and Conditions).
- 9.4 Unless stated otherwise in the Framework Agreement and/or the Order Form:
- 9.4.1 where the Framework Agreement and/or the Order Form confirms that the payment profile for this Contract is monthly in arrears, the Supplier shall invoice the Authority, within fourteen (14) days of the end of each calendar month, the Contract Price in respect of the Goods supplied or the Services provided in compliance with this Contract in the preceding calendar month; or
  - 9.4.2 where Clause 9.4.1 of this Schedule 2 of these Call-off Terms and Conditions does not apply, the Supplier shall invoice the Authority for the Goods or Services at any time following completion of the supply of the Goods or the provision of the Services in compliance with this Contract.

Each invoice shall contain such information and be addressed to such individual as the Authority may inform the Supplier from time to time. Each invoice may be submitted electronically by the Supplier if it complies with the standard on electronic invoicing as set out in the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/2870.

- 9.5 The Contract Price is exclusive of VAT, which, if properly chargeable, the Authority shall pay at the prevailing rate subject to receipt from the Supplier of

a valid and accurate VAT invoice. Such VAT invoices shall show the VAT calculations as a separate line item.

- 9.6 Where the Contract Price is or may become subject to any pricing requirements of any voluntary and/or statutory pricing regulation schemes, the Parties shall comply with such pricing requirements as required by Law from time to time and specifically as required by the statutory pricing regulation scheme (and any future regulation) or to the extent applicable to the Supplier from time to time as an industry member of a voluntary scheme, including any reductions in price by reason of the application of such schemes.
- 9.7 The Authority shall verify and pay each valid and undisputed invoice received in accordance with Clause 9.3 of this Schedule 2 of these Call off Terms and Conditions within thirty (30) days of receipt of such invoice at the latest. However, the Authority shall use its reasonable endeavours to pay such undisputed invoices sooner in accordance with any applicable government prompt payment targets. If there is undue delay in verifying the invoice in accordance with this Clause 9.6 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purposes this Clause 9.6 after a reasonable time has passed.
- 9.8 Where the Authority raises a query with respect to an invoice the Parties shall liaise with each other and agree a resolution to such query within thirty (30) days of the query being raised. If the Parties are unable to agree a resolution within thirty (30) days of the query shall be referred to dispute resolution in accordance with Clause 22 of this Schedule 2 of these Call off Terms and Conditions. For the avoidance of doubt, the Authority shall not be in breach of any of any of its payment obligations under this Contract in relation to any queried or disputed invoice sums unless the process referred to in this Clause 9.7 of this Schedule 2 of these Call-off Terms and Conditions has been followed and it has been determined that the queried or disputed invoice amount is properly due to the Supplier and the Authority has then failed to pay such sum within a reasonable period following such determination.
- 9.9 The Supplier shall pay to the Authority any service credits and/or other sums and/or deductions (to include, without limitation, deductions relating to a reduction in the Contract Price) that may become due in accordance with the provisions of the Specification and Tender Response Document and/or the Order Form. For the avoidance of doubt, the Authority may invoice the Supplier for such sums or deductions at any time in the event that they have

not automatically been credited to the Authority in accordance with the provisions of the Specification and Tender Response Document and/or Order Form. Such invoice shall be paid by the Supplier within 30 days of the date of such invoice.

9.10 The Authority reserves the right to set-off:

9.10.1 any monies due to the Supplier from the Authority as against any monies due to the Authority from the Supplier under this Contract; and

9.10.2 any monies due to the Authority from the Supplier as against any monies due to the Supplier from the Authority under this Contract.

9.11 Where the Authority is entitled to receive any sums (including, without limitation, any costs, charges or expenses) from the Supplier under this Contract, the Authority may invoice the Supplier for such sums. Such invoices shall be paid by the Supplier within 30 days of the date of such invoice.

9.12 If a Party fails to pay any undisputed sum properly due to the other Party under this Contract, the Party due such sum shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

## 10 Warranties

10.1 The Supplier warrants and undertakes that:

10.1.1 it shall comply with the Framework Agreement;

10.1.2 the Goods and Services shall be suitable for the purposes and/or treatments as referred to in the Specification and Tender Response Document, be of satisfactory quality, fit for their intended purpose and shall comply with the standards and requirements set out in this Contract;

10.1.3 unless otherwise confirmed by the Authority in writing (to include, without limitation, as part of the Specification and Tender Response

- Document), it will ensure that the Goods and any products purchased by the Supplier partially or wholly for the purpose of providing the services comply with requirements five (5) to eight (8), as set out in Annex 1 of the Cabinet Office Procurement Policy Note – Implementing Article 6 of the Energy Efficiency Directive (Action Note 07/14 3rd June 2014), to the extent such requirements apply to the relevant Goods;
- 10.1.4 it shall ensure that prior to actual delivery to the Authority the Goods are manufactured, stored and/or distributed using reasonable skill and care and in accordance with Good Industry Practice;
- 10.1.5 without prejudice to the generality of the warranty at 10.1.4 of this Schedule 2 of these Call-off Terms and Conditions, it shall ensure that, the Goods are, stored and/or distributed in accordance with any Law, Guidance and/or Good Industry Practice relevant to the Goods, and in accordance with any specific instructions of the manufacturer of the Goods;
- 10.1.6 it shall ensure that all facilities used in the manufacture, storage and distribution of the Goods are kept in a state and condition necessary to enable the Supplier to comply with its obligations in accordance with this Contract;
- 10.1.7 it has, or the manufacturer of the Goods has, manufacturing and warehousing capacity sufficient to comply with its obligations under this Contract;
- 10.1.8 it will ensure sufficient stock levels to comply with its obligations under this Contract;
- 10.1.9 it shall ensure that the transport and delivery of the Goods mean that they are delivered in good and useable condition;
- 10.1.10 where the Goods are required to be stored at a certain temperature, it shall provide, or shall procure the provision of, complete and accurate temperature records for each delivery of the Goods during the period of transport and/or storage of the Goods from the point of manufacture to the point of delivery to the Authority;
- 10.1.11 where there is any instruction information, including without limitation patient information leaflets, that accompany the Goods, it shall provide a sufficient number of copies to the Authority and provide updated copies should the instruction information change at any time during the Term;
- 10.1.12 all Goods delivered to the Authority shall comply with any shelf life requirements set out in the Specification and Tender Response Document;

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- 10.1.13 it shall not make any significant changes to the Goods without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed;
- 10.1.14 any equipment it uses in the manufacture, delivery, or installation of the  
Goods and Services shall comply with all relevant Law, Guidance, and Good Industry Practice, be fit for its intended purpose, and maintained fully in accordance with the manufacturer's specification;
- 10.1.15 it has and shall as relevant maintain all rights, consents, authorisations, licences and accreditations required to supply the Goods and Services;
- 10.1.16 it has, and shall ensure its Staff shall have, and shall maintain throughout the Term, all appropriate licences and registrations with the relevant bodies to fulfil its obligations under this Contract;
- 10.1.17 it has all rights, consents, authorisations, licences, and accreditations required to provide the Services and shall maintain such consents, authorisations, licences and accreditations throughout the Term;
- 10.1.18 it has and shall maintain a properly documented system of quality controls  
and processes covering all aspects of its obligations under this Contract and/or under Law, Guidance and Good Industry Practice and shall at all times comply with such quality controls and processes;
- 10.1.19 it shall not make any significant changes to its system of quality controls and processes in relation to the Services (excluding Subcontractor Services) without notifying the Authority in writing at least twenty-one (21) days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);
- 10.1.20 where any act of the Supplier requires the notification to and/or approval by  
any regulatory or other competent body in accordance with any Law and Guidance, the Supplier shall comply fully with such notification and/or approval requirements;
- 10.1.21 receipt of the Goods and/or Services by or on behalf of the Authority, and use of the Goods and/or deliverables in accordance with the Contract and any EULA or of any other item or information supplied or made available to the Authority will not infringe any third party rights, to include without limitation any Intellectual Property Rights;

- 10.1.22 it will comply with all Law, Guidance, Good Industry Practice, Policies and the Supplier Code of Conduct in so far as is relevant to the supply of the Goods and/or the provision of the Services;
- 10.1.23 it will provide the Services using reasonable skill and care and in accordance with Good Industry Practice and shall fulfil all requirements of this Contract using appropriately skilled, trained and experienced staff;
- 10.1.24 unless otherwise set out in the Specification and Tender Response Document and/or as otherwise agreed in writing by the Parties, it has and/or shall procure all resources, equipment, consumables and other items and facilities required to provide the Services;
- 10.1.25 without limitation to the generality of Clause 10.1.22 of this Schedule 2 of these Call-off Terms and Conditions, it shall comply with all health and safety processes, requirements safeguards, controls, and training obligations in accordance with its own operational procedures, Law, Guidance, Policies, Good Industry Practice, the requirements of the Specification and Tender Response Document and any notices or instructions given to the Supplier by the Authority and/or any competent body, as relevant to the supply of the Goods, the provision of the Services and the Supplier's access to the Premises and Locations in accordance with this Contract;
- 10.1.26 without prejudice to any specific notification requirements set out in this Contract, it will promptly notify the Authority of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the Goods and/or the performance of the Services and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;
- 10.1.27 any equipment it uses in the provision of the Services shall comply with all relevant Law, Guidance, and Good Industry Practice, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification and shall remain the Supplier's risk and responsibility at all times;
- 10.1.28 it shall use Good Industry Practice to ensure that any information and communications technology systems and/or related hardware and/or software it uses are free from corrupt data, viruses, worms and any other computer programs or code which might cause harm or disruption to the Authority's information and communications technology systems;
- 10.1.29 it shall comply with its Net Zero and Social Value Commitments

- 10.1.30 it shall provide to the Authority any information that the Authority may request as evidence of the Supplier's compliance with this Clause 10.1.29 of this Schedule 2 of these Call-off Terms and Conditions;
- 10.1.31 it will fully and promptly respond to all requests for information and/or requests for answers to questions regarding this Contract, the Goods, the provision of the Services, any complaints and any Disputes at the frequency, in the timeframes and in the format as requested by the Authority from time to time (acting reasonably);
- 10.1.32 all information included within the Supplier's responses to any documents issued by the Authority as part of the procurement relating to the award of this Contract (to include, without limitation, as referred to in the Specification and Tender Response Document and/or Order Form) and all accompanying materials is accurate;
- 10.1.33 it has the right and authority to enter into this Contract and that it has the capability and capacity to fulfil its obligations under this Contract;
- 10.1.34 it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Contract and the documents referred to in this Contract;
- 10.1.35 all necessary actions to authorise the execution of and performance of its obligations under this Contract have been taken before such execution;
- 10.1.36 there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Supplier;
- 10.1.37 there are no material agreements existing to which the Supplier is a party which prevent the Supplier from entering into or complying with this Contract;
- 10.1.38 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Contract; and
- 10.1.39 it has satisfied itself as to the nature and extent of the risks assumed by it under this Contract and has gathered all information necessary to perform its obligations under this Contract and all other obligations assumed by it.

- 10.2 Where the sale, manufacture, assembly, importation, storage, distribution, supply, delivery, or installation of the Goods under this Contract relates to medical devices and/or medicinal products (both as defined under any relevant Law and Guidance), the Supplier warrants and undertakes that it will comply with any such Law and Guidance and with Good Industry Practice relating to

such activities in relation to such medical devices and/or medicinal products. In particular, but without limitation, the Supplier warrants that:

- 10.2.1 at the point such Goods are supplied to the Authority, all such Goods which are medical devices shall have valid CE marking or UKCA marking as required by Law and Guidance and that all relevant marking, authorisation, registration, approval and documentation requirements as required under Law and Guidance relating to the sale, manufacture, assembly, importation, storage, distribution, supply, delivery, or installation of such Goods shall have been complied with. Without limitation to the foregoing provisions of this Clause 10.2 of this Schedule 2 of these Call-off Terms and Conditions, the

Supplier shall, upon written request from the Authority, make available to the Authority evidence of the grant of such valid CE marking or UKCA marking, and evidence of any other authorisations, registrations, approvals or documentation required;

- 10.2.2 at the point such Goods are supplied to the Authority, all such Goods which are medicinal products shall have a valid marketing authorisation as required by Law and Guidance and good Industry Practice in order to supply the Goods to the Authority and that all relevant authorisation, labelling, registration, approval and documentation requirements as required under Law, Guidance and Good Industry Practice relating to the sale, manufacture, assembly, importation, storage, distribution, supply or delivery of such Goods shall have been complied with. Without limitation to the foregoing provisions of this Clause 10.2 of this Schedule 2 of these Call-off Terms and Conditions, the

Supplier shall, upon written request from the Authority, make available to the Authority evidence of the grant of any required valid marketing authorisation, and evidence of any other authorisations, labelling, registrations, approvals or documentation required; and

- 10.2.3 it shall maintain, and no later than any due date when it would otherwise expire, obtain a renewal of, any authorisation, registration or approval (including without limitation CE marking, UKCA marking and/or marketing authorisation) required in relation to the Goods in accordance with Law and Guidance until such time as the Goods expire or the Authority notifies the Supplier in writing that it has used or disposed of all units of the Goods supplied under this Contract.

- 10.3 If the Supplier is in breach of Clause 10.2 of this Schedule 2 of these Call-off Terms and Conditions, then, without prejudice to any other right or remedy of the Authority, the Authority shall be entitled to reject and/or return the Goods and the Supplier shall, subject to Clause 13.2 of this Schedule 2 of these Call-off Terms and Conditions, indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the Authority as a result of such breach.
- 10.4 The Supplier agrees to use reasonable endeavours to assign to the Authority upon request the benefit of any warranty, guarantee or similar right which it has against any third party manufacturer or supplier of the Goods in full or part.
- 10.5 The Supplier warrants that all information, data and other records and documents required by the Authority as set out in the Specification and Tender Response Document shall be submitted to the Authority in the format and in accordance with any timescales set out in the Specification and Tender Response Document.
- 10.6 Without prejudice to the generality of Clause 10.5 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier acknowledges that a failure by the Supplier to submit accurate invoices and other information on time to the Authority may result in the commissioner of health and social care services, or such other entity responsible for reimbursing costs to the Authority, delaying or failing to make relevant payments to the Authority. Accordingly, the Supplier warrants that it shall submit accurate invoices and other information on time to the Authority.
- 10.7 The Supplier warrants and undertakes to the Authority that it shall comply with any eProcurement Guidance as it may apply to the Supplier and shall carry out all reasonable acts required of the Supplier to enable the Authority to comply with such eProcurement Guidance.
- 10.8 The Supplier warrants and undertakes to the Authority that, as at the Commencement Date, it has notified the Authority in writing of any Occasions of Tax

Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non Compliance. If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

- 10.8.1 notify the Authority in writing of such fact within five (5) Business Days of its occurrence; and
- 10.8.2 promptly provide to the Authority:
  - (i) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
  - (ii) such other information in relation to the Occasion of Tax NonCompliance as the Authority may reasonably require.

10.9 The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that any of the warranties set out in Clause 10 of this Schedule 2 of these Call-off Terms and Conditions have been breached or there is a risk that any warranties may be breached.

10.10 Any warranties provided under this Contract are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.

## 11 Intellectual property

11.1 Unless specified otherwise in the Specification and Tender Response Document or elsewhere in this Contract, the Supplier hereby grants to the Authority, for the life of the use of Goods by the Authority, an irrevocable, royalty-free, nonexclusive licence (with the right to sub-license to any supplier or other third party contracted by, engaged by and/or collaborating with the Authority) of any Intellectual Property Rights required for the purposes of receiving and using, and to the extent necessary to receive and use, the Goods (to include any associated technical or other documentation and information supplied or made accessible to the Authority in any media) in accordance with this Contract.

11.2 The Supplier warrants and undertakes to the Authority that either it owns or is entitled to use and will continue to own or be entitled to use all Intellectual Property Rights used in the development and provision of the Services and/or

necessary to give effect to the Services and/or to use any deliverables, matter or any other output supplied to the Authority as part of the Services.

- 11.3 Unless specified otherwise in the Specification and Tender Response Document or elsewhere in this Contract, the Supplier hereby grants to the Authority, for the life of the use by the Authority of any deliverables, material or any other output supplied to the Authority in any format as part of the Services, an irrevocable, royalty-free, nonexclusive licence (with the right to sub-license to any supplier or other third party contracted by, engaged by and/or collaborating with the Authority) to use, modify, adapt or enhance such items in the course of the Authority's normal business operations. For the avoidance of doubt, unless specified otherwise in any Key

Provisions and/or the Specification and Tender Response Document and/or elsewhere in this Contract, the Authority shall have no rights to commercially exploit (e.g., by selling to third parties) any deliverables, matter or any other output supplied to the Authority in any format as part of the Services.

## 12 Indemnity

- 12.1 The Supplier shall be liable to the Authority for, and shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings in respect of:

- 12.1.1 any injury or allegation of injury to any person, including injury resulting in death;
- 12.1.2 any loss of or damage to property (whether real or personal);
- 12.1.3 any breach of Clause 10.1.20 and/or Clause 11 of this Schedule 2 of these Calloff Terms and Conditions; and/or
- 12.1.4 any failure by the Supplier to commence the delivery of the Services by the  
Services Commencement Date;

that arise or result from the Supplier's negligent acts or omissions or breach of contract in connection with the performance of this Contract including the supply of Goods and provision of the Services, except to the extent that such loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings have been caused by any act or omission by, or on behalf of, or in accordance with the instructions of, the Authority.

12.2 Liability under Clauses 12.1.1, 12.1.3 and 17.13 of this Schedule 2 of these Call-off

Terms and Conditions and Clause 2.6 of Schedule 3 of these Call-off Terms and Conditions shall be unlimited. Liability under Clauses 3.9.4, 10.3, 12.1.2 and 12.1.4 of this Schedule 2 of these Call-off Terms and Conditions shall be subject to the limitation of liability set out in Clause 13 of this Schedule 2 of these Call-off Terms and Conditions.

12.3 In relation to all third party claims against the Authority, which are the subject of any indemnity given by the Supplier under this Contract, the Authority shall use its reasonable endeavours, upon a written request from the Supplier, to transfer the conduct of such claims to the Supplier unless restricted from doing so. Such restrictions may include, without limitation, any restrictions:

- 12.3.1 relating to any legal, regulatory, governance, information governance, or confidentiality obligations on the Authority; and/or
- 12.3.2 relating to the Authority's membership of any indemnity and/or risk pooling arrangements.

Such transfer shall be subject to the Parties agreeing appropriate terms for such conduct of the third party claim by the Supplier (to include, without limitation, the right of the Authority to be informed and consulted on the ongoing conduct of the claim following such transfer and any reasonable cooperation required by the Supplier from the Authority).

13 Limitation of liability

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

- 13.1.1 for death or personal injury resulting from its negligence;
- 13.1.2 for fraud or fraudulent misrepresentation; or
- 13.1.3 in any other circumstances where liability may not be limited or excluded under any applicable law.

13.2 Subject to Clauses 12.2, 13.1, 13.3 and 13.5 of this Schedule 2 of these Call-off Terms and Conditions, the total liability of each Party to the other under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to the greater of: (a) five million GBP (£5,000,000); or (b) one hundred and twenty five

percent (125%) of the total Contract Price paid or payable by the Authority to the Supplier for the Goods and Services.

13.3 There shall be no right to claim losses, damages and/or other costs and expenses under or in connection with this Contract whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged. For the avoidance of doubt, without limitation, the Parties agree that for the purposes of this Contract the following costs, expenses and/or loss of income shall be direct recoverable losses (to include under any relevant indemnity) provided such costs, expenses and/or loss of income are properly evidenced by the claiming Party:

- 13.3.1 extra costs incurred purchasing replacement or alternative goods and/or services;
- 13.3.2 costs incurred in relation to any product recall;
- 13.3.3 costs associated with advising, screening, testing, treating, retreating or otherwise providing healthcare to patients;
- 13.3.4 the costs of extra management time; and/or
- 13.3.5 loss of income due to an inability to provide health and social care services or any other relevant services to the public. in each case to the extent to which such costs, expenses and/or loss of income arise or result from the other Party's breach of contract, negligent act or omission, breach of statutory duty, and/or other liability under or in connection with this Contract.

13.4 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which that Party is entitled to bring a claim against the other pursuant to this Contract.

13.5 If the total Contract Price paid or payable by the Authority to the Supplier over the Term:

- 13.5.1 is less than or equal to one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 of these Calloff Terms and Conditions shall be replaced with one million pounds (£1,000,000);

13.5.2 is less than or equal to three million pounds (£3,000,000) but greater than one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 of these Call-off Terms and Conditions shall be replaced with three million pounds (£3,000,000);

13.5.3 is equal to, exceeds or will exceed ten million pounds (£10,000,000), but is less than fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 of these Call-off Terms and Conditions shall be replaced with ten million pounds

(£10,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 13.2 of this Schedule 2 of these Call-off Terms and Conditions shall be deemed to have been deleted and replaced with one hundred and fifteen percent (115%); and

13.5.4 is equal to, exceeds or will exceed fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 of these Call-off Terms and Conditions shall be replaced with fifty million pounds (£50,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 13.2 of this Schedule 2 of these Call-off Terms and Conditions shall be deemed to have been deleted and replaced with one hundred and five percent (105%).

13.6 Clause 13 of this Schedule 2 of these Call-off Terms and Conditions shall survive the expiry of or earlier termination of this Contract for any reason.

## 14 Insurance

14.1 Subject to Clauses 14.2 and 14.3 of this Schedule 2 of these Call-off Terms and Conditions and unless otherwise confirmed in writing by the Authority, as a minimum level of protection, the Supplier shall put in place and/or maintain in force at its own

cost with a reputable commercial insurer, insurance arrangements in respect of employer's liability, public liability, product liability and professional indemnity in accordance with Good Industry Practice with the minimum cover per claim of the greater of five million pounds (£5,000,000) or any sum as required by Law unless otherwise agreed with the Authority in writing. These requirements shall not apply to the extent that the Supplier is a member and maintains membership of each of the indemnity schemes run by the NHS Litigation Authority.

- 14.2 Without limitation to any insurance arrangements as required by Law, the Supplier shall put in place and/or maintain the different types and/or levels of indemnity arrangements specified in the Framework Agreement, if any.
- 14.3 Provided that the Supplier maintains all indemnity arrangements required by Law, the Supplier may self-insure in order to meet other relevant requirements referred to at Clauses 14.1 and 14.2 of this Schedule 2 of these Call-off Terms and Conditions on condition that such self-insurance arrangements offer the appropriate levels of protection and are approved by the Authority in writing prior to the Commencement Date.
- 14.4 The amount of any indemnity cover and/or self-insurance arrangements shall not relieve the Supplier of any liabilities under this Contract. It shall be the responsibility of the Supplier to determine the amount of indemnity and/or self-insurance cover that will be adequate to enable it to satisfy its potential liabilities under this Contract. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover and/or selfinsurance arrangement is insufficient to cover the settlement of any claim.
- 14.5 The Supplier warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which its insurance cover may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances repayable in whole or in part.
- 14.6 The Supplier shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to the Authority or Participating Authority (where applicable) that insurance arrangements taken out by the Supplier pursuant to Clause 14 of this Schedule 2 of these Call-off Terms and Conditions and/or the provisions of the Framework Agreement are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
- 14.7 Upon the expiry or earlier termination of this Contract, the Supplier shall ensure that any ongoing liability it has or may have arising out of this Contract shall continue to be the subject of appropriate indemnity arrangements for the period of twenty-one (21) years from termination or expiry of this Contract or

until such earlier date as that liability may reasonably be considered to have ceased to exist.

## 15 Term and termination

15.1 This Contract shall commence on the Commencement Date and, unless terminated earlier in accordance with the terms of this Contract or the general law, shall continue until the end of the Term.

15.2 The Authority:

15.2.1 subject to Clause 15.2.2 of this Schedule 2 of these Call-off Terms and Conditions shall be entitled to extend the Term on one or more occasions by giving the Supplier written notice no less than three (3) months prior to the date on which this Contract would otherwise have expired, provided that the duration of this Contract shall be no longer than the total term referred to in the Key Provisions; or

15.2.2 where the Term or any extension of the Term expires at a date the same as or after expiry of the Framework Agreement (including any extensions of the Framework Agreement in accordance with its terms), shall only be entitled to extend the Term with the prior written agreement of the Supplier, such agreement not to be unreasonably withheld or delayed.

15.3 In the case of a breach of any of the terms of this Contract by either Party that is capable of remedy (including, without limitation any breach of any KPI and, subject to Clause 9.7 of this Schedule 2 of these Call-off Terms and Conditions, any breach of any payment obligations under this Contract), the non-breaching Party may, without prejudice to its other rights and remedies under this Contract, issue a Breach Notice and shall allow the Party in breach the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Party in breach ("**Remedial Proposal**") before exercising any right to terminate this Contract in accordance with Clause 15.4(ii) of this Schedule 2 of these Call-off Terms and Conditions. Such Remedial Proposal must be agreed with the non-breaching Party (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Party in breach in accordance with the timescales referred to in the agreed Remedial Proposal. Once

agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Party in breach to:

15.3.1 put forward and agree a Remedial Proposal with the non-breaching Party in relation to the relevant default or breach within a period of ten (10)

Business Days (or such other period as the non-breaching Party may agree in writing) from written notification of the relevant default or breach from the nonbreaching Party;

15.3.2 comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be thirty (30) days unless otherwise agreed between the Parties); and/or

15.3.3 remedy the default or breach notwithstanding the implementation of such Remedial Proposal in accordance with the agreed timescales for implementation, shall be deemed, for the purposes of Clause 15.4(ii) of this Schedule 2 of these Call-off Terms and Conditions, a material breach of this Contract by the Party in breach not remedied in accordance with an agreed Remedial Proposal.

15.4 Either Party may terminate this Contract by issuing a Termination Notice to the other Party if such other Party commits a material breach of any of the terms of this Contract which is:

- (i) not capable of remedy; or
- (ii) in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal.

15.5 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier if:

15.5.1 the Supplier does not commence supply of the Goods and/or delivery of the Services by any Long Stop Date;

15.5.2 the Supplier, or any third party guaranteeing the obligations of the Supplier under this Contract, ceases or threatens to cease carrying on its business; suspends making payments on any of its debts or announces an intention to do so; is, or is deemed for the purposes of any Law to be, unable to pay its debts as they fall due or insolvent; enters into or proposes any composition, assignment or arrangement

with its creditors generally; takes any step or suffers any step to be taken in relation to its winding-up, dissolution, administration (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) otherwise than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation; has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed (in each case, whether out of court or otherwise) in respect of it or any of its assets; has any security over any of its assets enforced; or any analogous procedure or step is taken in any jurisdiction;

- 15.5.3 the Supplier undergoes a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 (other than for an intra-group change of control) without the prior written consent of the Authority and the Authority shall be entitled to withhold such consent if, in the reasonable opinion of the Authority, the proposed change of control will have a material impact on the performance of this Contract or the reputation of the Authority;
- 15.5.4 the Supplier purports to assign, Sub-contract, novate, create a trust in or otherwise transfer or dispose of this Contract in breach of Clause 28.1 of this Schedule 2 of these Call-off Terms and Conditions;
- 15.5.5 pursuant to and in accordance with any termination rights set out in any Key Provisions and Clauses 15.6, 19.7.2 23.8; 25.2; 25.4 and 29.2 of this Schedule 2 of these Call-off Terms and Conditions; or
- 15.5.6 the warranty given by the Supplier pursuant to Clause 10.8 of this Schedule 2 of these Call-off Terms and Conditions is materially untrue, the Supplier commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause 10.8 of this Schedule 2 of these Call-off Terms and Conditions, or the Supplier fails to provide details of proposed mitigating factors as required by Clause 10.8 of this Schedule 2 of these Call-off Terms and Conditions that in the reasonable opinion of the Authority are acceptable; or

15.5.7 pursuant to and in accordance with any termination rights set out in the Data Protection Protocol, as applicable to this Contract.

15.6 If the Authority, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Supplier and/or any third party guaranteeing the obligations of the Supplier under this Contract and/or any material Sub-Contractor of the Supplier when compared to any information provided to and/or assessed by the Authority as part of any procurement process or other due diligence leading to the award of this Contract to the Supplier or the entering into a Subcontract by the Supplier, the following process shall apply:

15.6.1 the Authority may (but shall not be obliged to) give notice to the Supplier requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Contract on such reasonable and proportionate terms as the Authority may require within a reasonable time period as specified in such notice;

15.6.2 a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 15.6 of this Schedule 2 of these Call-off Terms and Conditions in accordance with any reasonable timescales specified in any such notice issued by the Authority shall be deemed a breach of this Contract by the Supplier and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and

15.6.3 a failure to resolve such breach in accordance with such Dispute Resolution Procedure by the end of the escalation stage of such process (as set out in Clause 22.3 of this Schedule 2 of these Call-off Terms and Conditions) shall entitle, but shall not compel, the Authority to terminate this Contract in accordance with Clause 15.4(i) of this Schedule 2 of these Call-off Terms and Conditions.

In order that the Authority may act reasonably in exercising its discretion in accordance with Clause 15.6 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall provide the Authority with such reasonable and proportionate upto-date financial or other information relating to the Supplier or any relevant third party entity upon request.

15.7 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier where:

- 15.7.1 the Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure;
  - 15.7.2 the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract; or
  - 15.7.3 there has been a failure by the Supplier and/or one its SubContractors to comply with legal obligations in the fields of environmental, social or labour Law. Where the failure to comply with legal obligations in the fields of environmental, social or labour Law is a failure by one of the Supplier's SubContractors, the Authority may request the replacement of such SubContractor and the Supplier shall comply with such request as an alternative to the Authority terminating this Contract under this Clause
- 15.7.3.

15.8 If the Authority novates this Contract to any body that is not a Contracting Authority, from the effective date of such

15.9 , the rights of the Authority to terminate this Contract in accordance with Clause 15.5.2 to Clause 15.5.4 of this Schedule 2 of these Call-off Terms and Conditions shall be deemed mutual termination rights and the Supplier may terminate this Contract by issuing a Termination Notice to the entity assuming the position of the Authority if  
any of the circumstances referred to in such Clauses apply to the entity assuming the position of the Authority.

15.10 Within three (3) months of the Commencement Date the Supplier shall develop and agree an exit plan with the Authority consistent with the Exit Requirements, which shall ensure continuity of the Services on expiry or earlier termination of this Contract. The Supplier shall provide the Authority with the first draft of an exit plan within one (1) month of the Commencement Date. The Parties shall review and, as appropriate, update the exit plan on each anniversary of the Commencement Date of this Contract. If the Parties cannot agree an exit plan in accordance with the timescales set out in this Clause 15.9 of this Schedule 2 of these Call-off Terms and Conditions (such agreement not to be unreasonably withheld or delayed), such failure to agree shall be deemed

a Dispute, which shall be referred to and resolved in accordance with the Dispute Resolution Procedure.

## 16 Consequences of expiry or early termination of this Contract

16.1 Subject to the provision set out in Clause 16.5 of this Schedule 2 of these Calloff Terms and Conditions, upon expiry or earlier termination of this Contract, the Authority agrees to pay the Supplier for:

16.1.1 the Goods which have been supplied by the Supplier and not rejected by the Authority in accordance with this Contract prior to the expiry or earlier termination of this Contract; and

16.1.2 the Services which have been completed by the Supplier in accordance with this Contract prior to expiry or earlier termination of this Contract.

16.2 Immediately following expiry or earlier termination of this Contract and/or in accordance with any timescales as set out in the agreed exit plan:

16.2.1 the Supplier shall comply with its obligations under any agreed exit plan;

16.2.2 all data, excluding Personal Data, documents and records (whether stored electronically or otherwise) relating in whole or in part to the Services, including without limitation relating to patients or other service users, and all other items provided on loan or otherwise to the Supplier by the Authority shall be delivered by the Supplier to the Authority provided that the Supplier shall be entitled to keep copies to the extent that: (a) the content does not relate solely to this Contract; (b) the Supplier is required by Law and/or Guidance to keep copies; or (c) the Supplier was in possession of such data, documents and records prior to the Commencement Date; and

16.2.3 any Personal Data Processed by the Supplier on behalf of the Authority shall be returned to the Authority or destroyed in accordance with the relevant provisions of the Data Protection Protocol.

16.3 The Supplier shall retain all data relating to the provision of the Services that are not transferred or destroyed pursuant to Clause 16.2 of this Schedule 2 of

these Calloff Terms and Conditions for the period set out in Clause 24.1 of this Schedule 2 of these Call-off Terms and Conditions.

- 16.4 The Supplier shall cooperate fully with the Authority or, as the case may be, any replacement supplier during any re-procurement and handover period prior to and following the expiry or earlier termination of this Contract. This cooperation shall extend to providing access to all information relevant to the operation of this Contract, as reasonably required by the Authority to achieve a fair and transparent reprocurement and/or an effective transition without disruption to routine operational requirements.
- 16.5 If the Authority terminates the Contract in accordance with Clause 15.5.1 of this Schedule 2 of these Call-off Terms and Conditions, the Authority shall be entitled to a refund of any sums paid under this Contract provided the Authority informs the Supplier in writing of its intention to claim such refund no later than thirty (30) days of the effective date of such termination. Should the Authority seek a refund in respect of Goods already delivered, the Authority shall return such Goods to the Supplier at the Supplier's written request and at the Supplier's cost and expense.
- 16.6 Immediately upon expiry or earlier termination of this Contract any licence or lease entered into in accordance with any Order Form shall automatically terminate.
- 16.7 The expiry or earlier termination of this Contract for whatever reason shall not affect any rights or obligations of either Party which accrued prior to such expiry or earlier termination.
- 16.8 The expiry or earlier termination of this Contract shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.
- 16.9 The expiry or earlier termination of the Framework Agreement shall not affect this Contract. For the avoidance of doubt, any obligations set out in the Framework Agreement that form part of this Contract shall continue to apply for the purposes of this Contract notwithstanding any termination of the Framework Agreement.

17 Staff information and the application of TUPE at the end of the Contract

**HealthTrust Europe LLP – version 1.1 - 13/01/23**

NHS Framework Agreement for the Provision of Services (August 2022)

17.1 Upon the day which is no greater than nine (9) months before the expiry of this Contract or as soon as the Supplier is aware of the proposed termination of the Contract, the Supplier shall, within twenty eight (28) days of receiving a written request from the Authority and to the extent permitted by Law, supply to the Authority and keep updated all information required by the Authority as to the terms and conditions of employment and employment history of any Supplier Personnel (including all employee liability information identified in regulation 11 of TUPE) and the Supplier shall warrant such information is full, complete and accurate.

17.2 No later than twenty eight (28) days prior to the Subsequent Transfer Date, the Supplier shall or shall procure that any Sub-Contractor shall provide a final list to the Successor and/or the Authority, as appropriate, containing the names of all the Subsequent Transferring Employees whom the Supplier or Sub-Contractor expects will transfer to the Successor or the Authority and all employee liability information identified in regulation 11 of TUPE in relation to the Subsequent Transferring Employees.

17.3 If the Supplier shall, in the reasonable opinion of the Authority, deliberately not comply with its obligations under Clauses 17.1 and 17.2 of this Schedule 2 of these Call-off Terms and Conditions, the Authority may withhold payment under Clause 9 of this Schedule 2 of these Call-off Terms and Conditions.

17.4 The Supplier shall be liable to the Authority for, and shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any deficiency or inaccuracy in the information which the Supplier is required to provide under Clauses 17.1 and 17.2 of this Schedule 2 of these Call-off Terms and Conditions.

17.5 Subject to Clauses 17.6 and 17.7 of this Schedule 2 of these Call-off Terms and Conditions, during the period of nine (9) months preceding the expiry of this Contract or after notice of termination of this Contract has been served by either Party, the Supplier shall not, and shall procure that any Sub-Contractor shall not, without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed:

17.5.1 make, propose or permit any material changes to the terms and

- conditions of employment or other arrangements of any of the Supplier Personnel;
- 17.5.2 increase or seek to increase the emoluments (excluding cost of living increases awarded in the ordinary course of business) payable to any of the Supplier Personnel;
- 17.5.3 replace any of the Supplier Personnel or increase the total number of employees providing the Services;
- 17.5.4 deploy any person other than the Supplier Personnel to perform the Services;
- 17.5.5 terminate or give notice to terminate the employment or arrangements of any of the Supplier Personnel;
- 17.5.6 increase the proportion of working time spent on the Services by any of the Supplier Personnel; or
- 17.5.7 introduce any new contractual term or customary practice concerning the making of any lump sum payment on the termination of employment of any of the Supplier Personnel.
- 17.6 Clause 17.5 of this Schedule 2 of these Call-off Terms and Conditions shall not prevent the Supplier or any Sub-Contractor from taking any of the steps prohibited in that Clause in circumstances where the Supplier or Sub-Contractor is required to take such a step pursuant to any changes in legislation or pursuant to a collective agreement in force at that time.
- 17.7 Where the obligations on the Supplier under Clause 17 of this Schedule 2 of these Call-off Terms and Conditions are subject to the Data Protection Legislation, the Supplier will, and shall procure that any Sub-Contractor will, use its best endeavours to seek the consent of the Supplier Personnel to disclose any information covered under the Data Protection Legislation and utilise any other exemption or provision within the Data Protection Legislation which would allow such disclosure.
- 17.8 Having as appropriate gained permission from any Sub-Contractor, the Supplier hereby permits the Authority to disclose information about the Supplier Personnel to any Interested Party provided that the Authority informs the Interested Party in writing of the confidential nature of the information.
- 17.9 The Parties agree that where a Successor or the Authority provides the Services or services which are fundamentally the same as the Services in the immediate or subsequent succession to the Supplier or Sub-Contractor (in whole or in

part) on expiry or early termination of this Contract (howsoever arising) TUPE, the Cabinet

Office Statement and Fair Deal for Staff Pensions may apply in respect of the subsequent provision of the Services or services which are fundamentally the same as the Services. If TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions apply then Clause 17.11 to Clause 17.14 of this Schedule 2 of these Call-off Terms and Conditions and (where relevant) the requirements of Clause 1.5 of Part D of Schedule 7 of the NHS Terms and Conditions for the Provision of Services (Contract Version) (December 2016) shall apply.

17.10 If on the termination or at the end of the Contract TUPE does not apply, then all Employment Liabilities and any other liabilities in relation to the Supplier Personnel shall remain with the Supplier or Sub-Contractor as appropriate. The Supplier will, and shall procure that any Sub-Contractor shall, indemnify and keep indemnified the Authority in relation to any Employment Liabilities arising out of or in connection with any allegation or claim raised by any Supplier Personnel.

17.11 In accordance with TUPE, and any other policy or arrangement applicable, the Supplier shall, and will procure that any Sub-Contractor shall, comply with its obligations to inform and consult with the appropriate representatives of any of its employees affected by the subsequent transfer of the Services or services which are fundamentally the same as the Services.

17.12 The Supplier will and shall procure that any Sub-Contractor will on or before any Subsequent Transfer Date:

17.12.1 pay all wages, salaries and other benefits of the Subsequent Transferring Employees and discharge all other financial obligations (including reimbursement of any expenses and any contributions to retirement benefit schemes) in respect of the period between the Transfer Date and the Subsequent Transfer Date;

17.12.2 account to the proper authority for all PAYE, tax deductions and national insurance contributions payable in respect of the Subsequent Transferring

Employees in the period between the Transfer Date and the Subsequent Transfer Date;

17.12.3 pay any Successor or the Authority, as appropriate, the amount which

- would be payable to each of the Subsequent Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Subsequent Transfer Date;
- 17.12.4 pay any Successor or the Authority, as appropriate, the amount which fairly reflects the progress of each of the Subsequent Transferring Employees towards achieving any commission, bonus, profit share or other incentive payment payable after the Subsequent Transfer Date wholly or partly in respect of a period prior to the Subsequent Transfer Date; and
- 17.12.5 subject to any legal requirement, provide to the Successor or the Authority, as appropriate, all personnel records relating to the Subsequent Transferring Employees including, without prejudice to the generality of the foregoing, all records relating to national insurance, PAYE and income tax. The Supplier shall for itself and any Sub-Contractor warrant that such records are accurate and up to date.
- 17.13 The Supplier will and shall procure that any Sub-Contractor will indemnify and keep indemnified the Authority and/or a Successor in relation to any Employment Liabilities arising out of or in connection with any claim arising from:
- 17.13.1 the Supplier's or Sub-Contractor's failure to perform and discharge its obligations under Clause 17.2 of this Schedule 2 of these Call-off Terms and Conditions;
- 17.13.2 any act or omission by the Supplier or Sub-Contractor in respect of the Subsequent Transferring Employees occurring on or before the Subsequent Transfer Date;
- 17.13.3 any allegation or claim by any person who is not a Subsequent Transferring Employee but who alleges that their employment should transfer or has transferred to the Successor or the Authority, as appropriate;
- 17.13.4 any emoluments payable to a person employed or engaged by the Supplier or Sub-Contractor (including without limitation all wages, any accrued or unpaid holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and other contributions) payable in respect of any period on or before the Subsequent Transfer Date;

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- 17.13.5 any allegation or claim by any of the Subsequent Transferring Employees on the grounds that the Successor or Authority, as appropriate, has failed to continue a benefit provided by the Supplier or Sub-Contractor as a term of such Subsequent Transferring Employee's contract as at the Subsequent Transfer Date where it was not reasonably practicable for the Successor or Authority, as appropriate, to provide an identical benefit but where the Successor or Authority, as appropriate, has provided (or offered to provide where such benefit is not accepted by the Subsequent Transferring Employee) an alternative benefit which, taken as a whole, is no less favourable to such Subsequent Transferring Employee; and
  - 17.13.6 any act or omission of the Supplier or any Sub-Contractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the Successor's or Authority's failure to comply with regulation 13(4) of TUPE.
- 17.14 The Supplier will, or shall procure that any Sub-Contractor will, on request by the Authority provide a written and legally binding indemnity in the same terms as set out in Clause 17.13 of this Schedule 2 of these Call-off Terms and Conditions to any Successor in relation to any Employment Liabilities arising up to and including the Subsequent Transfer Date.
- 17.15 The Supplier will indemnify and keep indemnified the Authority and/or any Successor in respect of any Employment Liabilities arising from any act or omission of the Supplier or Sub-Contractor in relation to any other Supplier Personnel who is not a Subsequent Transferring Employee arising during any period whether before, on or after the Subsequent Transfer Date.
- 17.16 If any person who is not a Subsequent Transferring Employee claims or it is determined that their contract of employment has been transferred from the Supplier or any Sub-Contractor to the Authority or Successor pursuant to TUPE or claims that their employment would have so transferred had they not resigned, then:
- 17.16.1 the Authority will, or shall procure that the Successor will, within seven (7) days of becoming aware of that fact, give notice in writing to the Supplier;

- 17.16.2 the Supplier may offer (or may procure that a Sub-Contractor may offer) employment to such person within twenty-eight (28) days of the notification by the Authority or Successor;
- 17.16.3 if such offer of employment is accepted, the Authority will, or shall procure that the Successor will, immediately release the person from their employment; and
- 17.16.4 if after the period in Clause 17.16.2 of this Schedule 2 of these Call-off Terms and Conditions has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the Authority will, or shall procure that the Successor will (whichever is the provider of the Services or services of the same or similar nature to the Services), employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person after the Subsequent Transfer Date.

## 18 Packaging, identification, end of use and coding requirements

- 18.1 The Supplier shall comply with all obligations imposed on it by Law and Guidance relevant to the Goods in relation to packaging, identification, and obligations following end of use by the Authority.
- 18.2 Unless otherwise specified in the Specification and Tender Response Document or otherwise agreed with the Authority in writing, the Goods shall be securely packed in trade packages of a type normally used by the Supplier for deliveries of the same or similar goods in the same quantities within the United Kingdom.
- 18.3 The Supplier shall comply with any labelling requirements in respect of the Goods: (a) specified in the Specification and Tender Response Document; (b) agreed with the Authority in writing; and/or (c) required to comply with Law or Guidance.
- 18.4 The Supplier shall ensure that all Goods that are required by Law or Guidance to bear any safety information, environmental information, any mark, tab, brand, label, serial numbers or other device indicating place of origin, inspection by any government or other body or standard of quality at the point such Goods are delivered shall comply with such requirements at the point of delivery.
- 18.5 Unless otherwise set out in the Specification and Tender Response Document or agreed with the Authority in writing, the Supplier shall collect without charge any returnable containers and/or packages (including pallets) within

twenty-one (21) days of the date of the relevant delivery. Empty containers and/or packages not so removed may be returned by the Authority at the Supplier's expense or otherwise disposed of at the Authority's discretion. The Supplier shall credit the Authority in full for any containers for which the Authority has been charged upon their collection, return and/or disposal by the Authority in accordance with Clause 18.5 of this Schedule 2 of these Call-off Terms and Conditions.

- 18.6 Unless otherwise confirmed and/or agreed by the Authority in writing and subject to Clause 18.7 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall ensure full compliance with any Guidance issued by the Department of Health and Social Care in relation to the adoption of GS1 and PEPPOL standards (to include, without limitation, any supplier compliance timeline and other policy requirements published by the Department of Health and Social Care in relation to the adoption of GS1 and PEPPOL standards for master data provision and exchange, barcode labelling, and purchase-to-pay transacting).
- 18.7 Once compliance with any published timelines has been achieved by the Supplier pursuant to Clause 18.6 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall, during the Term, maintain the required level of compliance relating to the Goods in accordance with any such requirements and Guidance referred to as part of this Contract.
- 18.8 Once product information relating to Goods is placed by the Supplier into a GS1 certified data pool, the Supplier shall, during the Term, keep such information updated with any changes to the product data relating to the Goods.

## 19 **Modern slavery and environmental, social and labour laws**

### Environmental, social and labour law requirements

- 19.1 The Supplier shall comply in all material respects with applicable environmental, social and labour Law requirements in force from time to time in relation to the Goods and Services. Where the provisions of any such Law are implemented by the use of voluntary agreements, the Supplier shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Specification and Tender Response Document. Without prejudice to the generality of the foregoing, the Supplier shall:

- 19.1.1 comply with all Policies and/or procedures and requirements set out in the Order Form and/or Specification and Tender Response Document in relation to any stated environmental, social and labour requirements, characteristics and impacts of the Goods and Services and the Supplier's supply chain in particular Social Value commitments;
- 19.1.2 maintain relevant policy statements documenting the Supplier's significant labour, social and environmental aspects as relevant to the Goods and Services being supplied and provided and as proportionate to the nature and scale of the Supplier's business operations; and
- 19.1.3 maintain plans and procedures that support the commitments made as part of the Supplier's significant labour, social and environmental policies, as referred to at Clause 19.1.2 of this Schedule 2 of these Call-off Terms and Conditions.

#### Modern slavery

- 19.2 The Supplier shall, and shall procure that each of its Sub-contractors shall, comply with:
  - 19.2.1 the Modern Slavery Act 2015 ("**Slavery Act**"); and
  - 19.2.2 the Authority's anti-slavery policy as provided to the Supplier by the Authority from time to time ("**Anti-Slavery Policy**").
- 19.3 The Supplier shall:
  - 19.3.1 implement due diligence procedures for its Sub-contractors and other participants in its supply chains in accordance with Good Industry Practice with the aim of avoiding slavery or trafficking in its supply chains;
  - 19.3.2 respond promptly to all slavery and trafficking due diligence questionnaires issued to it by the Authority from time to time and shall ensure that its responses to all such questionnaires are complete and accurate;
  - 19.3.3 upon request from the Authority, prepare and deliver to the Authority each year, an annual slavery and trafficking report setting out the steps it has taken to ensure that slavery and trafficking is not taking place in any of its supply chains or in any part of its business;
  - 19.3.4 maintain a complete set of records to trace the supply chain of all

- goods and services purchased and/or supplied by the Supplier in connection with all contracts or framework agreements with the Authority;
- 19.3.5 implement a system of training for its employees to ensure compliance with the Slavery Act; and
- 19.3.6 ensure that any Sub-contracts contain anti-slavery provisions consistent with the Supplier's obligations under Clause 19 of this **Schedule 2** of these Call-off Terms and Conditions.
- 19.4 The Supplier undertakes on an ongoing basis that:
- 19.4.1 it conducts its business in a manner consistent with all applicable Laws including the Slavery Act and all analogous legislation in place in any part of the world in which its supply chain operates;
- 19.4.2 its responses to all slavery and trafficking due diligence questionnaires issued to it by the Authority from time to time are complete and accurate; and
- 19.4.3 neither the Supplier nor any of its Sub-contractors, nor any other persons associated with it (including any Staff):
- (i) has been convicted of any offence involving slavery or trafficking; or
  - (ii) has been, or is currently, the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body relating to any offence committed regarding slavery or trafficking,
- not already notified to the Authority in writing in accordance with Clause 19.5 of this **Schedule 2** of these Call-off Terms and Conditions.
- 19.5 The Supplier shall notify the Authority as soon as it becomes aware of:
- 19.5.1 any breach, or potential breach, of the Anti-Slavery Policy; or
- 19.5.2 any actual or suspected slavery or trafficking in its supply chain.
- 19.6 If the Supplier notifies the Authority pursuant to Clause 19.5 of this **Schedule 2** of these Call-off Terms and Conditions, it shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, premises, facilities, records and/or any other relevant documentation in accordance with this Contract.

19.7 If the Supplier is in breach of Clause 19.3 or the undertaking at Clause 19.4 of this **Schedule 2** of these Call-off Terms and Conditions in addition to its other rights and remedies provided under this Contract, the Authority may:

- 19.7.1 by written notice require the Supplier to remove from performance of any contract or framework agreement with the Authority (including this Contract) any Sub-contractor, Staff or other persons associated with it whose acts or omissions have caused the breach; or
- 19.7.2 terminate this Contract by issuing a Termination Notice to the Supplier.

#### Further corporate social responsibility requirements

19.8 The Supplier shall comply with any further corporate social responsibility requirements set out in the Specification and Tender Response Document.

##### Provision of further information

19.9 The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier's compliance with the provisions of Clause 19 of this Schedule 2 of these Call-off Terms and Conditions. For the avoidance of doubt, the Authority may audit the Supplier's compliance with this Clause 19 of this Schedule 2 of these Call-off Terms and Conditions in accordance with Clause 24 of this Schedule 2 of these Call-off Terms and Conditions.

#### 20 Electronic product and services information

20.1 Where requested by the Authority, the Supplier shall provide the Authority the Product Information and the Services Information in such manner and upon such media as agreed between the Supplier and the Authority from time to time for the sole use by the Authority.

20.2 The Supplier warrants that the Product Information and the Services Information is complete and accurate as at the date upon which it is delivered to the Authority and that the Product Information and the Services Information shall not contain any data or statement which gives rise to any liability on the part of the Authority following publication of the same in accordance with Clause 20 of this Schedule 2 of these Call-off Terms and Conditions.

20.3 If the Product Information and/or the Services Information ceases to be complete and accurate, the Supplier shall promptly notify the Authority in

writing of any modification or addition to or any inaccuracy or omission in the Product Information and/or the Services Information.

- 20.4 The Supplier grants the Authority a perpetual, non-exclusive, royalty free licence to use and exploit the Product Information and the Services Information and any Intellectual Property Rights in the Product Information and the Services Information for the purpose of illustrating the range of goods and services (including, without limitation, the Goods and Services) available pursuant to the Authority's contracts from time to time. Subject to Clause 20.5 of this Schedule 2 of these Call-off Terms and

Conditions, no obligation to illustrate or advertise the Product Information or the Services Information is imposed on the Authority, as a consequence of the licence conferred by this Clause 20.4 of this Schedule 2 of these Call-off Terms and Conditions.

- 20.5 The Authority may reproduce for its sole use the Product Information and the Services Information provided by the Supplier in the Authority's product and/or services catalogues from time to time which may be made available on any NHS communications networks in electronic format and/or made available on the Authority's external website and/or made available on other digital media from time to time.

- 20.6 Before any publication of the Product Information and the Services Information (electronic or otherwise) is made by the Authority, the Authority will submit a copy of the relevant sections of the Authority's product and/or services catalogues to the Supplier for approval, such approval not to be unreasonably withheld or delayed. For the avoidance of doubt the Supplier shall have no right to compel the Authority to exhibit the Product Information and/or the Services Information in any product and/or services catalogues as a result of the approval given by it pursuant to this Clause 20.6 of this Schedule 2 of these Call-off Terms and Conditions or otherwise under the terms of this Contract.

- 20.7 If requested in writing by the Authority, and to the extent not already agreed as part of the Specification and Tender Response Document, the Supplier and the Authority shall discuss and seek to agree in good faith arrangements to use any Electronic Trading System.

## 21 Change management

- 21.1 The Supplier acknowledges to the Authority that the Authority's requirements for the Goods and/or Services may change during the Term and the Supplier

shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification and Tender Response Document, as may be requested by the Authority from time to time.

21.2 Subject to Clause 21.3 of this Schedule 2 of these Call-off Terms and Conditions, any change to the Goods and/or Services or other variation to this Contract shall only be binding once it has been agreed (a) in accordance with any Change Control Process if any Key Provisions specify that changes are subject to a formal change control process; or (b) if the Key Provisions make no such reference, in writing and signed by an authorised representative of both Parties.

21.3 Any change to the Data Protection Protocol shall be made in accordance with the relevant provisions of that protocol.

21.4 The Supplier shall neither be relieved of its obligations to supply the Goods or provide the Services in accordance with the terms and conditions of this Contract nor be entitled to an increase in the Contract Price as the result of:

21.4.1 a General Change in Law; or

21.4.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Commencement Date.

## 22 Dispute resolution

22.1 During any Dispute, including a Dispute as to the validity of this Contract, it is agreed that the Supplier shall continue its performance of the provisions of the Contract (unless the Authority requests in writing that the Supplier does not do so).

22.2 In the case of a Dispute arising out of or in connection with this Contract the Supplier and the Authority shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the Dispute and follow the procedure set out in Clause 22.3 of this Schedule 2 of these Call-off Terms and Conditions as the first stage in the Dispute Resolution Procedure.

22.3 If any Dispute arises out of the Contract either Party may serve a notice on the other Party to commence formal resolution of the Dispute. The Parties shall first seek to resolve the Dispute by escalation in accordance with the

management levels as set out in Clause 5 of the Key Provisions. Respective representatives at each level, as set out in Clause 5 of the Key Provisions, shall have five (5) Business Days at each level during which they will use their reasonable endeavours to resolve the Dispute before escalating the matter to the next level until all levels have been exhausted. Level 1 will commence on the date of service of the Dispute Notice. The final level of the escalation process shall be deemed exhausted on the expiry of five (5) Business Days following escalation to that level unless otherwise agreed by the Parties in writing.

22.4 If the procedure set out in Clause 22.3 of this Schedule 2 of these Call-off Terms and Conditions above has been exhausted and fails to resolve such Dispute, as part of the

Dispute Resolution Procedure, the Parties will attempt to settle it by mediation. The Parties shall, acting reasonably, attempt to agree upon a mediator. In the event that the Parties fail to agree a mediator within five (5) Business Days following the exhaustion of all levels of the escalation procedure at Clause 22.3 of this Schedule 2 of these Call-off Terms and Conditions, the mediator shall be nominated and confirmed by the Centre for Effective Dispute Resolution, London.

22.5 The mediation shall commence within twenty-eight (28) days of the confirmation of the mediator in accordance with Clause 22.4 of this Schedule 2 of these Call-off Terms and Conditions or at such other time as may be agreed by the Parties in writing. Neither Party will terminate such mediation process until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour or one Party has failed to participate in the mediation process. After this time, either Party may terminate the mediation process by notification to the other party (such notification may be verbal provided that it is followed up by written confirmation). The Authority and the Supplier will cooperate with any person appointed as mediator providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine, or in the absence of such determination such costs will be shared equally.

22.6 Nothing in this Contract shall prevent:

22.6.1 the Authority taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the supply of the Goods and/or the provision of the Services; or

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- 22.6.2 either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party or that relates to the safety of patients and other service users or the security of Confidential Information, pending resolution of the relevant Dispute in accordance with the Dispute Resolution Procedure.
- 22.7 Clause 22 of this Schedule 2 of these Call-off Terms and Conditions shall survive the expiry of or earlier termination of this Contract for any reason.
- 23 Force majeure
- 23.1 Subject to Clause 23.2 of this Schedule 2 of these Call-off Terms and Conditions neither Party shall be liable to the other for any failure to perform all or any of its obligations under this Contract nor liable to the other Party for any loss or damage arising out of the failure to perform its obligations to the extent only that such performance is rendered impossible by a Force Majeure Event.
- 23.2 The Supplier shall only be entitled to rely on a Force Majeure Event and the relief set out in Clause 23 of this Schedule 2 of these Call-off Terms and Conditions and will not be considered to be in default or liable for breach of any obligations under this Contract if:
- 23.2.1 the Supplier has fulfilled its obligations pursuant to Clause 6 of this Schedule 2 of these Call-off Terms and Conditions;
- 23.2.2 the Force Majeure Event does not arise directly or indirectly as a result of any wilful or negligent act or default of the Supplier; and
- 23.2.3 the Supplier has complied with the procedural requirements set out in Clause 23 of this Schedule 2 of these Call-off Terms and Conditions.
- 23.3 Where a Party is (or claims to be) affected by a Force Majeure Event it shall use reasonable endeavours to mitigate the consequences of such a Force Majeure Event upon the performance of its obligations under this Contract, and to resume the performance of its obligations affected by the Force Majeure Event as soon as practicable.
- 23.4 Where the Force Majeure Event affects the Supplier's ability to perform part of its obligations under the Contract the Supplier shall fulfil all such contractual

obligations that are not so affected and shall not be relieved from its liability to do so.

- 23.5 If either Party is prevented or delayed in the performance of its obligations under this Contract by a Force Majeure Event, that Party shall as soon as reasonably practicable serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.
- 23.6 Subject to service of such notice, the Party affected by such circumstances shall have no liability for its failure to perform or for any delay in performance of its obligations affected by the Force Majeure Event only for so long as such circumstances continue and for such time after they cease as is necessary for that Party, using its best endeavours, to recommence its affected operations in order for it to perform its obligations.
- 23.7 The Party claiming relief shall notify the other in writing as soon as the consequences of the Force Majeure Event have ceased and of when performance of its affected obligations can be resumed.
- 23.8 If the Supplier is prevented from performance of its obligations as a result of a Force Majeure Event, the Authority may at any time, if the Force Majeure Event subsists for thirty (30) days or more, terminate this Contract by issuing a Termination Notice to the Supplier.
- 23.9 Following such termination in accordance with Clause 23.8 of this Schedule 2 of these Call-off Terms and Conditions and subject to Clause 23.10 of this Schedule 2 of these Call-off Terms and Conditions, neither Party shall have any liability to the other.
- 23.10 Any rights and liabilities of either Party which have accrued prior to such termination in accordance with Clause 23.8 of this Schedule 2 of these Call-off Terms and Conditions shall continue in full force and effect unless otherwise specified in this Contract.

## 24 Records retention and right of audit

- 24.1 Subject to any statutory requirement and Clause 24.2 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall keep secure and maintain

for the Term and six (6) years afterwards, or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to this Contract.

- 24.2 Where any records could be relevant to a claim for personal injury such records shall be kept secure and maintained for a period of twenty-one (21) years from the date of expiry or earlier termination of this Contract.
- 24.3 The Authority shall have the right to audit the Supplier's compliance with this Contract. The Supplier shall permit or procure permission for the Authority or its authorised representative during normal business hours having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records reasonably required to audit the Supplier's compliance with its obligations under this Contract.
- 24.4 Should the Supplier Sub-contract any of its obligations under this Contract, the Authority shall have the right to audit and inspect such third party. The Supplier shall procure permission for the Authority or its authorised representative during normal business hours no more than once in any twelve (12) months, having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records used in the performance of the Supplier's obligations under this Contract that are Subcontracted to such third party. The Supplier shall cooperate with such audit and inspection and accompany the Authority or its authorised representative if requested.
- 24.5 The Supplier shall grant to the Authority or its authorised representative, such access to those records as they may reasonably require in order to check the Supplier's compliance with this Contract for the purposes of:
  - 24.5.1 the examination and certification of the Authority's accounts; or
  - 24.5.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economic efficiency and effectiveness with which the Authority has used its resources.
- 24.6 The Comptroller and Auditor General may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to provide such oral and/or written

explanations as they consider necessary. Clause 24 of this Schedule 2 of these Call-off Terms and Conditions does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Supplier under sections 6(3)(d) and 6(5) of the National Audit Act 1983.

24.7 The Supplier shall provide reasonable cooperation to the Authority, its representatives and any regulatory body in relation to any audit, review, investigation or enquiry carried out in relation to the subject matter of this Contract.

24.8 The Supplier shall provide all reasonable information as may be reasonably requested by the Authority to evidence the Supplier's compliance with the requirements of this Contract.

## 25 Conflicts of interest and the prevention of fraud

25.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff or its Sub-contractor are placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Contract. The Supplier will disclose to the Authority full particulars of any such conflict of interest which may arise.

25.2 The Authority reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Contract. The actions of the Authority pursuant to this Clause 25.2 of this Schedule 2 of these Call-off Terms and Conditions shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the Authority.

25.3 The Supplier shall, and shall procure that its Sub-contractor will, take all reasonable steps to prevent Fraud by Staff and the Supplier (including its owners, members and directors). The Supplier shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

- 25.4 If the Supplier or its Staff or Sub-Contractor commit Fraud the Authority may terminate this Contract and recover from the Supplier the amount of any direct loss suffered by the Authority resulting from the termination.

26 Equality and human rights

26.1 The Supplier shall:

- 26.1.1 ensure that (a) it does not, whether as employer, a supplier of Goods or as provider of the Services, engage in any act or omission that would contravene the Equality Legislation, and (b) it complies with all its obligations as an employer, a supplier of Goods or provider of the Services as set out in the Equality Legislation and take reasonable endeavours to ensure its Staff do not unlawfully discriminate within the meaning of the Equality Legislation;
- 26.1.2 in the management of its affairs and the development of its equality and diversity policies, cooperate with the Authority in light of the Authority's obligations to comply with its statutory equality duties whether under the Equality Act 2010 or otherwise. The Supplier shall take such reasonable and proportionate steps as the Authority considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age; and
- 26.1.3 the Supplier shall impose on all its Sub-Contractors and suppliers, obligations substantially similar to those imposed on the Supplier by Clause 26 of this Schedule 2 of these Call-off Terms and Conditions.

- 26.2 The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier's compliance with the provisions of Clause 26 of this Schedule 2 of these Call-off Terms and Conditions.

27 Notice

- 27.1 Subject to clause 22.5 of Schedule 2 of these Call-off Terms and Conditions, any notice required to be given by either Party under this Contract shall be in writing quoting the date of the Contract and shall be delivered by hand or sent

by prepaid first class recorded delivery or by email to the person referred to in the Order Form or such other person as one Party may inform the other Party in writing from time to time or to a director of the relevant Party at the head office, main UK office or registered office of such Party.

27.2 A notice shall be treated as having been received:

- 27.2.1 if delivered by hand within normal business hours when so delivered or, if delivered by hand outside normal business hours, at the next start of normal business hours; or
- 27.2.2 if sent by first class recorded delivery mail on a normal Business Day, at 9.00 am on the second Business Day subsequent to the day of posting, or, if the notice was not posted on a Business Day, at 9.00 am on the third Business Day subsequent to the day of posting; or
- 27.2.3 if sent by email, if sent within normal business hours when so sent or, if sent outside normal business hours, at the next start of normal business hours provided the sender has either received an electronic confirmation of delivery or has telephoned the recipient to inform the recipient that the email has been sent.

## 28 Assignment, novation and Sub-contracting

- 28.1 The Supplier shall not, except where Clause 28.2 of this Schedule 2 of these Call-off Terms and Conditions applies, assign, Sub-contract, novate, create a trust in, or in any other way dispose of the whole or any part of this Contract without the prior consent in writing of the Authority such consent not to be unreasonably withheld or delayed. If the Supplier Sub-contracts any of its obligations under this Contract, every act or omission of the Sub-Contractor shall for the purposes of this Contract be deemed to be the act or omission of the Supplier and the Supplier shall be liable to the Authority as if such act or omission had been committed or omitted by the Supplier itself.
- 28.2 Notwithstanding Clause 28.1 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier may assign to a third party (“**Assignee**”) the right to receive payment of any sums due and owing to the Supplier under this Contract for which an invoice has been issued. Any assignment under this Clause 28.2 of this Schedule 2 of these Call-off Terms and Conditions shall be subject to:

- 28.2.1 the deduction of any sums in respect of which the Authority exercises its right of recovery under Clause 9.9 of this Schedule 2 of these Calloff Terms and Conditions;
  - 28.2.2 all related rights of the Authority in relation to the recovery of sums due but unpaid;
  - 28.2.3 the Authority receiving notification of the assignment and the date upon  
which the assignment becomes effective together with the Assignee’s contact information and bank account details to which the Authority shall make payment;
  - 28.2.4 the provisions of Clause 9 of this Schedule 2 of these Call-off Terms and Conditions continuing to apply in all other respects after the assignment which shall not be amended without the prior written approval of the Authority; and
  - 28.2.5 payment to the Assignee being full and complete satisfaction of the Authority’s obligation to pay the relevant sums in accordance with this Contract.
- 28.3 Any authority given by the Authority for the Supplier to Sub-contract any of its obligations under this Contract shall not impose any duty on the Authority to enquire as to the competency of any authorised Sub-Contractor. The Supplier shall ensure that any authorised Sub-Contractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such Sub-Contractor are fully in accordance with this Contract.
- 28.4 Where the Supplier enters into a Sub-contract in respect of any of its obligations under this Contract relating to the manufacture, supply, delivery or installation of or training in relation to the Goods or the provision of the Services, the Supplier shall include provisions in each such Sub-contract, unless otherwise agreed with the Authority in writing, which:
- 28.4.1 contain at least equivalent obligations as set out in this Contract in relation to such manufacture, supply, delivery or installation of or training in relation to the Goods or the performance of the Services to the extent relevant to such Sub-contracting;
  - 28.4.2 contain at least equivalent obligations as set out in this Contract in respect of

- confidentiality, information security, data protection, Intellectual Property Rights, compliance with Law, Guidance and Good Industry Practice and record keeping;
- 28.4.3 contain a prohibition on the Sub-Contractor Sub-contracting, assigning or novating any of its rights or obligations under such Subcontract without the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed);
  - 28.4.4 contain a right for the Authority to take an assignment or novation of the Subcontract (or part of it) upon expiry or earlier termination of this Contract;
  - 28.4.5 requires the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
  - 28.4.6 provides that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 28.4.5 of this Schedule 2 of these Call-off Terms and Conditions, the invoice shall be regarded as valid and undisputed for the purpose of Clause 28.4.7 of this Schedule 2 of these Call-off Terms and Conditions after a reasonable time has passed;
  - 28.4.7 requires the Supplier or other party to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
  - 28.4.8 permitting the Supplier to terminate, or procure the termination of, the relevant Sub-contract in the event the Sub-Contractor fails to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour Law where the Supplier is required to replace such Sub-Contractor in accordance with Clause 15.7.4 of this Schedule 2 of these Call-off Terms and Conditions;
  - 28.4.9 permitting the Supplier to terminate, or to procure the termination of, the relevant Sub-contract where the Supplier is required to replace such SubContractor in accordance with Clause 28.5 of this Schedule 2 of these Call-off Terms and Conditions; and
  - 28.4.10 requires the Sub-Contractor to include a clause to the same effect as this Clause 28.4 of this Schedule 2 of these Call-off Terms and Conditions in any Sub-contract which it awards.
- 28.5 Where the Authority considers that the grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015 apply to any Sub-Contractor, then:

- 28.5.1 if the Authority finds there are compulsory grounds for exclusion, the Supplier shall ensure, or shall procure, that such Sub-Contractor is replaced or not appointed; or
- 28.5.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to ensure, or to procure, that such Sub-Contractor is replaced or not appointed and the Supplier shall comply with such a requirement.
- 28.6 The Supplier shall pay any undisputed sums which are due from it to a SubContractor within thirty (30) days of verifying that the invoice is valid and undisputed. Where the Authority pays the Supplier's valid and undisputed invoices earlier than thirty (30) days from verification in accordance with any applicable government prompt payment targets, the Supplier shall use its reasonable endeavours to pay its relevant SubContractors within a comparable timeframe from verifying that an invoice is valid and undisputed.
- 28.7 The Authority shall upon written request have the right to review any Subcontract entered into by the Supplier in respect of the supply of the Goods and/or the provision of the Services and the Supplier shall provide a certified copy of any Subcontract within five (5) Business Days of the date of a written request from the Authority. For the avoidance of doubt, the Supplier shall have the right to redact any confidential pricing information in relation to such copies of Sub-contracts.
- 28.8 The Authority may at any time transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract and the Supplier warrants that it will carry out all such reasonable further acts required to effect such transfer, assignment, novation, sub-contracting or disposal. If the Authority novates this Contract to any body that is not a Contracting Authority, from the effective date of such novation, the party assuming the position of the Authority shall not further transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed by the Supplier.

#### 29 Prohibited Acts

##### 29.1 The Supplier warrants and represents that:

- 29.1.1 it has not committed any offence under the Bribery Act 2010 or done any of the following ("**Prohibited Acts**"):

- (i) offered, given or agreed to give any officer or employee of the Authority any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with the Authority or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the Authority; or
- (ii) in connection with this Contract paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Authority; and

29.1.2 it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.

29.2 If the Supplier or its Staff (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Supplier in relation to this or any other agreement with the Authority:

29.2.1 the Authority shall be entitled:

- (i) to terminate this Contract and recover from the Supplier the amount of any loss resulting from the termination;
- (ii) to recover from the Supplier the amount or value of any gift, consideration or commission concerned; and
- (iii) to recover from the Supplier any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;

29.2.2 any termination under Clause 29.2.1 of this Schedule 2 of these Call-off Terms and Conditions shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Authority; and

29.2.3 notwithstanding Clause 22 of this Schedule 2 of these Call-off Terms and Conditions, any Dispute relating to:

- (i) the interpretation of Clause 29 of this Schedule 2 of these Call-off Terms and Conditions; or

- (ii) the amount or value of any gift, consideration or commission, shall be determined by the Authority, acting reasonably, and the decision shall be final and conclusive.

### 30 General

- 30.1** Each of the Parties is independent of the other and nothing contained in this Contract shall be construed to imply that there is any relationship between the Parties of partnership or of principal/agent or of employer/employee nor are the Parties hereby engaging in a joint venture and accordingly neither of the Parties shall have any right or authority to act on behalf of the other nor to bind the other by agreement or otherwise, unless expressly permitted by the terms of this Contract.
- 30.2** Failure or delay by either Party to exercise an option or right conferred by this Contract shall not of itself constitute a waiver of such option or right.
- 30.3** The delay or failure by either Party to insist upon the strict performance of any provision, term or condition of this Contract or to exercise any right or remedy consequent upon such breach shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.
- 30.4** Any provision of this Contract which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Contract and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.
- 30.5** Each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this Contract and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in this Contract or unless such representation, undertaking or warranty was made fraudulently.
- 30.6** Each Party shall bear its own expenses in relation to the preparation and execution of this Contract including all costs, legal fees and other expenses so incurred.
- 30.7** The rights and remedies provided in this Contract are independent, cumulative and not exclusive of any rights or remedies provided by general law, any rights or remedies provided elsewhere under this Contract or by any other contract or

document. In this Clause 30.7 of this Schedule 2 of these Call-off Terms and Conditions, right includes any power, privilege, remedy, or proprietary or security interest.

**30.8** Unless otherwise expressly stated in this Contract, a person who is not a party to this Contract shall have no right to enforce any terms of it which confer a benefit on such person except that a Successor and/or a Third Party may directly enforce any indemnities or other rights provided to it under this Contract. No such person shall be entitled to object to or be required to consent to any amendment to the provisions of this Contract.

**30.9** This Contract, any variation in writing signed by an authorised representative of each Party and any document referred to (explicitly or by implication) in this Contract or any variation to this Contract, contain the entire understanding between the Supplier and the Authority relating to the supply of the Goods and the provision of the Services to the exclusion of all previous agreements, confirmations and understandings and there are no promises, terms, conditions or obligations whether oral or written, express or implied other than those contained or referred to in this Contract. Nothing in this Contract seeks to exclude either Party's liability for Fraud. Any tender conditions and/or disclaimers set out in the Authority's procurement documentation leading to the award of this Contract shall form part of this Contract.

**30.10** This Contract, and any Dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.

**30.11** Subject to Clause 22 of this Schedule 2 of these Call-off Terms and Conditions, the Parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any Dispute or claim that arises out of or in connection with this Contract or its subject matter.

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

### ***Schedule 3 of these Call-off Terms and Conditions***

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NHS Framework Agreement for the Provision of Services (August 2022)

## Information and Data Provisions

### 1 Confidentiality

1.1 In respect of any Confidential Information it may receive directly or indirectly from the other Party (“**Discloser**”) and subject always to the remainder of Clause 1 of this Schedule 3 of these Call-off Terms and Conditions, each Party (“**Recipient**”) undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser’s prior written consent provided that:

1.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date;

1.1.2 the provisions of Clause 1 of this Schedule 3 of these Call-off Terms and Conditions shall not apply to any Confidential Information:

- (i) which is in or enters the public domain other than by breach of this Contract or other act or omissions of the Recipient;
- (ii) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
- (iii) which is authorised for disclosure by the prior written consent of the Discloser;
- (iv) which the Recipient can demonstrate was in its possession without any obligation of confidentiality prior to receipt of the Confidential Information from the Discloser; or
- (v) which the Recipient is required to disclose purely to the extent to comply with the requirements of any relevant stock exchange.

1.2 Nothing in Clause 1 of this Schedule 3 of these Call-off Terms and Conditions shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Freedom of Information Act 2000 (“**FOIA**”), Codes of Practice on Access to Government Information, on the Discharge of Public Authorities’ Functions or on the Management of Records (“**Codes of Practice**”) or the Environmental Information Regulations 2004 (“**Environmental Regulations**”).

1.3 The Authority may disclose the Supplier’s Confidential Information:

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- 1.3.1 on a confidential basis, to any Contracting Authority (the Parties agree that all Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority);
- 1.3.2 on a confidential basis, to any consultant, contractor or other person engaged by the Authority and/or the Contracting Authority receiving such information;
- 1.3.3 to any relevant party for the purpose of the examination and certification of the Authority's accounts;
- 1.3.4 to any relevant party for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- 1.3.5 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirements; or
- 1.3.6 on a confidential basis to a proposed successor body in connection with any proposed or actual, assignment, novation or other disposal of rights, obligations, liabilities or property in connection with this Contract;

and for the purposes of this Contract, references to disclosure "on a confidential basis" shall mean the Authority making clear the confidential nature of such information and that it must not be further disclosed except in accordance with Law or this Clause 1.3 of this Schedule 3 of these Call-off Terms and Conditions.

- 1.4 The Supplier may only disclose the Authority's Confidential Information, and any other information provided to the Supplier by the Authority in relation to this Contract, to the Supplier's Staff or professional advisors who are directly involved in the performance of or advising on the Supplier's obligations under this Contract. The Supplier shall ensure that such Staff or professional advisors are aware of and shall comply with the obligations in Clause 1 of this Schedule 3 of these Call-off Terms and Conditions as to confidentiality and that all information, including Confidential Information, is held securely, protected against unauthorised use or loss and, at the Authority's written discretion, destroyed securely or returned to the Authority when it is no longer required. The Supplier shall not, and shall ensure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of performing the Supplier's obligations in this Contract.

- 1.5 For the avoidance of doubt, save as required by Law or as otherwise set out in

this

Schedule 3 of these Call-off Terms and Conditions, the Supplier shall not, without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed), announce that it has entered into this Contract and/or that it has been appointed as a Supplier to the Authority and/or make any other announcements about this Contract.

1.6 Clause 1 of this Schedule 3 of these Call-off Terms and Conditions shall remain in force:

1.6.1 without limit in time in respect of Confidential Information which comprises Personal Data or which relates to national security; and

1.6.2 for all other Confidential Information for a period of three (3) years after the expiry or earlier termination of this Contract unless otherwise agreed in writing by the Parties.

## 2 Data protection

2.1 The Parties acknowledge their respective duties under Data Protection Legislation and shall give each other all reasonable assistance as appropriate or necessary to enable each other to comply with those duties. For the avoidance of doubt, the Supplier shall take reasonable steps to ensure it is familiar with the Data Protection Legislation and any obligations it may have under such Data Protection Legislation and shall comply with such obligations.

2.2 Where the Supplier is processing Personal Data and/or the Parties are otherwise sharing under or in connection with this Contract, the Parties shall comply with the Data Protection Protocol in respect of such matters.

2.3 Not applicable

2.4 Not applicable .

2.5 Where any Personal Data is Processed by any Sub-Contractor of the Supplier in connection with this Contract, the Supplier shall procure that such Sub-Contractor shall comply with the relevant obligations set out in Clause 2 of this Schedule 3 of these Call-off Terms and Conditions and any relevant Data Protection Protocol, as if such Sub-Contractor were the Supplier.

## 2.6 Not applicable

### 3 Freedom of Information and Transparency

- 3.1 The Parties acknowledge the duties of Contracting Authorities under the FOIA, Codes of Practice and Environmental Regulations and shall give each other all reasonable assistance as appropriate or necessary to enable compliance with those duties.
- 3.2 The Supplier shall assist and cooperate with the Authority to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Supplier agrees:
- 3.2.1 that this Contract and any recorded information held by the Supplier on the Authority's behalf for the purposes of this Contract are subject to the obligations and commitments of the Authority under the FOIA, Codes of Practice and Environmental Regulations;
  - 3.2.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA, Codes of Practice and Environmental Regulations is a decision solely for the Authority;
  - 3.2.3 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier itself is subject to the FOIA, Codes of Practice and Environmental Regulations it will liaise with the Authority as to the contents of any response before a response to a request is issued and will promptly (and in any event within two (2) Business Days) provide a copy of the request and any response to the Authority;
  - 3.2.4 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier is not itself subject to the FOIA, Codes of Practice and Environmental Regulations, it will not respond to that request (unless directed to do so by the Authority) and will promptly (and in any event within two (2) Business Days) transfer the request to the Authority;
  - 3.2.5 that the Authority, acting in accordance with the Codes of Practice issued and revised from time to time under both section 45 of FOIA, and regulation 16 of the Environmental Regulations, may disclose information concerning the Supplier and this Contract; and

- 3.2.6 to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA and the Environmental Regulations) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of FOIA, and providing copies of all information requested by the Authority within five (5) Business Days of that request and without charge.
  - 3.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations, the content of this Contract is not Confidential Information.
  - 3.4 Notwithstanding any other term of this Contract, the Supplier consents to the publication of this Contract in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations.
  - 3.5 In preparing a copy of this Contract for publication under Clause 3.4 of this Schedule 3 of these Call-off Terms and Conditions, the Authority may consult with the Supplier to inform decision making regarding any redactions but the final decision in relation to the redaction of information will be at the Authority's absolute discretion.
  - 3.6 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Contract.
  - 3.7 Where any information is held by any Sub-Contractor of the Supplier in connection with this Contract, the Supplier shall procure that such SubContractor shall comply with the relevant obligations set out in Clause 3 of this Schedule 3 of these Call-off Terms and Conditions, as if such Sub-Contractor were the Supplier.
- 4 Information Security
- 4.1 Without limitation to any other information governance requirements set out in this Schedule 3 of these Call-off Terms and Conditions the Supplier shall:

- 4.1.1 notify the Authority forthwith of any information security breaches or near misses (including without limitation any potential or actual breaches of confidentiality or actual information security breaches) in line with the Authority's information governance Policies; and
  - 4.1.2 fully cooperate with any audits or investigations relating to information security and any privacy impact assessments undertaken by the Authority and shall provide full information as may be reasonably requested by the Authority in relation to such audits, investigations and assessments.
- 4.2 Where required in accordance with the Specification and Tender Response Document, the Supplier will ensure that it puts in place and maintains an information security management plan appropriate to this Contract, the type of Services being provided and the obligations placed on the Supplier. The Supplier shall ensure that such plan is consistent with any relevant Policies, Guidance, Good Industry Practice and with any relevant quality standards as may be set out in the Key Provisions, and/or the Specification and Tender Response Document.
- 4.3 Where required in accordance with the Specification and Tender Response Document, the Supplier shall obtain and maintain certification under the HM Government Cyber Essentials Scheme at the level set out in the Specification and Tender Response Document.

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

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

<b>“Anti-Slavery Policy”</b>	has the meaning given under Clause 19.2.2 of Schedule 2;
<b>“Authority”</b>	means the authority named on the form of Framework Agreement on the first page;
<b>“Authority’s Obligations”</b>	means the Authority’s further obligations, if any, referred to in the Specification and Tender Response Document;
<b>“Breach Notice”</b>	means a written notice of breach given by one Party to the other, notifying the Party receiving the notice of its breach of this Framework Agreement;
<b>“Business Continuity Event”</b>	means any event or issue that could impact on the operations of the Supplier and its ability to fulfil its obligations under this Framework Agreement including a pandemic and any Force Majeure Event;
<b>“Business Continuity Plan”</b>	means the Supplier’s business continuity plan which includes its plans for continuity of the supply of Goods and provision Services during a Business Continuity Event;
<b>“Business Day”</b>	means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales;
<b>“Call off Contract”</b>	means the template order forms set out in Schedule 7 (namely: Schedule 7A (Direct Award), Schedule 7A1 (Direct Award), Schedule 7B (Mini Competition) and Schedule 7B1(Mini Competition)) on which Orders are to be placed. A Call off Contract represents the agreement between the Supplier and Participating Authority for the supply of the Goods and the provision of Services in pursuance of this Framework Agreement;

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<b>“Call-off Terms and Conditions for the Supply of Goods and the Provision of Services”</b>	means the call-off terms and conditions for Contracts as set out at Appendix A of this Framework Agreement forming part of the Contracts placed under this Framework Agreement;
<b>“Change in Law”</b>	means any change in Law which impacts on the supply of the Goods and/or provision of the Services which comes into force after the Commencement Date;
<b>“Codes of Practice”</b>	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
<b>“Commencement Date”</b>	means the date of this Framework Agreement;
<b>“Commercial Schedule”</b>	means the document set out at Schedule 6;
<b>“Comparable Supply”</b>	means the supply of services and/or goods to another customer of the Supplier that are the same or similar to any of the Services and/or Goods;

<b>“Confidential Information”</b>	<p>means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the Framework Agreement including any procurement process which is:</p> <ul style="list-style-type: none"> <li>(a) Personal Data including without limitation which relates to any patient or other service user or his or her treatment or clinical or care history;</li> <li>(b) designated as confidential by either party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored); and/or</li> <li>(c) Policies and such other documents which the Supplier may obtain or have access to through the Authority’s intranet;</li> </ul>
<b>“Contract”</b>	<p>means any contract entered into under this Framework Agreement with the Supplier by any Participating Authority as further defined in the Call-off Terms and Conditions for the Supply of Goods and the Provision of Services;</p>
<b>“Contracting Authority”</b>	<p>means any contracting authority as defined in Regulation 2(1) of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than the Authority;</p>
<b>“Contract Manager”</b>	<p>means for the Authority and for the Supplier the individuals specified in the Key Provisions or such other person notified by a Party to the other Party from time to time in accordance with Clause 8.1 of Schedule 2;</p>

<b>“Contract Price”</b>	means the price exclusive of VAT that is payable to the Supplier by a Participating Authority under any Contract for the full and proper performance by the Supplier of its obligations under such Contracts (as calculated in accordance with the provisions of the Commercial Schedule) and as confirmed in the relevant Order Form relating to the particular Contract;
<b>“Controller”</b>	shall have the same meaning as set out in the UK GDPR;
<b>“Data Protection Legislation”</b>	means the Data Protection Act 2018 the UK GDPR, and any other applicable Laws of England and Wales relating to the protection of Personal Data and the privacy of individuals (all as amended, updated, replaced or re-enacted from time to time
<b>“Data Protection Protocol”</b>	means any document of that name as provided to the Supplier by the Authority (as amended from time to time in accordance with its terms), which shall include, without limitation, any such document appended to Schedule 3 (Information and Data Provisions) of this Framework Agreement;
<b>“Dispute(s)”</b>	means any dispute, difference or question of interpretation or construction arising out of or in connection with this Framework Agreement, any matters of contractual construction and interpretation relating to the Framework Agreement, or any matter where this Framework Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;

<b>“Dispute Notice”</b>	means a written notice served by one Party to the other stating that the Party serving the notice believes there is a Dispute;
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<b>“Dispute Resolution Procedure”</b>	means the process for resolving Disputes as set out in Clause 22 of Schedule 2;
<b>“DOTAS”</b>	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
<b>“E-Auctions”</b>	means an online electronic bid event or process in accordance with Regulation 35(1) (a) of the PCR to determine a Supplier offering a best price element
<b>“E-Auctions Portal”</b>	means a portal for Parties to participate in the E- Auction and where the terms of using this Portal are set out in Schedule 11

<b>“E-Auction User Terms”</b>	means terms and conditions applicable to Parties to participate in an E-Auction.
<b>“Electronic Trading System(s)”</b>	means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as the Authority may specify from time to time;
<b>“Environmental Regulations”</b>	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
<b>“eProcurement Guidance”</b>	means the NHS eProcurement Strategy available via: <a href="http://www.gov.uk/government/collections/nhs-procurement">http://www.gov.uk/government/collections/nhs-procurement</a> together with any further Guidance issued by the Department of Health and Social Care in connection with it;
<b>“Equality Legislation”</b>	means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-
	discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998;

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<b>“EU References”</b>	shall have the meaning given to the term in Clause 1.16 of this Schedule 4;
<b>“Evergreen Supplier Assessment”</b>	shall have the meaning given to the term in Clause 8.2 of Schedule 1;
<b>“Exit Day”</b>	shall have the meaning in the European Union (Withdrawal) Act 2018;
<b>“FOIA”</b>	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
<b>“Force Majeure Event”</b>	<p>means any event beyond the reasonable control of the Party in question to include, without limitation:</p> <ul style="list-style-type: none"> <li>(a) war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict materially affecting either Party’s ability to perform its obligations under this Framework Agreement;</li> <li>(b) acts of terrorism;</li> <li>(c) flood, storm or other natural disasters;</li> <li>(d) fire;</li> <li>(e) unavailability of public utilities and/or access to transport networks to the extent no diligent supplier could reasonably have planned for such unavailability as part of its business continuity planning;</li> <li>(f) government requisition or impoundment to the extent such requisition or impoundment does not result from any failure by the Supplier to comply with any relevant regulations, laws or procedures (including such laws or regulations relating to the payment of any duties or</li> </ul>

	<p>taxes) and subject to the Supplier having used all reasonable legal means to resist such requisition or impoundment;</p> <p>(g) compliance with any local law or governmental order, rule, regulation or direction applicable outside of England and Wales that could not have been reasonably foreseen;</p> <p>(h) industrial action which affects the ability of the Supplier to supply the Goods and/or to provide the Services, but which is not confined to the workforce of the Supplier or the workforce of any Sub-Contractor of the Supplier; and</p> <p>(i) a failure in the Supplier's and/or Authority's supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties; but excluding, for the avoidance of doubt, any event or other consequence arising as a result of or in connection with the withdrawal of the United Kingdom from the European Union;</p>
<b>“Framework Agreement”</b>	means the form of framework agreement at the front of this document and all schedules and appendices attached to the form of framework agreement;
<b>“Fraud”</b>	means any offence under any law in respect of fraud in relation to this Framework Agreement or defrauding or attempting to defraud or conspiring to defraud the government, parliament or any Contracting Authority;
<b>“General Change in Law”</b>	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;

<b>“General Anti-Abuse Rule”</b>	means  (a) the legislation in Part 5 of the Finance Act 2013; and
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	(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
<b>“Good Industry Practice”</b>	means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier and/or service provider engaged in the supply of goods and/or the provision of services similar to the Goods and Services under the same or similar circumstances as those applicable to this Framework Agreement, including in accordance with any codes of practice published by relevant trade associations;
<b>“Goods”</b>	means all goods, materials or items that the Supplier is required to supply to Participating Authorities under Contracts placed under this Framework Agreement, details of such Goods, materials or other items being set out in the Specification and Tender Response Document and any Order;

<b>“Guidance”</b>	means any applicable guidance, supplier code of conduct, direction or determination and any policies, advice or industry alerts which apply to the Goods and/or Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Authority and/or have been published and/or notified to the Supplier by the Department of Health, and Social Care, NHS England and NHS Improvement, the Medicines and Healthcare Products Regulatory Agency, the European Medicine Agency the European Commission, the Care Quality Commission, the National Institute for Health and Care Excellence and/or any other regulator or competent body;
<b>“Halifax Abuse Principle”</b>	means the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>"HM Government Cyber Essentials Scheme"</b>	means the HM Government Cyber Essentials Scheme as further defined in the documents relating to this scheme published at: <a href="https://www.gov.uk/government/publications/cyberessentialsschemeoverview">https://www.gov.uk/government/publications/cyberessentialsschemeoverview</a>

<b>“Implementation Plan”</b>	means the implementation plan, if any, referred to in the Key Provisions; and added to the Call off Contract;
<b>“Intellectual Property Rights”</b>	means all patents, copyright, design rights, registered designs, trademarks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trademarks and registered designs;
<b>“Key Provisions”</b>	means the key provisions set out in Schedule 1;

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<b>“KPI”</b>	means the key performance indicators as set out in Schedule 5 and/ or as part of the Order Form (if any);
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<p><b>“Law”</b></p>	<p>means any applicable legal requirements including, without limitation:</p> <ul style="list-style-type: none"> <li>(a) any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument as applicable in England and Wales;</li> <li>(b) any applicable European Union obligation, directive, regulation, decision, law or right (including any such obligations, directives, regulations, decisions, laws or rights that are incorporated into the law of England and Wales or given effect in England and Wales by any applicable statute, proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument);</li> <li>(c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;</li> <li>(d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;</li> <li>(e) requirements set by any regulatory body as applicable in England and Wales;</li> <li>(f) any relevant code of practice as applicable in England and Wales; and</li> </ul>
	<ul style="list-style-type: none"> <li>(g) any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above);</li> </ul>
<p><b>“Milestone(s)”</b></p>	<p>Milestones are checkpoints that highlight the successful completion of major events, tasks, or groups of tasks along the ICT project timeline, and can be utilised for hardware, software and/ or services to determine important event that occurs during a project and/or Call off Contract’s life cycle.</p>

<b>“Net Zero and Social Value Commitments”</b>	means the Supplier’s net zero and social value commitments, each as set out in the Key Provisions and/or the Specification and Tender Response Document;
<b>“Net Zero and Social Value Contract Commitments”</b>	shall have the meaning given to the term in Clause 8.4 of Schedule 1;
<b>“NHS”</b>	means the National Health Service;
<b>“Occasion of Tax Non-Compliance”</b>	<p>means:</p> <p>(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:</p> <ul style="list-style-type: none"> <li>(i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</li> <li>(ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or</li> </ul> <p>(b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;</p>

<b>“Order Form”</b>	means the template order form (also known as “Call-off Contract”) on which Orders are to be placed, as set out in Schedule 7;
<b>“Ordering Procedure”</b>	means the procedure enabling Participating Authorities to call off Goods and/or Services and enter into Contracts under this Framework Agreement, as set out in Schedule 7;
<b>“Orders”</b>	means orders for Goods and/or Services placed under this Framework Agreement by Participating Authorities;
<b>“Participating Authority”</b>	means a Contracting Authority entitled to place Orders under this Framework Agreement including the Authority and any other Contracting Authority as set out in the Key Provisions;
<b>“Party”</b>	means the Authority or the Supplier as appropriate and Parties means both the Authority and the Supplier;
<b>“Personal Data”</b>	shall have the same meaning as set out in the UK GDPR;
<b>“Policies”</b>	means the policies, rules and procedures of the Authority as notified to the Supplier from time to time;

<b>“Process”</b>	shall have the same meaning as set out in the UK GDPR. Processing and Processed shall be construed accordingly;
<b>“Processor”</b>	shall have the same meaning as set out in the GDPR;
<b>“Product Information”</b>	means information concerning the Goods as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 20 of Schedule 2 for inclusion in the Authority's product catalogue from time to time;
<b>“Prohibited Acts”</b>	has the meaning given under 29.1.1 of Schedule 2;
<b>“Relevant Tax Authority”</b>	means HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
<b>“Remedial Proposal”</b>	has the meaning given under Clause 15.3 of Schedule 2;
<b>“Services”</b>	means the services that the Supplier is required to provide to Participating Authorities under Contracts placed under this

	Framework Agreement, details of such Services being set out in the Specification and Tender Response Document and any Order;
<b>“Services Information”</b>	means information concerning the Services as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 20 of Schedule 2 for inclusion in the Authority's services catalogue from time to time;
<b>“Slavery Act”</b>	has the meaning given in Clause 19.2.1 of Schedule 2;
<b>“Specification and Tender Response Document”</b>	means the document set out in Schedule 5 as amended and/or updated in accordance with this Framework Agreement;
<b>“Specific Change in Law”</b>	means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;
<b>“Staff”</b>	means all persons employed or engaged by the Supplier to perform its obligations under this Framework Agreement including any Sub-Contractors and person employed or engaged by such Sub-Contractors;
<b>“Sub-contract”</b>	means a contract between two or more suppliers, at any stage of remoteness from the Supplier in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Framework Agreement;

<b>“Sub-Contractor”</b>	means a person including legal persons engaged by the Supplier under a contract to perform its obligations in whole or in part under the Framework Agreement and any call-off contracts. For the purposes of this Framework Agreement, a Sub-contractor includes any supplier, manufacturer, vendor, or any such provider of hardware, software or services or services to or for a value-added reseller. For the avoidance of doubt, a distributor of hardware is not classified as a Sub-contractor;
<b>“Supplier”</b>	means the supplier named on the form of Framework Agreement on the first page;
<b>“Supplier Code of Conduct”</b>	means the code of that name published by the Government Commercial Function originally dated September 2017, as may be amended, restated, updated, re-issued or re-named from time to time;
<b>“Supplier Net Zero Corporate Champion”</b>	shall have the meaning given to the term in Clause 8.3 of Schedule 1;
<b>“Supplier Net Zero and Social Value Contract Champion”</b>	shall have the meaning given to the term in Clause 8.6 of Schedule 1;
<b>“Term”</b>	means the term as set out in the Key Provisions;
<b>“Termination Notice”</b>	means a written notice of termination given by one Party to the other notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Framework Agreement on a specified date and setting out the grounds for termination;
<b>“Third Party Body”</b>	has the meaning given under Clause 8.5 of Schedule 2; and

<b>“UK GDPR”</b>	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018; and
<b>“VAT”</b>	means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax.

- 1.2 References to any Law shall be deemed to include a reference to that Law as amended, extended, consolidated, re-enacted, restated, implemented or transposed from time to time.
- 1.3 References to any legal entity shall include any body that takes over responsibility for the functions of such entity.
- 1.4 References in this Contract to a “Schedule”, “Appendix”, “Paragraph” or to a “Clause” are to schedules, appendices, paragraphs and clauses of this Contract. 1.5 References in this Contract to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.
- 1.6 Unless set out in the Contract as a chargeable item and subject to Clause 30.6 of Schedule 2 of these Call-off Terms and Conditions, the Supplier shall bear the cost of complying with its obligations under this Contract.
- 1.7 The headings are for convenience only and shall not affect the interpretation of this Contract.
- 1.8 Words denoting the singular shall include the plural and vice versa.
- 1.9 Where a term of this Contract provides for a list of one or more items following the word “including” or “includes” then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.
- 1.10 Where there is a conflict between the Supplier’s responses to the requirements set out in the Specification and Tender Response Document and any other part of this Contract, such other part of this Contract shall prevail.
- 1.11 Where a document is required under this Contract, the Parties may agree in writing that this shall be in electronic format only.
- 1.12 Where there is an obligation on the Authority to procure any course of action from any third party, this shall mean that the Authority shall use its reasonable endeavours to procure such course of action from that third party.
- 1.13 Any Breach Notice issued by a Party in connection with this Contract shall not be invalid due to it containing insufficient information. A Party receiving a Breach Notice (“**Receiving Party**”) may ask the Party that issued the Breach Notice (“**Issuing Party**”) to provide any further information in relation to the subject

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matter of the Breach Notice that it may reasonably require to enable it to understand the Breach Notice and/or to remedy the breach. The Issuing Party shall not unreasonably withhold or delay the provision of such further information as referred to above as may be requested by the Receiving Party but no such withholding or delay shall invalidate the Breach Notice.

- 1.14 Any terms defined as part of a Schedule or other document forming part of this Contract shall have the meaning as defined in such Schedule or document.
- 1.15 For the avoidance of doubt, and to the extent not prohibited by any Law, the term “expenses” (as referred to under any indemnity provisions forming part of this Contract) shall be deemed to include any fine and any related costs imposed by a commissioner, regulator or other competent body.
- 1.16 Any reference in this Contract which immediately before Exit Day was a reference to (as it has effect from time to time):
  - (i) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement (“EU References”) which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
  - (ii) any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred.

***Schedule 5 of these Call-off Terms and Conditions***

**Installation and Commissioning Services**

- 1 Installation and Commissioning Services
  - 1.1 Save as provided for under Clause 5 of this Schedule 5 of these Call-off Terms and Conditions where the Goods or equipment to be used in connection with this Contract are licenced to the Supplier by the Authority, the Goods shall be installed and commissioned at the relevant Premises and Locations by the Supplier as set out in the Specification and Tender Response Document or as otherwise agreed by the Authority in writing in the Order Form.
  - 1.2 The Supplier shall, and shall procure that its Sub-contractor(s) will, provide the Installation and Commissioning Services:
    - 1.2.1 promptly and in any event within any time limits as may be set out in this Contract;
    - 1.2.2 in accordance with all other provisions of this Contract;

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- 1.2.3 using reasonable skill and care;
  - 1.2.4 in accordance with any quality assurance standards as set out in the Contract;
  - 1.2.5 in accordance with the Law and with Guidance;
  - 1.2.6 in accordance with Good Industry Practice;
  - 1.2.7 in accordance with the original manufacture's guidelines and recommendations relating to the Goods being installed and commissioned;
  - 1.2.8 in accordance with the Policies;
  - 1.2.9 in a professional and courteous manner; and
  - 1.2.10 using appropriately skilled, trained and experienced Staff.
- 1.3 The Supplier will promptly notify the Authority of any health and safety hazard which arises, or the Supplier is aware may arise, in connection with the Installation and Commissioning Services and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards.
- 1.4 On completion of installation the Supplier and/or its Subcontractor(s) shall remove its plant, equipment and unused materials and shall leave the Premises and Locations in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Premises and Locations, or any objects contained therein, other than fair wear and tear, which is caused by the Supplier or any of its staff or SubContractors.

#### Inspection and Testing

- 1.5 Once the Goods or Services have been installed and commissioned, the Supplier shall inform the Authority in writing that the Goods or Services are ready for use. The following process will then apply:
- 1.5.1 within five (5) Business Days of receipt of such written confirmation from the Supplier that the Goods or Services are ready to use, the Authority may carry out any such reasonable inspections and testing of the Goods as the Authority deems appropriate (in accordance with the relevant manufacturers' technical manuals relating to the Goods or Services and/or as otherwise set out in the Specification and Tender Response Document and/or as otherwise agreed by the Parties in writing in the Order Form) to confirm that the Goods comply with the requirements of this Contract and are ready for use;

- 1.5.2 as part of the Contract Price, the Supplier shall provide the Authority with all reasonable assistance and/or information requested by the Authority in relation to any such reasonable inspections and testing of the Goods or Services;
  - 1.5.3 if the Authority on inspection and testing is of the view that the Goods or Services have been supplied, installed and commissioned (as appropriate) in conformance with the requirements of this Contract and are ready for use, it shall issue an Authority Confirmation to this effect to the Supplier;
  - 1.5.4 if the Authority on inspection and testing is not of the view that the Goods or Services have been supplied, installed and commissioned (as appropriate) in conformance with the requirements of this Contract and are ready for use, it shall inform the Supplier in writing and Clauses 1.7 and 1.8 of this Schedule 5 shall apply; and
  - 1.5.5 if the Authority chooses not to inspect and/or test the Goods or Services; and/or this is not detailed within an Order Form , then the Authority shall be deemed to have provided an Authority Confirmation in relation to such Goods on the sixth (6<sup>th</sup>) Business Day following receipt by the Authority of the written confirmation from the Supplier in accordance with Clause 1.5.1 of this Schedule 5 of these Call-off Terms and Conditions that the Goods are ready to use.
- 1.6 The issue by the Authority of any Authority Confirmation shall be a confirmation that the correct Goods or Services appear to have been supplied and reasonable installation and commissioning procedures look to have been followed by the Supplier in accordance with the requirements and standards of this Contract. It does not imply any acceptance of such Goods or any endorsement of such installation and commissioning procedures. Responsibility for supplying the Goods in accordance with the requirements and standards of the Contract and the appropriateness of any installation and commissioning procedures shall remain with the Supplier notwithstanding any such Authority Confirmation.
- 1.7 Without prejudice to any other rights and remedies of the Authority under this Contract, in relation to any failure by the Supplier to supply, install or commission the correct Goods in accordance with the requirements and standards of this Contract, the Supplier shall, at its own expense as part of the Contract Price, forthwith re-supply, reinstall and/or re-commission the Goods until such time as Goods in compliance with the requirements of this Contract are delivered, installed, and commissioned to the reasonable satisfaction of the Authority and the Authority has provided an Authority Confirmation to the Supplier to this effect. The Contract Price payable by the Authority under this Contract may be

withheld by the Authority in full or part (to be determined at the Authority's sole discretion) until the Goods are supplied, installed and commissioned in accordance with the requirements and standards of this Contract to the reasonable satisfaction of the Authority and the Authority has provided its Authority Confirmation to this effect.

1.8 In the event of any dispute between the Authority and the Supplier regarding the issue of an Authority Confirmation, the dispute shall be dealt with in accordance with the Dispute Resolution Procedure.

1.9 In the event that the Specification and Tender Response Document or Order Form states that Goods or Services shall be installed and commissioned on a phased basis and/or upon request, then the process for the inspection and testing of Goods set out in Clauses 1.1 to 1.81.4 (inclusive) of this Schedule 5 of these Call-off Terms and Conditions shall apply to the Goods or Services within each phase and/or instance of supply.

1.10 In the event that the Specification and Tender Response Document or Order Form stipulates a refresh programme and/or that substitute or replacement Goods or Services shall otherwise be installed in accordance with the requirements of this Contract (to include, without limitation, in connection with any Maintenance Services), then, following the installation and commissioning of the replacement Goods, the process for the inspection and testing of Goods set out in Clauses 1.1 to 1.4 (inclusive) of this Schedule 5 of these Call-off Terms and Conditions shall apply in relation to the inspection and testing of any substitute or replacement Goods.

## 2 Relocation of Goods

2.1 Upon reasonable written notice from the Authority, the Supplier shall, as part of the Installation and Commissioning Services, relocate such Goods within the Premises and Locations or to another location and the process for the inspection and testing of Goods set out in Clauses 1.1 to 1.4 (inclusive) of this Schedule 5 of these Call-off Terms and Conditions shall apply in relation to the inspection and testing of any relocated Goods.

2.2 The Authority shall meet the Supplier's reasonable charges and expenses incurred in complying with Clause 2.1 of this Schedule 5 of these Call-off Terms and Conditions provided that such reasonable charges and expenses are approved in writing by the Authority prior to being incurred by the Supplier.

3 Supplier's obligation to make good any damage

- 3.1 The Supplier shall make good at the Supplier's expense any damage to any property or equipment caused by the installation, commissioning, removal and/or relocation of the Goods by the Supplier

4 Licence of Authority Equipment

- 4.1 Where equipment and materials are supplied by the Authority these will be serviced and maintained by the Authority. However, the Authority gives no warranty that such equipment and materials used in connection with the Contract are fit for the purpose or in a good state of repair. It shall be the responsibility of the Supplier to ensure that any such equipment and materials are capable of being used for the purposes intended.
- 4.2 The Authority will with effect from the Commencement Date grant to the Supplier a non-exclusive, non-transferrable (save as necessary in relation to any permitted subcontractors) licence to use of any licensed equipment ("**Licensed Equipment**") (as defined in the Specification and the Tender Response Document) for the duration of the Contract.
- 4.3 The Supplier will indemnify and keep indemnified the Authority against all losses arising out of or in connection with the use of the Licensed Equipment by the Supplier unless such losses are caused by any negligent act or omission by the Authority.
- 4.4 In relation to the Licensed Equipment, the Supplier shall:
- 4.4.1 use the Licensed Equipment strictly in accordance with any reasonable instructions provided by the Authority;
  - 4.4.2 store, operate and/or utilise all the Licensed Equipment in accordance with the reasonable recommendations of the Authority and of the manufacturers which are notified in writing to the Supplier by the Authority from time to time;
  - 4.4.3 store, operate and/or utilise the Licensed Equipment in accordance with current statutory requirements and other applicable guidelines;
  - 4.4.4 not charge or encumber the Licensed Equipment;
  - 4.4.5 not sub-licence, assign or novate the benefit or burden of the licence set out in this Clause 4 in whole or in part;
  - 4.4.6 notify the Authority as soon as practicable of it coming to the notice of the Supplier that any of the Licensed Equipment has developed a fault or is otherwise not operating correctly (provided that the Supplier shall notify the Authority immediately in the case of an emergency relating to the Licensed Equipment and shall take all reasonable steps to secure the relevant item to ensure it does not pose any risk or harm to any service user or employee or any other person);

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- 4.4.7 not, nor shall it permit, any third party to modify, disassemble or alter the Licensed Equipment; and
- 4.4.8 ensure that the Licensed Equipment is returned to the Authority as soon as reasonably practicable in the same or similar condition as the Licensed Equipment have been provided to the Supplier (accepting fair wear and tear) at the expiry of the licence granted pursuant to this Clause 4.
- 4.5 Subject to the Supplier complying with its obligations pursuant to Clause 4.4 above, in relation to the Licensed Equipment the Authority shall at its discretion and own cost replace any Licensed Equipment which in its opinion (acting reasonably) ceases to be capable of being safely and effectively used for the purposes for which they are intended.
- 4.6 The Authority shall insure the Licensed Equipment for their full replacement value.
- 4.7 For the avoidance of any doubt, nothing in this Clause transfers or purports to transfer ownership of the Licensed Equipment to the Supplier.
- 4.8 Upon expiry or termination of the licence granted pursuant to Clause this 4 or, if earlier, upon written notice given by the Authority to the Supplier following a material breach by the Supplier of its obligations under Clause 4.4, all of the rights and licences granted by the Authority pursuant to this Clause 4 will terminate with immediate effect and the Supplier will return all the Licensed Equipment to the Authority or transfer them to a replacement Supplier as the Authority may direct within the timescales and in the manner agreed by the Parties from time to time each acting reasonably.
- 4.9 The Supplier shall satisfy himself that any Licensed Equipment is suitable for the purpose intended.
- 4.10 The Supplier's Contract Manager shall forthwith inform the Authority's Contract Manager of any defects appearing in or losses of, or damage, occurring to the Authority's equipment. The Supplier shall be liable for any damage to any Licensed Equipment caused by negligence, misdirection or misuse due to negligence on the part of the Supplier, its staff, sub- Suppliers, servants or agents.
- 4.11 The Authority shall not be liable for any damage to the Licensed Equipment caused by a defect in or faulty operation of the Licensed Equipment.

- 4.12 The Authority shall have the right to withdraw Licensed Equipment at any time and shall be under no liability whatsoever for failing to licence equipment at any time.

## 1.21 ***SCHEDULE 5A Maintenance Services***

### 1 Maintenance Services

- 1.1 From the point set out in the Specification and Tender Response Document or Order Form, at which Maintenance Services are triggered or as otherwise agreed by the Parties in writing taking into account any warranty period applicable to the Goods or Services, all Goods forming part of the Maintenance Inventory shall be maintained throughout the Term by the Supplier and/or its Subcontractor so as to comply with:

- 1.1.1 any applicable specification set out in this Contract (to include, without limitation, the provisions of the Authority's requirements set out in the Specification and Tender Response Document and the Supplier's response to such requirements set out as part of the Specification and Tender Response Document);
- 1.1.2 any Order Form as agreed by the Parties; and
- 1.1.3 any applicable manufacturers' specifications.

- 1.2 The Supplier shall provide the Maintenance Services:

- 1.2.1 promptly and in any event within any time limits as may be set out in this Contract;
- 1.2.2 in accordance with all other provisions of this Contract;
- 1.2.3 using reasonable skill and care;
- 1.2.4 in accordance with any quality assurance standards as set out in the Contract;
- 1.2.5 in accordance with the Law and with Guidance;
- 1.2.6 in accordance with Good Industry Practice;
- 1.2.7 in accordance with the original manufacture's guidelines and recommendations relating to the Goods being maintained;
- 1.2.8 in accordance with the Policies;
- 1.2.9 in a professional and courteous manner; and

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1.2.10 using appropriately skilled, trained and experienced Staff.

## 2 General maintenance requirements

2.1 The Supplier, in accordance with Good Industry Practice and the original equipment manufacture's guidelines and recommendations, shall:

2.1.1 provide effective planned preventive maintenance for all Goods to the extent this requirement is set out in the Specification and Tender Response Document and/or as otherwise agreed between the Parties in writing; and

2.1.2 provide appropriate remedial maintenance for all Goods to the extent this requirement is set out in the Specification and Tender Response Document and/or as otherwise agreed between the Parties in writing.

## 3 Service visits

3.1 The Supplier shall ensure that the Authority is notified in writing in advance of all service visits to any Premises and Locations and that Staff comply with any relevant Policies and/or reasonable instructions and/or security procedures notified to the Supplier by the Authority from time to time in connection with such site visits.

## 4 Provision of information

4.1 Without prejudice to any specific records keeping requirements set out in this Contract, including as part of the Specification and Tender Response Document, the Supplier shall:

4.1.1 maintain a record of all Goods that are covered by the Maintenance Services (**"Maintenance Inventory"**). For the avoidance of doubt, such Maintenance Inventory shall be deemed to form part of the Specification and Tender Response Document and may be in a single document or separate documents, as amended and/or updated in accordance with this Contract from time to time;

4.1.2 maintain records of all maintenance work carried out on any Goods in connection with this Contract; and

- 4.1.3 provide all required management information to the Authority promptly upon Authority's written request to demonstrate, to the Authority's reasonable satisfaction, compliance with requirements to provide planned preventative maintenance and, where applicable, remedial maintenance in connection with all Goods listed in the Maintenance Inventory.
- 4.2 Without prejudice to any other audit or information requirements set out as part of this Contract, any records kept by the Supplier in connection with the Maintenance Services, the Maintenance Inventory and any service visits shall be made available by the Supplier for inspection by the Authority and/or its authorised representatives on request.
- 4.3 Subject always to the provisions of Clause 8 of this SCHEDULE 5A Maintenance Services, the Supplier shall inform the Authority in writing as soon as it becomes aware that either of the following circumstances will, or are likely to, arise in connection with any Goods forming part of the Maintenance Inventory:
  - 4.3.1 the Supplier will no longer be able to maintain the item of Goods as any required third-party support will no longer be available (including, without limitation, support from the original equipment manufacturer); or
  - 4.3.2 the Supplier will no longer not be able to obtain from any third party (including, without limitation, the original equipment manufacturer) any required spare parts and/or consumable items required to provide the Maintenance Services in relation to those Goods.
- 4.4 Where the Supplier provides information to the Authority under Clause 4.3 of this Schedule 5A, it will inform the Authority in writing promptly upon becoming aware that this information has changed or may change.
- 5 Loan Goods and replacement Goods
  - 5.1 Where the Supplier is unable to fix any Goods forming part of the Maintenance Inventory as part of the Maintenance Services during a site visit, and the Specification and Tender Response Document or Order Form provides for substitute Goods to be provided to the Authority in these circumstances on a loan and/or replacement basis, the Supplier shall:

- 5.1.1 provide the Authority with such substitute Goods in accordance with the relevant provisions and timescales, as set out in the Order Form
- 5.1.2 comply with any installation, commissioning, inspection and testing processes as may be set out in this Contract or otherwise agreed by the Parties in writing; and
- 5.1.3 update the Maintenance Inventory accordingly to include any substitute Goods.

Where the Supplier loans Goods to the Authority and subsequently replaces the loaned Goods, the Supplier shall comply with the provisions of Clauses 5.1.2 and 5.1.3 of this Schedule 5A in relation to such replacement of the loaned Goods.

Subject to Clauses 7 and 8 of this Schedule 5A, any Goods added to the Maintenance Inventory in accordance with Clause 5.1.3 of this Schedule 5A will be covered by the Maintenance Services for the remainder of the Term from the point set out in the Specification and Tender Response Document at which Maintenance Services are triggered for such substitute Goods or as otherwise agreed by the Parties in writing taking into account any warranty period applicable to such substitute Goods. For the avoidance of doubt, this Contract shall apply in full to the supply, installation, and commissioning (as applicable) of such substitute Goods.

## 6 Additional warranties

### 6.1 The Supplier warrants and undertakes that:

- 6.1.1 when providing the Maintenance Services (including, without limitation, providing any loan or replacement Goods), it shall comply with all timescales and KPIs set out in the Specification and Tender Response Document or Order Form associated with such requirements;
- 6.1.2 any replacement parts, consumable items, replacement Goods and/or loan Goods shall be of satisfactory quality, fit for their intended purpose, installed (where applicable) in accordance with Good Industry Practice and shall comply with the standards and requirements set out in this Contract;
- 6.1.3 it will ensure sufficient stock levels of any replacement parts, consumable items, replacement Goods and/or loan Goods to comply with its obligations to provide the Maintenance Services in accordance with the provisions of this Contract;
- 6.1.4 it has and shall maintain a properly documented system of quality controls in respect of the Maintenance Services including, without limitation, covering the supply of any replacement parts, consumable

- items, replacement Goods and/or loan Goods and shall at all times comply with such quality controls;
- 6.1.5 any equipment it uses in the installation of any replacement parts, consumable items, replacement Goods and/or loan Goods shall comply with all relevant Law and Guidance, be fit for its intended purpose and shall be maintained fully in accordance with the manufacturer's specification;
- 6.1.6 receipt of any replacement parts, consumable items, replacement Goods and/or loan Goods by or on behalf of the Authority and use of such items or of any other related item or information supplied, or made available, to the Authority will not infringe any third party rights, to include without limitation, any Intellectual Property Rights;
- 6.1.7 it will comply with all Law and Guidance in so far as it is relevant to the supply of any replacement parts, consumable items, replacement Goods and/or loan Goods to the Authority; and
- 6.1.8 it will promptly notify the Authority of any health and safety hazard which arises, or the Supplier is aware may arise, in connection with the Maintenance Services including, without limitation, in connection with the supply of any replacement parts, consumable items, replacement Goods and/or loan Goods and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards.

6.2 Where the supply of any replacement parts, consumable items, replacement Goods and/or loan Goods relates to medical devices (as defined under any relevant Law and Guidance), the Supplier warrants and undertakes that it will comply with any such Law and Guidance relating to such activities in relation to such medical devices. In particular, but without limitation, the Supplier warrants that at the point such replacement parts, consumable items, replacement Goods and/or loan Goods are supplied to the Authority, all such items which are medical devices shall have valid UKCA marking or CE marking as required by Law and Guidance and that all relevant marking, authorisation, registration, approval and documentation requirements as required under Law and Guidance relating to the supply, manufacture, assembly, importation, storage, distribution, delivery, or installation of such items shall have been complied with. Without limitation to the foregoing provisions of this Clause 6.2 of this Schedule 5A, the Supplier shall, upon written request from the Authority, make available to the Authority evidence of such valid UKCA marking or CE marking, and evidence of any other authorisations, registrations, approvals or documentation required.

- 6.3 If the Supplier is in breach of Clause 6.2 of this Schedule 5A , in relation to any items supplied to the Authority, then, without prejudice to any other right or remedy of the Authority, the Authority shall be entitled to reject and/or return such items and the Supplier shall, subject to Clause 13.2 of Schedule 2, indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the Authority as a result of such breach.
    - 6.4 The Supplier agrees to use reasonable endeavours to assign to the Authority upon request the benefit of any warranty, guarantee or similar right which it has against any third party manufacturer or supplier of any replacement parts, consumable items and/or replacement Goods in full or part.
    - 6.5 The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that any of the warranties set out in Clause 6 of this Schedule 5A have been breached or there is a risk that any warranties may be breached.
  - 7 The Authority's rights to remove Goods from the Maintenance Inventory
    - 7.1 By giving a minimum of thirty (30) days written notice to the Supplier, the Authority may remove any Goods from the Maintenance Inventory and discontinue the Maintenance Services on such Goods in the event that:
      - 7.1.1 it decommissions or replaces the Goods for health and safety reasons and/or for reliability reasons;
      - 7.1.2 it sells, transfers or otherwise disposes of the Goods;
      - 7.1.3 the Goods are lost or stolen; or
      - 7.1.4 the Goods are replaced by the Authority and the replacement Goods are still under warranty.
  - 8 The Supplier's rights to remove Goods from the Maintenance Inventory
    - 8.1 Unless another time period is detailed within an Order Form, by giving a minimum of twelve (12) months written notice to the Authority, the Supplier may remove Goods from the Maintenance Inventory and discontinue the Maintenance Services on such Goods in the following circumstances:

- 8.1.1 the Supplier will no longer be able to maintain the Goods as any required third party support is no longer available (including, without limitation, support from the original equipment manufacturer); and/or
- 8.1.2 the Supplier will permanently not be able to obtain from any third party (including, without limitation, the original equipment manufacturer) any required spare parts and/or consumable items required to provide the Maintenance Services in relation to those Goods.

8.2 The Parties acknowledge that:

- 8.2.1 at all times the Supplier shall be required to provide the Authority with information in accordance with Clauses 4.3 and 4.4 of this Schedule 5A notwithstanding the length of the Term of the Contract or the period of the Term still remaining; and
- 8.2.2 Clause 8.1 of this Schedule 5A shall only apply where the Term of the Contract exceeds twelve (12) months.

9 Adjustment to the Contract Price where Goods are removed from the Maintenance Inventory

9.1 Following the removal of any Goods from the Maintenance Inventory in accordance with Clauses 7.1 or 8.1 of this Schedule 5A:

- 9.1.1 there shall be a pro-rata adjustment to the Contract Price to account for such removal; and
- 9.1.2 where applicable, the Supplier shall make a full refund to the Authority in respect of the balance of the Contract Price paid in advance for any period following the removal of such Goods. Such refund shall be paid automatically by the Supplier to the Authority within thirty (30) days following the effective date of the removal of the relevant Goods from the Maintenance Inventory and may be by credit note where the Supplier continues to provide ongoing Maintenance Services to the Authority.

9.2 If the Parties are unable to agree the pro-rata adjustment to the Contract Price in accordance with Clause 9.1.1 this Schedule 5A within thirty (30) days of the effective date of the removal of such Goods from the Maintenance Inventory, this failure to agree shall be referred to dispute resolution in accordance with Clause 22 of Schedule

2.

## 10 Additional termination provisions

- 10.1 If the Authority removes any Goods from the Maintenance Inventory in accordance with Clause 7.1 of this Schedule 5A and no Goods will remain part the Maintenance Inventory following such removal, the Authority may terminate the Maintenance Services by giving a minimum of thirty (30) days written notice to the Supplier. Such notice may be given by the Authority at the same time as it gives the notice of removal of the last remaining Goods in accordance with the Clause 7.1 of this Schedule 5A or at any time afterwards.
- 10.2 If the Supplier removes Goods from the Maintenance Inventory in accordance with Clause 8.1 of this Schedule 5A and no Goods will remain part of the Maintenance Inventory following such removal, the Authority may terminate the Maintenance Services by giving a minimum of thirty (30) days written notice to the Supplier. Such notice may be given by the Authority at any point after it receives the notice of removal of the last remaining Goods in accordance with Clause 8.1 of this Schedule 5A or at any time afterwards, but shall not take effect before the effective date of the removal of such Goods from the Maintenance Inventory.
- 10.3 Following any termination of the Maintenance Services by the Authority in accordance with Clause 10.1 or Clause 10.2 of this Schedule 5A, the Supplier shall make a full refund to the Authority in respect of the balance of the Contract Price paid in advance for the Maintenance Services for any period following such termination to the extent such balance has not already been paid to the Authority in accordance with Clause 9.1.2 of this Schedule 5A. Such refund shall be paid automatically by the Supplier to the Authority within thirty (30) days following the effective termination date of this Contract.

## 11 Non-performance

- 11.1 The Supplier acknowledges the critical importance that the Authority places on ensuring that all Goods used by the Authority are properly maintained in a timely manner so as to ensure the safety of its staff, patients and other service users. Therefore, without prejudice to any other provisions of the Contract, where the Supplier does not provide the Maintenance Services in accordance with any time periods and/or other requirements set out in the Contract (“**Nonperformed Services**”), without prejudice to its other right and remedies under this Contract, the

Authority may elect to: (i) follow the remedial process set out in Clause 15.3 of Schedule 2; or (ii) the Authority may procure alternative maintenance services from a third party.

11.2 The Authority confirms that it will act reasonably at all times when electing to exercise its rights to procure alternative services from a third party under Clause 11.1 of this Schedule 5A. In particular, the Authority will only elect to procure alternative services from a third party where the following circumstances apply:

- 11.2.1 the alternative services are required urgently due to health and safety reasons and/or to keep the relevant Goods operative;
- 11.2.2 the Supplier has been notified of the urgency of the requirement and its failure to provide the Maintenance Services in accordance with the requirements of this Contract; and
- 11.2.3 the Supplier has been given a reasonable period of time (taking into account the urgency of the requirement) to perform the Non-performed Services itself. What is a “reasonable period of time” in the particular circumstances shall be determined at the Authority’s sole discretion taking into account its obligation under this Clause 11.2 of this Schedule 5A to act reasonably.

11.3 In the event that the Authority elects to procure alternative services from a third party in accordance with Clause 11.1 of this Schedule 5A, the following provisions shall apply:

- 11.3.1 where the Supplier has been paid the Contract Price in advance for such Nonperformed Services, the Supplier shall (i) refund the Authority the full Contract Price paid; and (ii) pay to the Authority upon demand any additional charges that the Authority has incurred in connection with any alternative services additional to the Contact Price paid to the Supplier; and
- 11.3.2 where the Supplier has not yet been paid the Contract Price for such Nonperformed Services, the Supplier shall: (i) forfeit the Contact Price for such Maintenance Services; and (ii) pay to the Authority upon demand any additional charges that the Authority has incurred in connection with any alternative services additional to the Contact Price that would have been paid to the Supplier had the Supplier performed the Non-performed Services in accordance with any time periods and/or other requirements set out in the Contract.

12 Supplier’s obligation to make good any damage

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- 12.1 The Supplier shall make good at the Supplier's expense any damage to any property or equipment caused by the Supplier when providing the Maintenance Services.

#### **Schedule 6 of these Call-off Terms and Conditions**

##### ***Additional Terms relating to Provision of ICT Solutions***

**The following terms detailed in Paragraphs 2 to 8 shall apply to all solutions provided through the Framework Agreement. This includes all Hardware, Software and Services.**

#### **1. Interpretation**

Unless the context otherwise requires, definitions of terms used in this Schedule 6 shall have the same meanings as set out in the Call-Off Terms and Conditions except for the following additional words and expressions which shall have the meanings set out opposite them below:

#### **2. Implementation Services**

- 2.1 Where required to provide project scoping services, the Supplier shall, and shall procure that its Subcontractor(s) will properly identify and document the requirements of the Participating Authority and the Participating Authority's Staff (if required) for the Solution. This shall include without limitation the Supplier carrying out all of the activities required by the Participating Authority. As a minimum this process shall include:

1. scoping the project
2. assessing Participating Authority requirements
3. project management and development of appropriate documentation.

- 2.2 Where there is any conflict between the requirements of individual members of Staff or departments within the Participating Authority, the Supplier shall identify these to the Participating Authority and refer them to the Participating Authority for resolution.

- 2.3 Without limiting the generality of clause 2.2, the Supplier shall ensure that prior to the start of the Implementation Services, it has:

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- I. conducted such due diligence on the Existing Systems; and
- II. made such inquiries of the Participating Authority and its requirements, objectives, operating procedures/ policies and security controls/ policies.

as are reasonably required to enable the Solution to be implemented so that it properly interfaces and operates with the Existing Systems and can be successfully implemented so that it delivers all of the functionality provided by the systems, processes and procedures that it replaces (except as and to the extent expressly otherwise agreed in writing with the Participating Authority) and meets the requirements of the Contract.

2.4 The Supplier shall prepare and provide to the Participating Authority a draft Solution Specification that meets Participating Authority Requirements.

### 3 Implementation

3.1 Within ten (10) Business Days (or such longer period as may be agreed in writing by the parties) after the Commencement Date, the Supplier shall develop and supply a draft Solution project plan to the Participating Authority. The Supplier shall ensure that the draft project plan clearly sets out each party's responsibilities and the timescales within which they are required to be carried out and in particular shall ensure that it:

- 3.1.1 complies with all Legislation and Good Industry Practice;
- 3.1.2 enables the Solution to be supplied and implemented in accordance with the Contract and Ready for Use on or before the Ready for Use Date;
- 3.1.3 identifies in reasonable detail all of the activities (including any data transfer, formatting and cleansing) required to enable the Participating Authority to transition from its existing systems, policies and procedures to the use of the Solution without any disruption to the Participating Authority's activities;
- 3.1.4 accommodates the availability of those of Participating Authority's resources that will be required for the implementation of the Solution; and
- 3.1.5 complies with those of the Participating Authority's reasonable requirements notified to the Supplier in writing prior to the completion of the draft project plan.

- 3.2 The Participating Authority shall either approve the draft project plan or make such alterations to it as the Participating Authority reasonably considers appropriate to render it compliant with the requirements set out in Clause 3.1 immediately following such approval or amendment it shall become the “Implementation Plan”.
- 3.3 Each party shall comply with the obligations, perform the responsibilities and provide the deliverables specified as being its responsibility in the project plan by the applicable date assigned to that particular task in the project plan (or promptly if no date is specified). Without limiting the generality of the foregoing, the Supplier shall perform its obligations under the Contract within the timescales specified in the project plan (or promptly where no timescale for performance is specified), and shall co-operate with the Participating Authority in connection with the transition and migration of the Participating Authority's data and operations to the SaaS Services and in all other respects, such that there is a seamless transition to the SaaS Services with minimal disruption to the Participating Authority's business.
- 3.4 The Supplier acknowledges that the Participating Authority is relying on the Supplier to manage the implementation of the Solution and provision of the SaaS Services efficiently and on time. Accordingly, if the Supplier foresees any delays in delivering any aspect of the Solution and implementation of the SaaS Services in accordance with the Implementation Plan, the Supplier shall immediately notify the Participating Authority of the fact of the delay, the reasons for the delay, the consequences of the delay for the rest of the Project Plan and how the Supplier proposes to mitigate the delay.
- 3.5 Without limiting the generality of Clause 3.4, if the Participating Authority breaches the Contract and this directly results in a delay for the Supplier in meeting any agreed deadline, the Supplier shall give written notice to the Participating Authority of such breach and the impact on the project plan within two (2) Business Days of becoming aware of the breach. Where the Supplier notifies the Participating Authority of any delay caused by the Participating Authority in accordance with this Clause 3.5 then the Supplier shall be entitled to a reasonable extension to the times for performance with its obligations under the Contract and the Implementation Plan shall be adjusted accordingly. Unless otherwise agreed in writing by the parties the extension shall be equivalent to the duration of the delay caused by the Participating Authority.
- 3.6 The Supplier shall not be entitled to any extension of time where it fails to notify the Participating Authority in accordance with the terms of this clause 3.6.

3.7 Whether the delay is due to a Participating Authority's breach of the Contract or not, the Supplier shall deploy all additional resources and efforts, and take all reasonable steps, to eliminate (or where that is not possible, to minimize the consequences of) the delay.

3.8 Any disputes about or arising out of delays shall be resolved through the dispute resolution procedure specified at Clause 22. Pending the resolution of the dispute, both parties shall continue to work together to resolve the causes of, and mitigate the effects of, the delay.

#### 4 Testing

4.1 Once the Supplier has satisfied itself that it has completed an agreed phase of the Implementation Services, the Supplier shall allow the Participating Authority to conduct the applicable Acceptance Tests in relation to the part of the Solution that is required to be delivered during such phase (together with relevant previously delivered and tested elements where relevant).

4.2 The Supplier shall ensure that the relevant parts of the Solution are ready for the commencement of the applicable Acceptance Tests by the relevant date set out in the project plan. The Supplier shall provide the Participating Authority with such assistance as the Participating Authority reasonably requires enabling the Acceptance Tests to be completed.

4.3 If the Participating Authority requests that the Supplier is to conduct the applicable acceptance tests in relation to the part of the Solution that is required to be delivered during such phase, this will be agreed within the Project Plan and will be delivered during such phase.

4.4 If, in the reasonable opinion of the Participating Authority, the Solution (or relevant elements of it) meet all of the Acceptance Criteria for the applicable Acceptance Tests, the Participating Authority shall notify the Supplier of this in writing, within an agreed time.

4.5 If the Solution or relevant elements of the Solution (as the case may be) fail to pass any one or more of the Acceptance Tests, the Participating Authority shall, within [ten] (10) Business Days from the completion of the relevant Acceptance Tests, provide a written notice to this effect, giving details of such failure(s). The Supplier shall remedy the defects and deficiencies at the Supplier's own cost (unless agreed in writing beforehand) within [ten] (10) Business Days or such longer period as may be

agreed between the Supplier and the Participating Authority, and the relevant test(s) shall be repeated within a reasonable time.

4.6 Except as otherwise described in this Clause 4.6 each party shall bear its own costs in respect of the acceptance testing process. However, if an acceptance test does not satisfy the acceptance criteria applicable to it; the Participating Authority shall be entitled to recover from the Supplier any reasonable additional costs it may incur as a direct result of any further review or further Acceptance Testing to achieve the Acceptance Criteria. In such circumstances and without prejudice to the Participating Authority's other rights and remedies, the Supplier shall bear all costs related to amending the relevant elements of the Solution and re-submitting them for Acceptance Testing.

4.7 If the Solution or relevant elements of the Solution (as the case may be) fail to pass any repeated acceptance tests, then the Participating Authority shall, by written notice to the Supplier, choose at its sole discretion:

4.7.1 to fix (without prejudice to the Participating Authority's other rights and remedies) a new date for carrying out further tests on the Solution or relevant elements of the Solution (as the case may be). The provisions of this Clause 4.7 shall apply to each of such repeated tests except that the Supplier shall bear the Participating Authority's reasonable costs incurred in the performance of such additional tests in addition to the Supplier's own costs; or

4.7.2 to accept the Solution or relevant elements of the Solution (as the case may be) subject to such change of Acceptance Criteria, amendment of the Specifications and reduction in the Contract Price (including any ongoing subscription charges) as, after taking into account all the relevant circumstances, is reasonable.

4.8 Where the whole or any part of the Solution passes the Acceptance Tests, this shall not affect the Participating Authority's right to subsequently reject the Solution (or any part of it) if it fails to pass any subsequent Acceptance Tests. Regardless of the successful completion of the applicable Acceptance Tests, the Supplier shall remain responsible for ensuring that the Solution and the rest of the SaaS Services function and perform in accordance with the Specifications and the Service Levels at all times during the Term.

4.9 If the Supplier fails to implement the Solution as a whole so that all of the Acceptance Criteria for it have been met by the Long Stop Date (as extended in accordance with the Contract), the Participating Authority shall be entitled, in addition to its other rights and remedies, to terminate the Contract by written notice to the Supplier and recover from the Supplier all sums previously paid by the Participating Authority in respect of the SaaS Services.

## 5 Key Staff

5.1 The Supplier shall ensure that, except in the case of sickness or injury, compassionate leave, termination of employment or engagement ("Unforeseen Circumstances"), the Key Personnel are and remain assigned to provide the Implementation Services and are not replaced or removed from the performance of the Implementation Services except as expressly otherwise provided under the Contract.

5.2 If at any time any key personnel are unavailable through Unforeseen Circumstances, the Supplier shall allocate alternative personnel reasonably acceptable to the Participating Authority and of equivalent expertise and experience to provide the Implementation Services for the duration of the unavailability of such Key Personnel. With effect from their appointment, such alternative personnel shall become Key Personnel.

5.3 The Participating Authority reserves the right, acting reasonably, to require the Supplier to remove any or all members of Staff (including any Key Personnel) at any time. The Supplier will promptly comply with any such instruction and provide a replacement who is acceptable to the Participating Authority (acting reasonably).

## 6 Change Control

6.1 Where a Change Request is submitted as a result of any Change in Laws or government requirements that results in a change being required to Services then the parties shall be obliged to implement the Change Request.

6.2 Where the change is required as a result of a change in Laws and regulations that are specific to the Participating Authority then the change shall be carried out at the Participating Authority's reasonable cost. Where the change is required because of any other change in laws and regulations then the Supplier shall carry out the change at its own cost and shall not be entitled to any increase in the Charges to reflect the change.

## 7 Additional Termination & Exit Provisions

7.1 In addition to the rights and obligations set out in Clause 15 (Term and termination) and Clause 16 (Consequences of expiry or earlier termination of this Contract), the following provisions shall apply.

7.2 The Participating Authority shall be entitled to terminate the Contract immediately (or on such longer period of notice at the Participating Authority may specify) if:

- the parties have failed to agree in writing the Specification and/or the Implementation Plan by the date(s) specified for this in the Order Form and/or Call off Contract or (by the expiry of thirty (30) days following the date of the Order Form and/or Call off Contract if no other date has been specified); or
- the Solution has not been accepted by the Long Stop Date.

7.3 Within thirty (30) days after acceptance of the Solution, the Supplier shall produce a draft exit plan for the orderly transition of the Services from the Supplier to the Participating Authority and/or any replacement Supplier on termination or expiry of the Contract. This exit plan shall be presented in a reasonable format with agreement by the Participating Authority that is capable of being utilised by any New Service Provider.

7.4 Each party shall bear its own costs incurred in preparing and considering any Change Request or quotation or Operational Change requested or required under this Clause 7.4.

7.5 The Supplier shall ensure that the draft exit plan sets out in reasonable detail the steps to be taken by each party to enable the Services to be transferred to a new provider without and adverse impact on the Participating Authority's operations.

7.6 The Participating Authority shall review the draft exit plan and provide the Supplier with any recommended changes to the draft. The parties shall discuss such recommended changes in good faith and the Supplier shall incorporate any agreed changes into a final exit plan which shall be the "Exit Plan". The Supplier shall update the Exit Plan no less than once in every 12-month period to reflect changes in the Services and shall keep the Exit Plan under continuous review. For the avoidance of doubt, the Supplier shall not charge for the production or updating of the Exit Plan.

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7.7 Upon receipt of any termination notice in respect of the Contract (or on termination of the Contract if this occurs prior to any termination notice being issued):

- 7.7.1 the parties shall comply with their respective responsibilities and obligations under the Exit Plan; and
- 7.7.2 where requested by the Participating Authority, the Supplier shall provide the Participating Authority with copies of any Participating Authority data or information in the possession or control of the Supplier in such format as the Participating Authority may reasonably request or deem appropriate.

7.8 Where the Supplier terminates as a result of the material breach or insolvency of the Participating Authority or the Participating Authority terminates for convenience, the Participating Authority shall pay the reasonable additional costs incurred by the Supplier in performing the Supplier's obligations, provided such costs are calculated in accordance with the rates specified in the Contract.

7.9 Where the Participating Authority terminates as a result of the breach (actual or deemed) or insolvency of the Supplier then the Supplier shall bear its own costs and shall pay the Participating Authority's reasonable costs of termination as well as the Participating Authority's reasonable additional costs incurred in engaging a new provider.

7.10 Where the Participating Authority terminates the Contract for the Supplier's breach or insolvency then the Participating Authority shall be entitled (in addition to its other rights and remedies) to reject the Solution if it has not been finally Accepted. Where the Participating Authority rejects the Solution then the Supplier shall refund to the Participating Authority any amounts previously paid by the Participating Authority in respect of the rejected Solution and any licence granted to the Participating Authority to use the Solution shall terminate.

## 8 Additional Obligations

8.1 The Supplier shall:

- 8.1.1 maintain the capacity to meet existing and future requirements of Participating Authority;
- 8.1.2 not (and shall ensure that the Staff shall not) access or use any of the Participating Authority's systems or Sites except as and to the extent

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expressly permitted by the Participating Authority in writing and shall limit such assess and use to that which is required for the purposes of providing the Goods and Services;

- 8.1.3 perform its obligations so that they do not cause any fault or interruption to the Participating Authority's operations other than any agreed and unavoidable minor interruptions required to perform its obligations in a proper and efficient manner (such agreement by the Participating Authority not to be unreasonably withheld or delayed);
- 8.1.4 provide the Participating Authority with comprehensive user Documentation that provides all of the information reasonably required to enable the Participating Authority to properly understand, operate and maintain the Solution;
- 8.1.5 supply the Goods and Services so that, for the Term of the Contract, they meet and satisfy (and provide all of the functionality and performance specified in) the Specification(s), Contract and Tender Response Document; and,
- 8.1.6 make reasonable endeavours to ensure that each element of the Good and Services is compatible with and does not adversely affect the Existing Systems (including ensuring that it is compatible with the browsers and other systems used by the Participating Authority) or any other part of the Solution.

#### ***ADDITIONAL TERMS FOR SOFTWARE AND SERVICES***

**The following terms detailed in Paragraphs 9 to 16 shall apply to provision of Software and Services only through the Framework Agreement. For the avoidance of doubt, these terms do not apply to hardware procurements.**

#### **9. Pricing for Services**

- 9.1 Where Services are to be provided on a time and materials basis, the Supplier shall provide the Participating Authority with fee estimates for the Services concerned where requested by the Participating Authority from time to time. The Supplier shall not make a charge for providing fee estimates. Where the Supplier provides or has provided any fee estimates (whether provided before, on or after the commencement of the Contract), it shall:
  - ensure that they have been calculated with reasonable skill and care and in accordance with Good Industry Practice; and

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- continuously monitor its performance against these estimates and notify the Participating Authority immediately if the Supplier anticipates the estimate being exceeded. In such circumstances the parties shall immediately meet and consult with each other in good faith to seek to agree a revised estimate or changes to the scope of the Services or the manner in which they will be executed to avoid (or where that is not possible to minimise) any cost overrun.

9.3 Where the Supplier charges on a time and materials basis for the provision of Implementation Services then, unless otherwise agreed in writing by the parties, 10% of the invoice(s) value for such Implementation Services shall be held back and shall only become due on final acceptance of the Solution as a whole in accordance with clause [insert].

## 10. Service Levels

- 10.1 The service levels (including Service Level Agreement, Specification or Statement of Works) set out in the Contract and/ or Order Form shall apply to the Contract. In addition, if the Order Form specifies that the parties are to agree service levels for one or more of the Services independently, the parties shall agree such service levels in accordance with the process set out in the Specification, Call off Contract and Tender Response Document.
- 10.2 Throughout the Term of the Contract, the Supplier shall perform and provide the Services in a manner that shall meet or exceed the Service Levels stipulated. The Supplier will measure and report its performance against these Service Levels to the Participating Authority on a [monthly basis] in such format as the Participating Authority reasonably requests from time to time. In addition, with effect from the Commencement Date and for the remainder of the Term the Supplier shall make the Solution available for use so that it meets the Specification, the Contract, Documentation, Service Level Agreement and the Tender Response Document.

## 11. Helpdesk, Error Correction & Problem Resolution

- 11.1 Where agreed by the parties, the Supplier shall make the helpdesk Services available throughout the helpdesk hours, which will be documented in

writing within the Contract and/ or Order Form. The Supplier shall ensure that the user manual or any relevant training materials or Documentation are structured so users can easily locate relevant content.

- 11.2 The Supplier shall respond to all Error notifications and service requests made by the Participating Authority within the response times and shall fix all Errors within the fix times applicable to them and agreed in the Contract. The Supplier may Fix an Error by providing a temporary workaround. Where the Supplier provides a temporary workaround, it shall provide a permanent fix as soon as reasonably practical and within a reasonable period that is agreed with the Participating Authority.
- 11.3 The Participating Authority shall use reasonable endeavours to provide the Supplier with such information as the Supplier reasonably requests in relation to each Error or service request reported to it by the Participating Authority.
- 11.4 Where agreed by the parties, the Supplier shall pro-actively monitor the systems used to provide the SaaS Services (including monitoring their capacity, availability and performance) to identify any Errors and potential issues and shall seek to resolve any issues identified before they affect the SaaS Services.
- 11.5 Where agreed by the parties in the Order Form and, where any Error occurs or the Services fail to meet any Service Level then, in addition to its obligations under clause 11.2 , the Supplier shall carry out root cause analysis to identify the cause of the failure. The Supplier shall provide the Participating Authority with the results of its analysis together with details of the cause of the failure and a corrective action plan to remedy this. The Supplier shall implement such plan immediately at the Supplier's own cost.

## 12. Solution Compatibility, Updates & Upgrades

- 12.1 The Supplier shall ensure that throughout the Term of the Contract the Solution is maintained, updated and upgraded from time to time (at no additional cost to the Participating Authority unless agreed otherwise in writing), so that at all times it:
  - 12.1.1 is and remains fully compatible with (and interfaces with) the Existing Systems as they may be modified, updated and replaced from time to time;
  - 12.1.2 complies with (and do not put the Participating Authority in breach of):

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- 12.1.3 any applicable Laws;
- 12.1.4 Government Requirements; and
- 12.1.5 provides at least the functionality, capacity and performance specified in the Call off Contract, Order Form, Specification and/or Tender Response Document.
- 12.2 Subject to clause 12.1, the Supplier shall make available to the Participating Authority, at no additional charge, any updates or upgrades to the Solution that the Supplier makes generally available to other Participating Authorities. If the Participating Authority elects to take any such update or upgrade the Supplier shall implement it promptly at no additional charge (unless agreed otherwise in writing). The provisions of clause [insert] shall apply to any material update or upgrade except that if the relevant acceptance tests are not satisfied the Participating Authority shall also have the option to roll back to the previous version/release of the Solution.
- 12.3 Where the Supplier makes available any new version of the software (Subsequent Versions) commercially available to other Participating Authorities for an additional charge and such new version includes material additional functionality to the Solution then the Supplier shall make such version available to the Participating Authority under the Contract. The Supplier shall be entitled to make an additional charge to the Participating Authority for the supply and implementation of such a new version if it notifies the Participating Authority of this charge in writing at the same time that it offers to make the version available to the Participating Authority. The Participating Authority shall not be obliged to acquire any such new version and it shall only be provided where the Participating Authority issues a new written order form and/or new Contract for that version. If the Participating Authority elects not to take the new version, the Supplier shall continue to provide and support the existing version of the Solution.
- 12.4 For the purposes of this clause 12.4, a new version (Subsequent Version) shall include any Solution that is designed as a replacement for or upgrade to the standard Solution used to provide the Solution whether or not it is known by a different name. Subsequent Versions are modifications or upgrades to the Vendor Software that add significant functionality.
- 12.5 Unless agreed otherwise in an Order Form, the Supplier shall ensure that all upgrades, updates and new versions of the Solution made available to the Participating Authority are fully backwards compatible with all previous versions and

releases and contain at least the same core functionality, performance and capacity as previous versions and releases.

12.6 The Supplier shall ensure that the systems used to provide and/or host the Solution and any third party software that is incorporated into, or forms part of the Solution shall at all times be:

12.6.1 subject to valid support and maintenance agreements with the relevant third party manufacturer/support where available (or an authorised representative of it); and

12.6.2 maintained at release levels within one release of the then -current release of the software concerned and at a version for which support has not been withdrawn by the relevant third party manufacturer/supplier.

12.7 The Supplier shall also ensure that any hardware used to provide and/or host the Solution adheres to all security legislation and is refreshed regularly in accordance with Good Industry Practice.

### 13. Hosting, Back-up & Disaster Recovery

13.1 Any data storage products and Solutions provided by Suppliers will comply with all relevant legislation and standards including the UK GDPR, Information Governance, Data Protection Act 2018, Data Security, 14 Cloud Security Principles from the National Cyber Security Centre (NCSC) and Security legislation (and in all cases as amended from time to time). These Solutions will also comply with Participating Authorities individual policies and procedures, as detailed within the Call off Contract or Order Form.

13.2 The Supplier shall only host any Participating Authority data solely at such locations within the UK or the- European Economic Area (EEA), or a country deemed to have adequate organizational and technical measures by the UK or European Commissioners.

13.3 If a Supplier is intending to the host any Solution outside of the UK, this must be agreed with the Participating Authority in writing within the Specification, Contract and Tender Response Document prior to the Commencement Date.

13.4 The Supplier shall ensure that the Solution is designed and implemented on a fully resilient basis so that it does not contain any single point of failure.

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- 13.5 The Supplier shall and shall procure that its Sub-contractors shall ensure that proper measures, systems and processes (including the Business Continuity Plan) are in place to enable continuation of the Services in the event of unexpected disruptive events.
- 13.6 The Supplier shall maintain the Business Continuity Plan so that it is able to meet:
  - 13.6.1 the recovery time objective that has been agreed with the Participating Authority and detailed within writing within the Specification, Contract and/or Tender Response Document
  - 13.6.2 the Recovery Point Objective that has been agreed with the Participating Authority.
- 13.7 The Supplier shall ensure that all information and data (including Participating Authority data) under its responsibility is properly backed up and also that arrangements are made for recovery processes to be installed and maintained throughout the Term of the Contract to minimise any potential disruption to the Participating Authority's operations.

#### 14. IT Security & Virus Protection

- 14.1 The Supplier shall and shall procure that its Sub-contractors will:
- 14.2 keep up to date with all national government cybersecurity standards, guidance and legislation.
- 14.3 maintain and enforce appropriate safety and security systems and procedures to prevent unauthorised access or damage to the Solution, Services and any Participating Authority data hosted by the Supplier in accordance with good industry practice and legislation,
- 14.4 ensure that the SaaS Services provide for the secure hosting and transfer of all data  
(including Participating Authority data) submitted to and/or transmitted via the SaaS Services; and that will meet or exceed Cyber Essentials Certification requirements as a minimum.
- 14.5 where the Order Form provides for the Supplier to maintain and upgrade the Solution; maintain and upgrade the Solution at all times so as to minimise the risk of attack or contamination by Viruses; and
- 14.6 use comprehensive and up to date security methods and processes to check all applicable aspects of the Services and shall use all reasonable endeavours

to ensure that the Services shall be free from all security risks and attacks that may be or will be used to access, modify, delete or damage any data files or other computer programs used by the Participating Authority.

## 15. Compliance with IT policies and standards (including Participating Authority policies and standards)

15.1 The Supplier shall and shall procure that its Sub-contractors will at all times maintain compliance with and shall not place the Participating Authority in breach of:

15.1.1 all relevant legislation, regulations and standards including but not limited to: the UK GDPR, Information Governance, Data Protection Act 2018, Data Security, 14 Cloud Security Principles from the National Cyber Security Centre (NCSC) and Cybersecurity legislation (and in all cases as amended from time to time) for the purposes of the Framework Agreement. Where agreed by the parties, these Solutions will also comply with Participating Authorities individual policies and procedures.

15.1.2 the information governance requirements specified by the National Cybersecurity Centre (NCSC) and all other relevant bodies; as these may be amended, supplemented or replaced from time to time;

15.2 The Supplier shall:

15.2.1 hold a valid PSN compliance certificate and/or a valid Data Security and Protection Toolkit (DSPT) assessment, where required by a Participating Authority;

15.2.2 maintain and comply with all Participating Authority Policies; and

15.2.3 obtain and maintain in force any authorisations, consents, agreements and/or permissions required to enable the Solution to connect with any relevant NHS or other public sector ICT systems (including the N3 network and any replacement for this)

### 15.3 ***Software Usage Restrictions***

15.4 Where the Supplier provides the Participating Authority with any software or access to any software as part of the Services then the Participating Authority shall not be entitled to and shall not:

15.4.1 reverse engineer, decompile, disassemble or otherwise seek to obtain the source code to the Software except as and to the extent permitted by Law; or

15.4.2 copy, modify or adapt the Software other than to the extent reasonably required to enable the Participating Authority to obtain the full benefit of the Services.

## 16. Escrow

16.1 Where requested by the Participating Authority and agreed by the parties in writing, the Supplier shall enter into a standard escrow agreement with such reputable third-party escrow agent as the Participating Authority reasonably specifies. This may be for a single escrow license agreement or a multi license escrow agreement.

16.2 Such escrow agreement shall extend to the below as a minimum:

16.2.1 the source code to the Solution;

16.2.2 the Participating Authority data hosted by or on behalf of the Supplier; and 16.2.3 the configuration of the Solution

16.3 The escrow agent's charges shall be agreed between the Supplier and Participating Authority in writing within the Contract and/or Specification, Contract and/or Tender Response Document. As a general rule (and unless agreed otherwise in writing), the charges should be apportioned between the Supplier and the Participating Authority on a 50:50 basis except that the Participating Authority shall be responsible for payment of any escrow release fee. The Supplier shall bear its own costs incurred in preparing and supplying any materials (including source code to software) to the escrow agent.

16.4 If the escrow agreement terminates for any reason, then the Participating Authority shall be entitled to nominate an alternative escrow agent and this Paragraph 16 shall apply to any such replacement agent.

### **Schedule 7 of these Call-off Terms and Conditions**

1.22 ***Pharmaceutical Products - Not used***