

[**Supplier name**
Supplier address]

Attn: [**insert Supplier contact name**]

By email to: [**insert Supplier contact email address**]

Date: [**Insert date**]

Your ref: [**Insert Supplier's reference, if any**]

Our ref: [**Insert Customer's reference**]

Dear Sirs,

Award of contract for the supply of [insert description of Services**]**

Following your tender/ proposal for the supply of [**insert short description of services**] to [**Monitor**] [**and**] [**National Health Service Trust Development Authority ("NHS TDA")**] [**select NHSI organisation(s) that will sign the contract**] (referred to as "NHS Improvement") (the "**Customer**"), we are pleased to award this contract to you.

This letter (Award Letter) and its [Annex/Annexes] set out the terms of the contract between NHS Improvement as the Customer and [**insert Supplier's name**] as the Supplier for the provision of the Services.

Unless the context otherwise requires, capitalised expressions used in this Award Letter have the same meanings as in the terms and conditions of contract set out in Annex 1 to this Award Letter (the "**Conditions**").

In the event of any conflict between this Award Letter and the Conditions, this Award Letter shall prevail. Please do not attach any Supplier terms and conditions to this Award Letter as they will not be accepted by the Customer and may delay the conclusion of the Agreement.

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

- 1) The Services shall be performed at [**insert description of premises (including whether they are the Customer's premises, the Supplier's premises and/or a third party's premises and in each case the address)**].
- 2) The charges for the Services shall be as set out in [Schedule 3 / the Supplier's quotation dated [**insert date**]].
- 3) The specification of the Services to be supplied is as set out in [Schedule 4/ the Supplier's quotation dated [**insert date**]].
- 4) The Term shall commence on [**insert the start date of the contract**] and the Expiry Date shall be [**insert the date on which the contract will end unless extended or subject to early termination**].
- 5) The address for notices of the Parties are:

Customer

NHS Trust Development Authority
Wellington House
133-135 Waterloo Road
London
SE1 8UG

Attention: [**insert title**]

Email: [**insert email address**]

Supplier

[**insert name**
and address of Supplier]

Attention: [**insert title**]

Email: [**insert email address**]

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

Name

Title

- 7) Not used

Improvement

- 8) The Customer may require the Supplier to ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service check. The Supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Services, relevant to the work of the Customer, or is of a type otherwise advised by the Customer (each such conviction a “**Relevant Conviction**”), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.
- 9) For the purposes of the Agreement Part A of Schedule 1 (Intellectual Property Rights) to Annex 1 shall apply.

Payment

All invoices must be sent, quoting a valid purchase order number (PO Number), to: **[NHS Trust Development Authority, 74T Payables M535] [Monitor, 90T Payables M545], Phoenix House, Topcliffe Lane, Wakefield WF3 1WE**. Within 10 working days of receipt of your countersigned copy of this letter, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.

To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Customer contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment. If you have a query regarding an outstanding payment please make contact by email to NHS Shared Business Services (SBS-W.Payables@nhs.net **noting that invoices cannot be sent to this address**) or by telephone (0303 123 1177) between 09:00-17:00 Monday to Friday.

Liaison

For general liaison your contact will continue to be **[insert Contract Manager name and contact details]** or, in their absence, **[insert secondary name and contact details]**.

We thank you for your co-operation to date and we look forward to forging a successful working relationship resulting in a smooth and successful delivery of the Services. Please confirm your acceptance of the award of this contract by signing and returning the enclosed copy of this letter to **[insert name]** at the above address **within [7] days** from the date of this letter. No other form of acknowledgement will be accepted. Please remember to quote the reference number above in any future communications relating to this contract.

Yours faithfully,

Signed for and on behalf of NHS Improvement

Name: **[insert name]**
[insert job title]

Signature:

Name:
Customer name
(Procurement)

Signature:

Date:

Date:

We accept the terms set out in this letter and its **[Annex/Annexes]**, including the Conditions.

Signed for and on behalf of **[insert name of Supplier]**

Name: **[insert name]**
[insert job title]

Annex 1

Terms and Conditions of Contract for Services

1 Interpretation

1.1 In these terms and conditions:

“Agreement”	means the contract between (i) the Customer and (ii) the Supplier constituted by the Supplier’s countersignature of the Award Letter and includes the Award Letter and Annexes;
“Award Letter”	means the letter from the Customer to the Supplier printed above these terms and conditions;
“Central Government Body”	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"> (a) Government Department; (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); (c) Non-Ministerial Department; or (d) Executive Agency;
“Charges”	means the charges for the Services as specified in the Award Letter;
“Confidential Information”	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
“Customer”	means the person named as Customer in the Award Letter;
“Expiry Date”	means the date for expiry of the Agreement as set out in the Award Letter;
“FOIA”	means the Freedom of Information Act 2000;
“Information”	has the meaning given under section 84 of the FOIA;
“IR35 Rules”	the off-payroll rules, also known as intermediary’s legislation, which applies to engagements in the public sector as explained in https://www.gov.uk/topic/business-tax/ir35 ;
“Key Personnel”	means any persons specified as such in the Award Letter or otherwise notified as such by the Customer to the Supplier in writing;
“NHS Body”	has the meaning of “NHS body” as defined in section 28 (6) of Chapter 4 of the National Health Service Act 2006 (as amended from time to time);
“Party”	means the Supplier or the Customer (as appropriate) and “Parties” shall mean both of them;
“Purchase Order Number”	means the Customer’s unique number relating to the supply of the Services;
“Request for Information”	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);
“Services”	means the services to be supplied by the Supplier to the Customer under the Agreement;
“Specification”	means the specification for the Services (including as to quantity, description and quality) as specified in the Award Letter;
“Staff”	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;
“Staff Vetting Procedures”	means vetting procedures that accord with good industry practice or, where requested by the Customer, the Customer’s procedures for the vetting of personnel as provided to the Supplier from time to time;
“Sub-contract”	means a contract between two or more suppliers, at any stage of remoteness from the Customer 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 Agreement, and the term “Sub-contractor” shall be interpreted accordingly;

“Supplier”	means the person named as Supplier in the Award Letter;
“Term”	means the period from the start date of the Agreement set out in the Award Letter to the Expiry Date as such period may be extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement;
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
“Working Day”	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London; and
“Worker”	for the purpose of clause 18 (Status & Tax) and in connection with any member of Staff, has the meaning given to it in clause 61M (1) (a) of Chapter 10 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA), as enacted by Schedule 1 of the Finance Act 2017 (and as amended from time to time).

1.2 In these terms and conditions, unless the context otherwise requires:

- 1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
- 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;
- 1.2.5 the word ‘including’ shall be understood as meaning ‘including without limitation’; and
- 1.2.6 nothing shall have the effect of making the Supplier the agent or employee of the Customer.

2 Basis of Agreement

- 2.1 The Award Letter constitutes an offer by the Customer to purchase the Services subject to and in accordance with the terms and conditions of the Agreement.
- 2.2 The offer comprised in the Award Letter shall be deemed to be accepted by the Supplier on receipt by the Customer of a copy of the Award Letter countersigned by the Supplier within the period stated in the Award Letter.

3 Supply of Services

- 3.1 In consideration of the Customer’s agreement to pay the Charges, the Supplier shall supply the Services to the Customer for the Term subject to and in accordance with the terms and conditions of the Agreement.
- 3.2 In supplying the Services, the Supplier shall:
 - 3.2.1 co-operate with the Customer in all matters relating to the Services and comply with all the Customer’s instructions;
 - 3.2.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier’s industry, profession or trade;
 - 3.2.3 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier’s obligations are fulfilled in accordance with the Agreement;
 - 3.2.4 ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
 - 3.2.5 comply with all applicable laws; and
 - 3.2.6 provide all equipment, tools and vehicles and other items as are required to provide the Services.
- 3.3 If the Customer informs the Supplier that the Customer considers all or any part of the Services to be inadequate or in any way differing from the Services required under the Agreement, and this is other than as a result of default or negligence on the part of the Customer, then, without prejudice to any other rights of the Customer under this Agreement or by operation of law, the Supplier shall at its own expense re-schedule and re-perform the Services correctly within such reasonable time as may be specified by the Customer.
- 3.4 If the performance of the Agreement by the Supplier is delayed by reason of any act on the part of the Customer or by industrial dispute (other

than by industrial dispute occurring within the Supplier's or its Sub-contractor's organisations) or any other cause which the Supplier could not have prevented because they were events beyond its reasonable control, then the Supplier shall be allowed a reasonable extension of time for completion, to be determined by the Customer, subject to the Supplier both immediately notifying the Customer of the act or cause of delay in question and taking all steps to overcome the circumstances as far as possible. For the purposes of this condition, the Supplier will be deemed to have been able to prevent causes of delay that are within the reasonable control of the Supplier's staff, agents and Sub-contractors.

- 3.5 Where stated in the Agreement, timely provision of the Services shall be of the essence of the Agreement, including in relation to commencing the provision of the Services within the time agreed or on a date specified by the Customer.
- 3.6 Without prejudice to the provisions of clause 5, the Supplier shall reimburse the Customer for all reasonable costs incurred by the Customer which have arisen as a direct consequence of the Supplier's failure or delay in the performance of the Agreement (which the Supplier had failed to remedy after being given reasonable notice by the Customer), provided always that the Customer shall take reasonable steps to minimise the need to incur such costs.
- 3.7 The Customer may by written notice to the Supplier at any time request a variation to the scope of the Services. In the event that the Supplier agrees to any variation to the scope of the Services, the Charges may be subject to adjustment. Any adjustment must be fair and reasonable and agreed in writing between the Parties.

4 Term

- 4.1 The Agreement shall take effect on the date specified in Award Letter and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.
- 4.2 The Customer may extend the Agreement for a period of up to six (6) months by giving not less than then (10) Working Days' notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.

5 Charges, Payment and Recovery of Sums Due

- 5.1 The Charges for the Services shall be as set out in the Award Letter and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 5.2 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.
- 5.3 The Supplier shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 5.4 In consideration of the supply of the Services by the Supplier, the Customer shall pay the Supplier the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. The Customer may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 5.5 If the Customer fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of paragraph 5.4 after a reasonable time has passed.
- 5.6 If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 17.3. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 22.
- 5.7 If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.8 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including but not limited) to:
 - 5.8.1 any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Agreement; or
 - 5.8.2 any over-payment by the Customer to the Supplier whether in respect of the Contract Price or Value Added Tax or expenses, that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Customer. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.
- 5.9 The Supplier shall keep full and proper accounts, records and vouchers relating to all expenditure reimbursed by the Customer and all payments made by the Customer in respect of the Services.
- 5.10 The Supplier shall permit the Customer by its officers, employees, agents, advisers, independent auditor or other person duly authorised by

the Customer on request and at all reasonable times to examine all accounts, records and vouchers at the offices of the Supplier or at such other places as the Supplier shall direct, and to take copies of such accounts, records and vouchers and the Supplier shall provide the Customer or its independent auditor with such explanations relating to that expenditure as the Customer may request.

- 5.11 The Supplier shall ensure that the said accounts, records and vouchers are available for a period of six (6) years after termination or expiry of the Agreement.

6 Premises and equipment

- 6.1 If necessary, the Customer shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Customer's premises by the Supplier or the Staff shall be at the Supplier's risk.
- 6.2 If the Supplier supplies all or any of the Services at or from the Customer's premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate the Customer's premises, remove the Supplier's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Customer's premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Customer's premises or any objects contained on the Customer's premises which is caused by the Supplier or any Staff, other than fair wear and tear.
- 6.3 If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Customer may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 6.4 The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer's premises the Supplier shall, and shall procure that all Staff shall, comply with all the Customer's security requirements.
- 6.5 Where all or any of the Services are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Customer in writing.
- 6.6 Without prejudice to clause 3.2.6, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.
- 6.7 The Supplier shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Customer is notified otherwise in writing within five (5) Working Days.

7 Staff and Key Personnel

- 7.1 If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
- 7.1.1 refuse admission to the relevant person(s) to the Customer's premises;
 - 7.1.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
 - 7.1.3 require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,
- and the Supplier shall comply with any such notice.
- 7.2 The Supplier shall:
- 7.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures (if specified in the Award Letter);
 - 7.2.2 if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and
 - 7.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.
- 7.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
- 7.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Customer (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

8 Assignment and sub-contracting

- 8.1 The Supplier shall not without the written consent of the Customer assign, Sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, Sub-contract, novation or disposal.
- 8.2 The Supplier shall be responsible for the acts and omissions of its Sub-contractors as though those acts and omissions were its own.
- 8.3 Where the Customer has consented to the placing of Sub-contracts, the Supplier shall, at the request of the Customer, send copies of each Sub-contract, to the Customer as soon as is reasonably practicable.
- 8.4 Where the Supplier enters into a Sub-contract, the Supplier shall include in that Sub-contract:
- 8.4.1 provisions having the same effects as clauses 5.3 to 5.7 of this Agreement; and
 - 8.4.2 a provision requiring the counterparty to that Sub-contract to include in any Sub-contract which it awards provisions having the same effect as 5.3 to 5.7 of this Agreement.
- 8.5 The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

9 Intellectual Property Rights

- 9.1 The Parties shall comply with the provisions of Schedule 1 specified in the Award Letter.

10 Governance and Records

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

11 Confidentiality, Transparency and Publicity

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

- (b) on a confidential basis to any other Central Government Body or NHS Body, any successor body to a Central Government Body or NHS Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;
- (c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
- (d) in accordance with clause 12.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this clause 11; and

11.2.7 if that information is in the possession of the Supplier, without restriction as to its disclosure, before receiving it from the Customer.

11.3 The obligations contained in clauses 11.1 and 11.2 shall continue to apply for a period of six (6) years after the expiry or termination of the Agreement.

11.4 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Supplier hereby gives its consent for the Customer to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Customer may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

11.5 The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

12 Freedom of Information

12.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:

- 12.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
- 12.1.2 transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- 12.1.3 provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
- 12.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Customer.

12.2 The Supplier acknowledges that the Customer may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Supplier or the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

12.3 Notwithstanding any other provision in the Agreement, the Customer shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

13 Data Protection

13.1 The Parties shall comply with the provisions in Schedule 2 (Data Protection).

14 Liability and Insurance

14.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.

14.2 Subject always to clauses 14.3 and 14.4:

- 14.2.1 the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort

(including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Supplier; and

14.2.2 except in the case of claims arising under Schedule 1 (Intellectual Property Rights) and clauses 18 (Status and Tax) and 20.3 (Prevention of Fraud and Corruption), in no event shall the Supplier be liable to the Customer for any:

- (a) loss of profits;
- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); and/or
- (f) any indirect, special or consequential loss or damage.

14.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:

- 14.3.1 death or personal injury caused by its negligence or that of its Staff;
- 14.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or
- 14.3.3 any other matter which, by law, may not be excluded or limited.

14.4 The Supplier's liability under any indemnities in Schedule 1 (Intellectual Property Rights) and clauses 18 (Status and Tax) and 20.3 (Prevention of Fraud and Corruption) shall be unlimited.

14.5 The Supplier shall effect and maintain any insurances and/or risk pooling arrangements in relation to the performance of its obligations under this Agreement and the discharge of any associated liabilities, and shall procure that Sub-contractors shall do the same in relation to the performance of their obligations and any associated liabilities under any Sub-contract.

14.6 The terms of any insurance and/or risk pooling arrangements or the amount of cover shall not relieve the Supplier of any liabilities arising under this Agreement. For the avoidance of doubt, any liabilities of the Supplier that are not allowable and recoverable costs under this Agreement shall not be paid by the Customer to the Supplier.

14.7 The Supplier shall meet its insurance obligations under applicable Law in full, including, where applicable UK employers' liability insurance and motor third party liability insurance.

14.8 The Supplier shall from time to time and in any event within seven (7) calendar days following receipt of written notice from the Customer provide documentary evidence to the Customer of the insurance/risk pooling arrangements taken out by the Supplier together with evidence (as appropriate) that they are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.

15 Force Majeure

15.1 Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

16 Termination for insolvency or change of control

16.1 The Supplier shall notify the Customer in writing immediately upon the occurrence of any of the following events:

- 16.1.1 where the Supplier is an individual, if a petition is presented for his/her bankruptcy, or he/she makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his/her affairs; or
- 16.1.2 where the Supplier is not an individual but is a firm or a number of persons acting together, if any event in clause 16.1.1 or 16.1.3 occurs in respect of any partner in the firms or any of those persons, or if a petition is presented for the Supplier to be wound up as an unregistered company; or
- 16.1.3 where the Supplier is a company:
 - (a) it ceases or threatens to cease trading or if the company passes a resolution to wind up or takes any steps to place the company into administration (including filing of papers with a court of competent jurisdiction) or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors or one

is made by the court over the whole or part of its assets or undertaking, or possession is taken of any of its property under the terms of a floating charge; or

- (b) It undergoes a change of control, where “control” has the meaning given in section 416 of the Income and Corporation Taxes Act 1998.

16.2 After receipt of the notice under clause 16.1 or on earlier discovery by the Customer of the occurrence of any of the events described in clause 16.1, the Customer may, by notice in writing to the Supplier, terminate the Agreement with immediate effect without compensation to the Supplier and without prejudice to any right or action or remedy which may accrue to the Customer thereafter.

16.3 The Customer’s right to terminate the Agreement under clause 16.2 in respect of a notice received under clause 16.1 shall continue until the end of a period of six (6) months starting from receipt of the notice provided by the Supplier pursuant to clause 16.1, or such other period as is agreed by the parties.

17 Termination for other causes

17.1 Subject to clauses 17.1.1 and 17.1.2, the Customer may suspend or terminate (fully or partially) this Agreement at any time by notice in writing to the Supplier to take effect on any date falling at least one (1) month ((or, if the Agreement is less than 3 months in duration, at least then (10) Working Days)) after the date of service of the relevant notice.

17.1.1 Where the Customer terminates (in whole or in part) this Agreement under Clause 17.1, the Supplier may recover from the Customer any costs that it reasonably and properly incurs in winding down and concluding the provision of the Services provided that the Supplier:

- (a) takes all reasonable steps to mitigate such costs or losses; and
- (b) submits to the Customer a fully itemised and costed list of such costs or losses claimed together with supporting evidence as to expenditure and quantum of such costs and losses (including such evidence as the Customer may require).

17.1.2 The Customer shall not be liable under Clause 17.1.1 to pay any sum which:

- (a) was claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;
- (b) would have been claimable under insurance but for the Supplier’s failure to comply with its obligation to insure under clause 14; or
- (c) when added to any sums paid or due to the Supplier under this Agreement, exceeds the total sum that would have been payable to the Supplier if this Agreement had not been terminated.

17.2 Without prejudice to any other right or remedy it might have, the Customer may terminate this Agreement by written notice to the Supplier with immediate effect if the Supplier:

- 17.2.1 without prejudice to clause 17.2.4, is in material breach of any obligation under the Agreement which is not capable of remedy;
- 17.2.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;
- 17.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within fourteen (14) days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
- 17.2.4 breaches any of the provisions of clauses 7.2, 11, 12, 13, 18, 19, 20;
- 17.2.5 fails to comply with legal obligations in the fields of environmental, social or labour law.

17.3 The Supplier may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.

17.4 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6.1, 6.2, 6.6, 6.7, 7, 9, 10.2, 11, 12, 14, 17.5, 19.4, 20.3, 22, 23.7 and Schedule 2 or any other provision of the Agreement that either expressly or by implication has effect after termination.

17.5 Upon termination or expiry of the Agreement, the Supplier shall:

- 17.5.1 give all reasonable assistance to the Customer and any incoming supplier of the Services; and

- 17.5.2 return all requested documents, information, data and any other Customer's property to the Customer as soon as reasonably practicable and in any event no later than within fourteen (14) days from the end of the Term.

18 Status and Tax

- 18.1 The relationship of the Supplier (and of any Worker) to the Customer will be that of independent contractor and nothing in this Agreement shall render the Supplier (or the Worker) an employee, worker, agent or partner of the Customer and the Supplier or the Worker shall not hold themselves out as such.
- 18.2 This Agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Supplier shall be fully responsible and indemnify the Customer for and in respect of:
- 18.2.1 subject to where responsibility lies with the Customer under the IR35 Rules, any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment claims arising from or made in connection with either the performance of the Services or any payment or benefit received by the Supplier (or the Worker) in respect of the Services, where such recovery is not prohibited by law. The Supplier shall further indemnify the Customer against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Customer in connection with or in consequence of any such liability, deduction, contribution, assessment or claim;
- 18.2.2 any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by any Worker against the Customer arising out of or in connection with the provision of the Services.
- 18.3 Where the Customer determines that the Supplier (or the Worker) is liable to be taxed in the UK in respect of consideration received under this Agreement, the Supplier (and Supplier shall procure that the Worker) shall at all times co-operate fully with the Customer to ensure compliance with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) (as amended by Schedule 1 of the Finance Act 2017 or other legislation from time to time) and all other statutes and regulations relating to income tax in respect of that consideration.
- 18.4 Where the Customer determines that the Supplier (or the Worker) is liable to National Insurance Contributions (NICs) in respect of consideration received under this Agreement, the Supplier (and Supplier shall procure that the Worker) shall at all times co-operate fully with the Customer to ensure compliance with the Social Security Contributions and Benefits Act 1992 (SSCBA) (as amended by Schedule 1 of the Finance Act 2017 or other legislation from time to time) and all other statutes and regulations relating to NICs in respect of that consideration.
- 18.5 The Customer may, at any time during the term of this Agreement, request the Supplier to provide it with such information as the Customer reasonably considers necessary to enable it to make the determinations referred to in and ensure compliance with clauses 18.3 **Error! Reference source not found.** and 18.4 **Error! Reference source not found.**. When making such request the Customer shall specify a reasonable period of time within which the Supplier must provide the required information.
- 18.6 The Customer may terminate this Agreement if:
- 18.5.1 In the case of a request under clause 18.5:
- (a) the Supplier fails to provide the required information within the specified period, or
- (b) the Supplier provides information which is inadequate and, following a further request by the Customer, fails to provide adequate information within the new specified period;
- 18.5.2 it receives information which demonstrates that, at any time when the liabilities referred to in clauses 18.3 and 18.4 apply to the Supplier (or the Supplier's Worker), the Supplier has not cooperated fully with the Customer to ensure the correct application of the IR35 Rules; or
- 18.5.3 the Supplier fails to comply with any of its obligations under the IR35 Rules.
- 18.7 The Customer may supply any information which it receives in connection with the obligations in this clause 18 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

19 Compliance

- 19.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Supplier in the performance of its obligations under the Agreement.
- 19.2 The Supplier shall:
- 19.2.1 comply with all the Customer's health and safety measures while on the Customer's premises; and
- 19.2.2 notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal

injury.

- 19.3 The Supplier shall:
- 19.3.1 perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer's equality and diversity policy as provided to the Supplier from time to time; and
 - 19.3.2 take all reasonable steps to secure the observance of clause 19.3.1 by all Staff.
- 19.4 The Supplier shall supply the Services in accordance with the Customer's environmental policy as provided to the Supplier from time to time.
- 19.5 The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of:
- 19.5.1 the Official Secrets Acts 1911 to 1989; and
 - 19.5.2 section 182 of the Finance Act 1989.

20 Prevention of Fraud and Corruption

- 20.1 The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
- 20.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including, if the Supplier is a company, its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 20.3 If the Supplier or the Staff engages in conduct prohibited by clause 20.1 or commits fraud in relation to the Agreement or any other contract with a Central Government Body or NHS Body, the Customer may:
- 20.3.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
 - 20.3.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

21 Dispute Resolution

- 21.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 21.2 If the dispute cannot be resolved by the Parties within one (1) month of being escalated as referred to in clause 21.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "Mediator") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 21.3 If the Parties fail to appoint a Mediator within one (1) month or fail to enter into a written agreement resolving the dispute within one (1) month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

22 Conflicts of Interest

- 22.1 The Supplier shall ensure that there is no conflict of interest as to be likely to prejudice its independence and objectivity in performing the Services and complying with its obligations under the Agreement. The Supplier undertakes that upon becoming aware of any such conflict of interest during the performance of the Agreement (whether the conflict commenced before the award of the Agreement or arises during its performance) it shall immediately notify the Customer in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as the Customer may reasonably require.
- 22.2 Where the Customer is of the opinion that the conflict of interest notified to it under clause 22.1 is capable of being avoided or removed, the Customer may require the Supplier to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict and:
- 22.2.1 if the Supplier fails to comply with the Customer's requirements in this respect; or
 - 22.2.2 if, in the opinion of the Customer, purported compliance does not avoid or remove the conflict,
- the Customer may terminate the Agreement immediately and recover from the Supplier the amount of any loss resulting from such termination.
- 22.3 Notwithstanding clause 22.2, where the Customer is of the opinion that a conflict of interest which existed when it awarded this Agreement to the Supplier:

- 22.3.1 was known to the Supplier; or
- 22.3.2 could have been discovered by the Supplier had it carried out due diligence; and
- 22.3.3 ought to have been disclosed to the Customer prior to the award of the Agreement,
- 22.3.4 the Customer may terminate this Agreement immediately and, without prejudice to any other rights, recover from the Supplier the amount of any loss resulting from such termination.

23 General

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

24 Notices

- 24.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 24.3, e-mail to the address of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:
- 24.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
- 24.3 Notices under clauses 15 (Force Majeure) and 16 to **Error! Reference source not found.** (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 24.1.

25 Governing Law and Jurisdiction

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

Schedule 1 to Annex 1 (Intellectual Property Rights)

Part A – Customer ownership of project specific IPR (short form)

1. All intellectual property rights in any materials provided by the Customer to the Supplier for the purpose of providing the Services to the Customer under this Agreement shall remain the property of the Customer.
2. The Customer hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of this Agreement for the sole purpose of enabling the Supplier to perform its obligations under this Agreement.
3. All intellectual property rights in any materials created or developed by the Supplier pursuant to the Agreement or arising as a result of the provision of the Services shall vest in the Customer and the Supplier hereby irrevocably assigns to the Customer with full title guarantee all such intellectual property rights.
4. The Supplier shall indemnify, and keep indemnified, the Customer in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff.

Part B – Customer ownership of project specific IPR (long form)

The following capitalised words or expressions shall have the following meaning in this Agreement:

"Approved Sub – Licensee"	means:	<ul style="list-style-type: none"> a) the Secretary of State for Health or other Central Government Body; b) any public organisation providing services or performing functions in relation to health services in England including a relevant NHS Body; c) any third party providing services to the bodies referred to in (a) or (b); and/or d) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer;
"Customer Background IPR"	means:	<ul style="list-style-type: none"> a) IPR owned by the Customer before the start date of the Agreement, including IPR contained in any of the Customer's know-how, documentation, processes, software and procedures; b) IPR created by the Customer independently of this Agreement; and/or c) Crown Copyright which is not available to the Supplier otherwise than under this Agreement;
"Customer Data"	means:	<ul style="list-style-type: none"> a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any Customer's Confidential Information, and which: <ul style="list-style-type: none"> i) are supplied to the Supplier by or on behalf of the Customer; or ii) the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or b) any Personal Data for which the Customer is the "Data Controller" within the meaning of the GDPR;
"Customer Software"	means software owned by or licensed to the Customer (other than under or pursuant to this Agreement), which is or will be used by the Supplier for the purposes of providing the Services;	
"Object Code"	means software and/or data in machine-readable, compiled object code form;	
"Open Source"	means computer software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as open source;	
"Project Specific IPR"	means:	<ul style="list-style-type: none"> a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Agreement and updates and amendments of these items including (but not limited to) database schema; and/or b) IPR in or arising as a result of the performance of the Supplier's obligations under this Agreement and all updates and amendments to the same; <p>including Specially Written Software but not including the Supplier Background IPR;</p>
"Source Code"	means computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;	
"Specially Written Software"	means any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-contractor or other third party on behalf of the Supplier) specifically for the purposes of this Agreement, including any modifications or enhancements to Supplier Software or third party software created specifically for the purposes of this Agreement;	
"Supplier Background IPR"	means:	

- a) Intellectual Property Rights owned by the Supplier before the start date of the Agreement, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's know-how or generic business methodologies; and/or
- b) Intellectual Property Rights created by the Supplier independently of this Agreement;

which are or will be used by the Supplier for the purpose of providing the Services;

"Supplier Software"

means software which is proprietary to the Supplier and which is or will be used by the Supplier for the purpose of providing the Services;

"Third Party IPR"

means Intellectual Property Rights owned by a third party which are or will be used by the Supplier for the purpose of providing the Services.

The following provisions shall apply to this Agreement.

1. INTELLECTUAL PROPERTY

1.1 Allocation and Conditions of title to IPR

1.1.1 Save as expressly granted elsewhere under this Agreement:

- (a) the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including the:
 - (i) Supplier Background IPR;
 - (ii) Supplier Software; and
 - (iii) Third Party IPR.
- (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors, including the:
 - (i) Customer Background IPR;
 - (ii) Customer Data;
 - (iii) Customer Software; and
 - (iv) Project Specific IPR;

1.1.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 1.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

1.1.3 Without prejudice to the generality of the foregoing, the Supplier hereby assigns to the Customer absolutely with full title guarantee (including by way of present assignment of future rights) all rights, titles and other interest in and to the Project Specific IPR including:

- (a) the documentation, Source Code and Object Code of any and all Specially Written Software delivered as part of the Services;
- (b) all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting any Specially Written Software (together the **"Software Supporting Materials"**).

1.1.4 The Supplier:

- (a) shall:
 - (i) inform the Customer of all Specially Written Software that constitute a modification or enhancement to Supplier Software or software subsisting in Third Party IR; and
 - (ii) deliver to the Customer the Specially Written Software in both Source Code and Object Code forms together with relevant documentation and all related Software Supporting Materials within seven (7) days of completion of the relevant Deliverable and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Customer;
- (b) acknowledges and agrees that the ownership of the media referred to in Clause 1.1.4 (a) shall vest in the Customer upon their receipt by the Customer; and
- (c) shall execute all such assignments as are required to ensure that any rights in the Specially Written Software and Project Specific IPR are properly transferred to the Customer.

- 1.1.5 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.
- 1.1.6 Unless the Customer otherwise agrees in advance in writing, the Supplier shall not include (whether as addition, modification, enhancement or any other form) Supplier Background IPR, Supplier Software or Third Party IPR in any Project Specific IPR (including any Specially Written Software) which prevents their publication or other use of them by the Customer. Failure to seek prior approval gives the Customer the right to use all Project Specific IPR at sole discretion and will.
- 1.1.7 Should the Supplier become aware at any time, including after termination of this Agreement, that the Project Specific IPR (including any Specially Written Software) contain any Intellectual Property Rights for which the Customer does not have a licence, then the Supplier must notify the Customer within 10 days of what those rights are and which parts of the Project Specific IPR they are found in.
- 1.1.8 The Customer may publish any Specially Written Software (or other Deliverable that is software) as Open Source and unless the Customer otherwise agrees in advance in writing:
 - (a) it shall be created in a format, or able to be converted into a format, which is capable and suitable for publication by the Customer as Open Source software;
 - (b) where the software is written in a format that requires conversion before publication as Open Source software, the Supplier shall also provide the converted format to the Customer as Open Source software.
- 1.2 Licences granted by the Customer: Customer Background IPR, Customer Data, Customer Software and Project Specific IPR
 - 1.2.1 The Customer hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the term of this Agreement to use the Customer Background IPR, Customer Data, Customer Software and Project Specific IPR solely for the purposes of and only to the extent necessary for providing the Services to the Customer in accordance with this Agreement, such licence to include the right to grant sub-licences to Sub-contractors provided that:
 - (a) any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 11 (Confidentiality);
 - (b) any such Sub-contracts shall be non-transferable and personal to the relevant Sub-contractor unless the Customer agrees otherwise in writing; and
 - (c) the Sub-contractor shall not, without the Customer's prior written consent, use the aforementioned sub-licensed materials for any other purpose or for the benefit of any person other than the Customer.
 - 1.2.2 The Customer gives no warranty as to the suitability of any IPR licensed to the Supplier hereunder.
- 1.3 Licences granted by the Supplier: Supplier Background IPR and Supplier Software
 - 1.3.1 The Supplier hereby grants to the Customer a perpetual, royalty-free and non-exclusive licence to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)) the Supplier Background IPR and Supplier Software for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Customer's business or function.
- 1.4 Customer's right to sub-licence
 - 1.4.1 The Customer may sub-licence:
 - (a) the rights granted under Clause 1.3 (Licences granted by the Supplier: Supplier Background IPR and Supplier Software) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
 - (i) the sub-licence is on terms no broader than those granted to the Customer;
 - (ii) the sub-licence authorises the third party to use the rights licensed in Clause 1.3 (Licences granted by the Supplier: Supplier Background IPR and Supplier Software) only for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Customer's business or function; and
 - (iii) the sub-licence shall have executed a confidentiality undertaking in favour of the Supplier in or substantially in the form set out in annex 2 to schedule 5 of the model contract for services of the Crown Commercial Service (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/526359/Combined_Schedules_Model_Services_Contract_v1.04.pdf); and
 - (b) the rights granted under Clause 1.3 (Licences granted by the Supplier: Supplier Background IPR and Supplier Software) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Project Specific IPR and Supplier Software provided that:
 - (i) the sub-licence is on terms no broader than those granted to the Customer; and
 - (ii) The Supplier has received a confidentiality undertaking in its favour in or substantially in the form set out in annex 2 to schedule 5 of the model contract for services of the Crown Commercial Service (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/526359/Combined_Schedules_Model_Services_Contract_v1.04.pdf) duly executed by the Approved Sub-Licensee.
- 1.5 Customer's right to assign/novate licences
 - 1.5.1 The Customer:

- (a) may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to Clause 1.3 (Licences granted by the Supplier: Supplier Background IPR and Supplier Software) to:
 - (i) any of the bodies included in limbs (a) or (b) of the definition of “Approved Licensee”; or
 - (ii) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer.
- (b) Any change in the legal status of the Customer which means that it ceases to be a public body shall not affect the validity of any licence granted in Clause 1.3 (Licences granted by the Supplier: Supplier Background IPR and Supplier Software). If the Customer ceases to be a public body, the successor body to the Customer shall still be entitled to the benefit of the licence granted in Clause 1.3 (Licences granted by the Supplier: Supplier Background IPR and Supplier Software).
- (c) If a licence granted in Clause 1.3 (Licences granted by the Supplier: Supplier Background IPR and Supplier Software) is novated under Clause 1.5.1 (a) or there is a change of the Customer’s status pursuant to Clause 1.5.1 (b), the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Customer.

1.6 Third Party IPR

- 1.6.1 Before using any Third Party IPR (including in any third party software) in the provision of the Services, the Supplier shall submit to the Customer for the Customer’s written approval full details of any such Third Party IPR, the proposed licensing terms and all relevant information the Customer may request.
- 1.6.2 If the Third Party IPR are made available to the Customer on terms equivalent to the Open Government Licence v3.0, the Customer shall agree to the request for approval and the Supplier shall procure that the owner or the authorised licensor of such Third Party IPR has granted direct licences to the Customer over the Third Party IPR under those terms.
- 1.6.3 If the Third Party IPR are not made available on terms equivalent to the Open Government Licence v3.0, the Supplier shall procure that the owner or the authorised licensor of any Third Party IPR grant a direct licence to the Customer on terms at least equivalent to those set out in Clause 1.3 (Licences granted by the Supplier: Supplier Background IPR and Supplier Software) and Clause 1.5.1 (a) (Customer’s right to assign/novate licences). If the Supplier cannot obtain for the Customer a licence materially in accordance with the licence terms set out in Clause 1.3 (Licences granted by the Supplier: Supplier Background IPR and Supplier Software) and Clause 1.5.1(a) (Customer’s right to assign/novate licences) in respect of any such Third Party IPR, the Supplier shall:
 - (a) notify the Customer in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative providers which the Supplier could seek to use; and
 - (b) only use such Third Party IPR if the Customer has first approved in writing the terms of the licence from the relevant third party (and any necessary amendments to this Agreement).

Part C - Supplier ownership of project specific IPR

1. All intellectual property rights in any materials provided by the Customer to the Supplier for the purposes of this Agreement shall remain the property of the Customer but the Customer hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Supplier to perform its obligations under the Agreement.
2. All intellectual property rights in any materials created or developed by the Supplier pursuant to the Agreement or arising as a result of the provision of the Services shall vest in the Supplier. If, and to the extent, that any intellectual property rights in such materials vest in the Customer by operation of law, the Customer hereby assigns to the Supplier by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).
3. The Supplier hereby grants the Customer:
 - 3.1 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use all intellectual property rights in the materials created or developed pursuant to the Agreement and any intellectual property rights arising as a result of the provision of the Services; and
 - 3.2 a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:
 - (a) any intellectual property rights vested in or licensed to the Supplier on the date of the Agreement; and
 - (b) any intellectual property rights created during the Term but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Services,

including any modifications to or derivative versions of any such intellectual property rights, which the Customer reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services provided.
4. The Supplier shall indemnify, and keep indemnified, the Customer in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff.

SCHEDULE 2: DATA PROTECTION

Section 1

The following capitalised words or expressions shall have the following meaning in this Agreement:

Law: means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;

Controller: has the meaning given to it in the GDPR;

Data: has the meaning given to it in the GDPR;

Data Protection Legislation: means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time; (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

Data Protection Impact Assessment: means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

Data Protection Officer: has the meaning given to it in the GDPR;

Data Subject: has the meaning given to it in the GDPR;

Data Loss Event: means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under the Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of the Agreement, including any Personal Data Breach;

Data Subject Request: means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

DPA 2018: means the Data Protection Act 2018;

GDPR: means the General Data Protection Regulation (*Regulation (EU) 2016/679*);

Joint Controllers: means where two or more Controllers jointly determine the purposes and means of processing;

LED: means the Law Enforcement Directive (*Directive (EU) 2016/680*);

Personal Data: has the meaning given to it in the GDPR;

Personal Data Breach: has the meaning given to it in the GDPR;

Processor: has the meaning given to it in the GDPR;

Processor Personnel: means all directors, officers, employees, agents consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement;

Protective Measures: means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it including those outlined in paragraph 7 of the Award Letter;

Sub-processor: means any third Party appointed to process Personal Data on behalf of the Supplier related to the Agreement.

Section 2

The following provisions shall apply to this Agreement:

1. DATA PROTECTION

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor unless otherwise specified in Annex B to this Schedule 2. The only processing that the Processor is authorised to do is listed in Annex A of this Schedule 2 by the Controller and may not be determined by the Processor.
- 1.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 1.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

1.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with Annex A of this Schedule 2, unless the Processor is required to do otherwise by Law. If it is so required, the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that:
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Annex A of this Schedule 2);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

1.5 Subject to clause 1.6, the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- 1.6 The Processor's obligation to notify under clause 1.5 shall include the provision of further information to the Controller in phases, as details become available.
- 1.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Data Loss Event;
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 1.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
 - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 1.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 1.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Controller;
 - (c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this clause 1 such that they apply to the Sub-processor; and
 - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 1.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 1.13 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Where the Parties include two or more Joint Controllers as identified in Annex B in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Annex C in replacement of Clauses 1.1 – 1.14 for the Personal Data under Joint Control.

Annex A to Schedule 2

1. The Supplier shall process any and all Personal Data provided to it under the Agreement:
 - (a) solely for the purpose of and only to the extent necessary for delivering the Services to the Customer under the Agreement;
 - (b) In accordance at all times with:
 - (i) the terms of the Agreement;
 - (ii) the terms of any supplemental confidentiality or data processing agreement between the Parties;
 - (iii) the Data Protection Legislation; and
 - (c) in observance at all times of NHS Improvement's [Information & Data Handling Policy](#), as updated from time to time.
2. The Customer reserves the right to update and specify from time to time the categories of Personal Data, Data Subject and any relating information which form part of the Supplier's authorised Processing of Personal Data under the Agreement. Both Parties acknowledge and agree that this shall not require a formal Variation to the Agreement, but such updates shall be in furtherance to this Schedule 2 and come into effect from the Customer setting out this further detail in writing to the Supplier.

Annex B to Schedule 2 – Processing, Personal Data and Data Subjects

This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are: **[Guidance: Insert Contact details]**
2. The contact details of the Processor's Data Protection Officer are: **[Guidance: Insert Contact details]**
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor in accordance with Clause 1.1.</p> <p>[Guidance: You may need to vary this section where (in the rare case) the Customer and Contractor have a different relationship. For example, where the Parties are Joint Controller of some Personal Data:</p> <p><i>"Notwithstanding Clause 1.1 the Parties acknowledge that they are also Joint Controllers for the purposes of the Data Protection Legislation in respect of: [Insert the scope of Personal Data which the purposes and means of the processing is determined by the both Parties]"</i></p> <p><i>In respect of Personal Data under Joint Control, Clause 1.1 – 1.15 will not apply and the Parties agree to put in place a Joint Controller Agreement as outlined in Annex C to Schedule 2 instead."</i></p>
Subject matter of the processing	<p>[Guidance: This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.</p> <p><i>Example: The Processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public.]</i></p>
Duration of the processing	[Guidance: Clearly set out the duration of the processing including dates]
Nature and purposes of the processing	<p>[Guidance: Please be as specific as possible, but make sure that you cover all intended purposes.</p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i></p>
Type of Personal Data being processed	[Guidance: Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]
Categories of Data Subject	[Guidance: Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students/ pupils, members of the public, users of a particular website etc]
Plan for return and destruction of the data once the processing is complete	[Guidance: Describe how long the data will be retained for, how it will be returned or destroyed]
UNLESS requirement under union or member state law to preserve that type of data	

Annex C to Schedule 2 - Joint Controller Agreements

[Guidance: *insert this Annex C only where Joint Controller applies in Annex B to Schedule 2, otherwise please delete drafting and replace with "N/A"]*

[Guidance: *In this Annex the Parties must outline each party's responsibilities for:*

- *providing information to data subjects under Article 13 and 14 of the GDPR*
- *responding to data subject requests under Articles 15-22 of the GDPR*
- *notifying the Information Commissioner (and data subjects) where necessary about data breaches*
- *maintaining records of processing under Article 30 of the GDPR*
- *carrying out any required Data Protection Impact Assessment*
- *The agreement must include a statement as to who is the point of contact for data subjects.*

The essence of this relationship shall be published.

You may wish to incorporate some clauses equivalent to those specified in Clause 1.2 – 1.14.

You may also wish to include an additional clause apportioning liability between the parties arising out of data protection; of data that is jointly controlled.

Where there is a Joint Control relationship, but no controller to processor relationship under the contract, this completed Annex C should be used instead of Clause 1.1 – 1.15

SCHEDULE 3 - CHARGES

[Guidance: *Insert agreed Charges schedule*]

SCHEDULE 4 – SPECIFICATION

[Guidance: *insert agreed services specification*]