

Access and Identity Management Service (AIMS)

Terms and Conditions of Contract FINAL

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2. Basic Details

2.1	NAME AND ADDRESS OF CONTRACTOR (including Company Registration Number if relevant)	Jisc Services Ltd 4 Portwall Lane Bristol BS1 6NB
2.2	DESCRIPTION OF CONTRACTOR	Jisc provides digital solutions for UK education and research.
2.3	DESCRIPTION OF SERVICES	Access and Identity Management Service
2.4	NICE BUDGET HOLDER	[REDACTED]
2.5	NICE COMMISSIONING MANAGER	[REDACTED]
2.6	NOMINATED MANAGER OF CONTRACTOR	[REDACTED]
2.7	CONTRACTOR AUTHORISED SIGNATORY	[REDACTED]
2.8	DATE AGREEMENT SIGNED	27 May 2022
2.9	DATE AGREEMENT COMES INTO EFFECT (IF DIFFERENT FROM ABOVE)	01 05 2022
2.10	DATE AGREEMENT ENDS (IF FIXED DATE)	30 04 2025
2.11	AGREEMENT NUMBER	[REDACTED]
2.12	NICE BUDGET CODE	

It is agreed as follows:

3. Definitions

3.1. Interpretations

Acceptance Completion Date	means any date, contained in by which the Contractor undertakes to have met the acceptance criteria for the implementation of the Services, as detailed in Annex 4.
Acceptance Test	means a test or sequence of tests specified in Annex 4 to be performed in order to establish, by compliance with acceptance criteria, that the Services conform to the Obligations of the Contractor.
Access Management Federation (AMF)	A single solution to accessing digital knowledge resources and services. Participating organisations use SAML compatible technology, such as Shibboleth and OpenAthens, which adhere to comprehensive technical standards to connect Users to resources and services.
Activation State	State defining whether a User Account has been activated. Activation State types are non-activated or activated.
Administration Website	A web browser-based administration interface provided as part of The Service for Administrators to manage their Organisational Entities, Users and Content.
Administrator	Individual who is responsible for managing Organisational Entities, Users and Content through the Administration Website. An Administrator may be responsible for one or more Organisational Entity.
Administrator Account	Dedicated User Account through which Administrators manages their Organisational Entities' User Accounts.
Agreement	means this agreement concluded between the Authority and the Contractor including: <ul style="list-style-type: none">(a) the clauses contained herein;(b) the Annexes attached hereto; and(c) such variations in writing as shall be agreed by the Authority and the Contractor according to the provisions of clause 32 (Variations to the Agreement).
Agreement Change	Any change or variation to this agreement subject to clause 32 and as detailed in any Annex 7 agreed by both parties throughout the term of this agreement.

Agreement Charge or Agreement Price	The agreed fee for the services under this Agreement as defined in Annex 3 or any amended fee as defined in any Variation to Agreement Annex 7.
AIMS	Access and Identity Management Service.
Allowlist	A list of IP addresses or email domains that can be used to verify the User's eligibility for a User Account.
Annexes	All Annexes to the Agreement, which are: Annex 1 – The Services Specification Annex 2 – Service Level Agreement and Key Performance Indicators Annex 3 – Payment Schedule Annex 4 – Implementation and Transition, Acceptance and Liquidated Damages Annex 4a – Acceptance Criteria Annex 5 - Sub-contractors Annex 6 – Contractors and Third Party Hardware and Software Annex 7 – Variation to Agreement Annex 8 – Data Protection
API	Application Program Interface. A set of routines, protocols, and tools for building software applications. The API specifies how software components interact.
Applicant	Individual who has applied for a User Account.
Authentication	Process of verifying that the User attempting to access Content is who they claim to be.
Authorisation	Process of verifying that a User attempting to access digital knowledge resources is permitted to access the Content.
Authority	National Institute for Health and Care Excellence (NICE).
Authority Personal Data	any personal data supplied by the Authority, or data for which the Authority is the Data Controller.
Background IPR	Means any Intellectual Property owned by either Party prior to the commencement of this Agreement.
Commissioning Manager	the person appointed by the Authority to manage this Agreement.
Confidential Information	means information, data and material of any nature which either Party may receive or obtain in connection with the operation of the Agreement and:

- (a) which comprises Personal Data or Sensitive Personal Data (as both terms are defined in the Data Protection Act 1998) or which relates to any patient of the Authority or his or her treatment or medical history;
- (b) the release of which is likely to prejudice the commercial interests of the Authority or (as the case may be) any Beneficiary or the Contractor respectively; or
- (c) which is a trade secret.

Content	Digital knowledge resources, such as journals, bibliographic databases, point of care resources and e-books, appropriate for staff working in health and social care settings published by Content Providers.
Content Activity	User activity on a specified digital knowledge resource. Please note, Content Activity may also be tracked by the relevant Content Provider.
Content Provider	A publisher of Content provided to the NHS and health and social care related organisations. An illustrative list of Content Providers is provided in Appendix 1 .
Contractor	the organisation in 2.1 or any partner, employee, agent, sub-contractor or other lawful representative of the organisation in 2.1; the service provider contracted to deliver the AIMS service.
Contractor Premises	means any Contractor's building or location where facilities are installed for the purposes of providing the Services.
Contractor Software	means the Software which is listed as such in Annex 6 to be supplied by the Contractor for use in the provision of the Services whether such Software is owned by the Contractor or by a third party.
Contractual Date	Any date as defined in this Agreement or the Annexes or in writing by both parties subject to this Agreement.
Credit	A sum of money owed by either party to the other.
Credit Note	A credit to be issued to the Authority for any payment invoiced by the Contractor that: <ul style="list-style-type: none"> • should not have been charged; or • in error of any invoice charge; or • any chargeable Service Credit charge; or • any chargeable Liquidated Damage charge.
Controller	means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria

for its nomination may be provided for by Union or Member State law.

Data	means all information stored in the user directory database, including but not limited to; titles; names; full postal addresses; entity; organisation name and type; email addresses; telephone numbers; role, position and job type; access and activation status; eligibility status expiry dates; acceptance and approval terms and conditions (DPA).
Data Loss Event	means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
Data Protection Act	Refers to the Data Protection Act 2018.
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 Legislation	means (a) any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction which relates to the protection of individuals with regards to the Processing of Personal Data to which a Party is subject for the purposes of this Agreement, including the Data Protection Act 2018 and the General Data Protection Regulation 2016/679 (EU GDPR) as each is amended in accordance with the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended by SI 2020 no. 1586) and incorporated into UK law under the UK European Union (Withdrawal) Act 2018, as amended to be referred to as DPA 2018 and the UK GDPR respectively; and (b) any code of practice or guidance published by the ICO or European Data Protection Board from time to time;
Data Protection Officer	take the meaning given in the UK GDPR
Data Subject	take the meaning given in the UK GDPR
Data Subject Access 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.
Database	means the rights in or to the content and database schema of the databases developed and supplied by the Contractor to the Authority in accordance with the terms of this Agreement (excluding all database Third Party Software).

Deed of Novation	means an Agreement between all parties which novates all contractual responsibilities of the Authority to another organisation not party to this Agreement and that organisation shall be wholly responsible for the Agreement and the Authority released of any responsibility under the Agreement from the effective date of the Deed of Novation.
Default	means any breach of the obligations of either party, (including but not limited to fundamental breach or breach of a fundamental term), or any default, act, omission, negligence or statement of either party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of the Agreement and in respect of which such party is liable to the other hereunder.
Deliverable	Any of the services as defined in the Service Specification, Service Level Agreement, Milestones, Implementation and Transition and any agreed Variation to Agreement Annexes.
Documentation	means such manuals, reports, drawings, specifications, training materials, use policies, plans and other documents, in each case relating to the Services (or any part of the Services), that are developed by the Contractor or any sub-contractor for the Authority and/ or which are jointly developed by the Contractor or any sub-contractor with the Authority.
Eligibility Criteria	Criteria agreed with Content Providers of nationally procured Content describing who is entitled to access it, and therefore who is entitled to a User Account. The current Eligibility Criteria are set out at: https://www.nice.org.uk/about/what-we-do/evidence-services/journals-and-databases/openathens/openathens-eligibility
Eligibility State	State defining whether a User is eligible to access Content. Eligibility State types are eligible, pending and ineligible.
Exception	means a Service failure or the failure to achieve any Service Level or resolve any failure as defined in Annex 2 Service Level Agreement, Key Performance Indicators (KPI) and Reporting excel spreadsheet that has exceptional circumstances for that failure that the Contractor considers out of its control or where the Contractor is using its best endeavours to resolve but is unachievable within the Service Level for exceptional reasons.
Exit Management	the obligations and rights of the respective Parties pertaining to managing a smooth transition from the provision of the Services by the Contractor to the provision of replacement services by the Authority or any replacement contractor.

Exit Plan	means the detailed plan to be specified 6 months prior to the Agreement end or termination date, to ensure a smooth transition from the provision of the Services by the Contractor to the provision of replacement services by the Authority or any replacement contractor.
Failure Level	means the point at which or the percentage of which a Service Level is not achieved as defined in Annex 2_Service Level Agreement, Key Performance Indicators (KPI) and Reporting excel spreadsheet.
Force Majeure	means one or more of the following to the extent that it is not attributable to the Contractor or the Contractor's staff: war, civil war (whether declared or undeclared), riot or armed conflict; radioactive, chemical or biological contamination; pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speed; acts of terrorism; explosion; fire; flood; extraordinarily severe weather conditions which are both unforeseen and for which precautions are not customarily taken by prudent business organisations so as to avoid or mitigate the impact thereof; industrial action which affects the provision of the Deliverable(s), but which is not confined to the workforce of the Contractor or is site specific; pestilence; the actions of governmental authorities to the extent that such actions are implemented either pursuant to emergency powers or otherwise outside the usual course of governmental business; or Act of God, or other event which is beyond the reasonable control of the Party in question and could not have been avoided or mitigated by the exercise of all reasonable care by that Party and further provided that such event materially affects the ability of the Party seeking to rely upon it to perform its obligations under the Agreement.
GDPR	means the General Data Protection Regulation (<i>Regulation (EU) 2016/679</i>)
Identity Provider (IdP)	Responsible for (a) providing identifiers for Users looking to interact with a system, (b) asserting to such a system that such an identifier presented by a User is known to the provider, and (c) providing other information about the User that is known to the provider.
Implementation	means the implementation and delivery of any service as detailed in Annex 4.
Implementation Charge	means the portion of the fee chargeable by the contractor to the Authority for the implementation of any deliverable or service as defined in Annex 4.

Implementation Liquidated Damages	means a sum of money specified in clause 13 and Annex 4 - 4.8, for each day of delay or until the service is implemented or the Contract is terminated, whichever is sooner.
Intellectual Property Rights (IPR)	means patents, trademarks, service marks, domain names, registered designs, utility models, applications for and the right to make applications for any of such rights, inventions, know-how, unregistered trademarks and service marks, trade and business names, including rights in any get-up or trade dress, copyrights (including rights in computer software), unregistered design rights and other rights in designs and copyright in databases; the sui generis right for the maker of a database to prevent extraction or re-utilisation or both of the whole or a substantial part of the content of that database, as described in the Copyright and Rights in Databases Regulations 1997 (S.I. 1997 No. 3032); and rights of the same or similar effect or nature as or to those in paragraphs above.
Key Performance Indicator (KPI)	means the metrics used to quantify the performance of the Contractor and monitor adherence to the Service Level Agreement as defined in Annex 2.
Liquidated Damages	means the charges payable under clause 13 and Annex 4 - 4.8.
Liquidated Damages Period	means the period of time that the Liquidated Damages apply as defined in clause 13 and Annex 4 - 4.8.
Location	means any premises of the Authority.
Milestone	the Milestones as set out in Annex 4.
National Administrator	Global system Administrator who has access to all Organisational Entities and Users and who can define system policies.
NICE	National Institute for Health and Care Excellence of Level 1 City Tower, Piccadilly Plaza, Manchester, M1 4BT.
Obligations of the Contractor	means the statements contained in clause 6 and Annex 1, 2, 3 and 5 which specify: <ul style="list-style-type: none"> (a) Services that the Contractor undertakes to provide and the functions and performance that such Services shall meet in all material respects; and (b) operational responsibilities in respect of such Services as the Contractor undertakes; (c) implementation responsibilities in respect of such Services as the Contractor undertakes; and

(d) Service Levels in accordance with which the Contractor undertakes to perform the Services.

Organisational Entity	A set of Users to which Content Providers grant access to their Content. A set of users may come from a single organisation, or more than one organisation grouped together within the system for administration purposes.
Party	The Authority and the Contractor, as detailed in 2.1.
Personal Data	means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
Personal Data Breach	means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed.
Planned Acceptance Date	means the Milestone date by which it is planned that the Contractor shall have met the acceptance criteria for the implementation of the Services, as detailed in Annex 4.
Premises	means any location or premises of the Contractor where the Services are delivered.
Priority Level	the priority rating given to defects impacting the complete delivery of the Service implementation.
Processor	means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller.
Processing	means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, 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.
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 the such measures adopted by it.
SAML	Security Assertion Markup Language. XML-based open standard for exchanging Authentication and Authorisation data between identity providers and Content Providers.
Scheduled Downtime	A period of time, planned and agreed in advance, during which The Service will be unavailable to Users to enable the Contractor to perform essential maintenance on The Service.
Services	the Services detailed in Annex 1, Annex 2 and Annex 4.
Sensitive Personal Data	as defined in the Data Protection Act 1998.
Service Continuity Damages	means a sum of money specified in clause 13 and Annex 4 – 4.8, for any delay over the specified timetable contained in Annex 4.
Service Credit	means a credit applicable to the quarterly service charge that results from the failure of the AIMS as detailed in clause 13.2 and Annex 2.
Service Level Agreement	means the agreement in Annex 2 that records the common understanding about services and responsibilities.
Service Levels	means the standards of service or service objectives which the Contractor is required to achieve in the performance of Services details of which are contained in Annex 2_Service Level Agreement, Key Performance Indicators (KPI) and Reporting excel spreadsheet.
Service Transfer	any transfer of the Services (or any part of the Services), from the Contractor or any sub-contractor to the Authority or a third party supplier for any reason including upon the termination, partial termination or expiry of this Agreement.
Software	means any Contractor or Third Party Software or any of them, listed as such in Annex 6.
Source Code	software in eye-readable form and in such form that it can be compiled or interpreted into equivalent object code together with all technical information and documentation necessary for the use, reproduction, modification, enhancement and support of such software without recourse to any other document, materials or person;
Specification	the services detailed in Annex 1.

State	Stage in lifecycle of a User Account. All User Accounts have two State types, (a) an Activation State and (b) an Eligibility State.
Sub-processor	means any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement
Technical Changes	Any major changes or development that will impact the Services and / or require the Authority to make any associated digital development, including renewal or update of the Services software.
Termination Consideration Date	means any date as defined in Annex 4 where the Authority may exercise its rights to terminate the contact.
Test Criteria	The criteria on which the Acceptance Testing will be measured as set out in Annex 4.
Testing	any testing to be carried out under this Agreement as further described in Annex 4.
Testing Procedure	the procedure for carrying out Tests for the Service Deliverables detailed in Annex 4
Test	any test set out in the Testing Procedure, any Additional Services Implementation Tests, and any other tests agreed throughout the Agreement term.
The Authority	The contracting authority, in this case NICE.
The Service	The Access and Identity Management Service consisting of the Identity Provider and the Access Management Federation.
Third Party Content	the information and other content used for the Services, owned by a third party and sourced and supplied by the Contractor, as listed in Annex 6.
Third Party Losses	<p>any losses, costs, expenses, charges, damages or other liabilities incurred by the Authority:</p> <p>(a) in connection with the Authority putting in place alternative arrangements for users of the Services to access content, where Services Users are unable to access content by using the Services as a result of any breach of this Agreement by the Contractor; and/or</p> <p>(b) in connection with any claims, proceedings, suits or actions brought against the Authority by any third party (including, without limitation, a user of the Services, or a supplier of content for the Services) which arise out of, or in respect of, or in connection with, any breach of this Agreement by the Contractor.</p>

Third Party Software	software, the IPR in which are: (a) owned by a third party (other than any of the Contractor's affiliates); and (b) used by the Contractor to provide the Services, listed in Annex 6.
Transition	means a deliverable(s) required to achieve the transfer of responsibility for the provision of Services between parties with the minimum disruption to processing the Authority's workload, whether at the commencement of the Services (the assumption of responsibility by the Contractor for the provision of the Services) or on discontinuance of Services by the Authority (transfer of responsibility between the Contractor and the Authority or its third-party contractor).
Transition Plan	means any agreed plan between the parties where any Deliverables and Contractual Dates are required to achieve any transition of the services.
TUPE	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and any subsequent amendment or statute replacing such regulations as it may apply to the Agreement.
UK government Transparency Agenda	Procurement Transparency as detailed at https://www.gov.uk/government/policies/government-transparency-and-accountability .
User	Individuals who meet the Eligibility Criteria set out at: https://www.nice.org.uk/about/what-we-do/evidence-services/journals-and-databases/openathens/openathens-eligibility and are entitled to a User Account.
User Account	The individual account through which Users can manage their account details.
Virus	means any Software intended to corrupt, destroy or otherwise damage or interfere with the use of Software or other Software or data owned by or under the control of the Authority whether such Software is introduced wilfully or negligently.

4. Agreement

- 4.1. In consideration of the Authority making certain payments to the Contractor, the Contractor has agreed to provide the Services to the Authority on the terms and conditions of this Agreement and the specification of requirements as detailed in Annex 1.

- 4.2. The payments for the Services are fixed and no further payments shall be made by the Authority as defined in Annex 3, unless varied under clause 32, Annex 7 Variation to Agreement and agreed by both parties.

5. Term

- 5.1. This agreement shall commence on the date shown in 2.9 and shall continue until the expiry date as shown in 2.10 unless terminated earlier under clause 28.
- 5.2. This Agreement may be extended on mutual agreement by both parties for a maximum of 2 x 12 month periods.
- 5.3. The provision of the Implementation Services shall commence on the date this agreement commences, as shown in 2.9. The Implementation period shall be completed no later than the 30th April 2022.
- 5.4. Subject to 5.3, the provision of the Live Services shall commence on the 1st May 2022. Where delays have occurred subject to clause 11 (Delays), 12 (Extension of time) and 13 (Liquidated Damages and Service Credit Liability) then the Live Services shall commence on the day following the Acceptance Completion Date of the Services as detailed in Annex 4.
- 5.5. Except for those clauses 9 (Transition on Expiry or Termination), 14 (Liability), 15 (Limitation of Liability), 16 (Insurance) 22 (Intellectual Property), 24 (Confidentiality), 24 and Annex 8 (Data Protection), 25 (Data Security), 28 (Termination), 31 (Dispute Resolution), 35 (TUPE), 36.6 (Governing Law) and which shall continue after this Agreement terminates, this Agreement shall begin on the date set out in clauses 2.9 and end on the date set out in clause 2.10. If there is no date in clause 2.10 then this Agreement shall continue until the Services are completed to the satisfaction of the Authority or such other time as shall be notified by the Authority to the Contractor.

6. Obligations of the Contractor

6.1. The Services

- 6.1.1. The Contractor shall carry out the Services in accordance with Annex 1 and to a quality acceptable to the Authority as per Annex 2, Service Level Agreement and Key Performance Indicators.
- 6.1.2. The Contractor shall invoice the Authority quarterly, in arrears, and in accordance with clause 20.1, 20.3, and 20.4.
- 6.1.3. No material changes to the Services shall be permitted without the written consent of the Commissioning Manager.
- 6.1.4. No significant Technical Changes shall be made to the services unless the Contractor has notified the Authority in writing, giving no less than ninety (90) days prior notice before which changes are made.
- 6.1.5. The Contractor shall achieve the milestones set out in Annex 4.

- 6.1.6. If any dispute is resolved so that monies are due from the Contractor to the Authority such monies shall be repaid forthwith.

6.2. Sub-Contractors

- 6.2.1. The Contractor shall ensure that any sub-contractors it uses adhere to the obligations of this Agreement as if the sub-contractors were the Contractor.
- 6.2.2. A list of sub-contractors approved by the Authority at the date of signature of the Agreement is contained in Annex 5.
- 6.2.3. Notwithstanding any sub-contracting permitted hereunder, the Contractor shall remain responsible for the acts and omissions of its sub-contractors as though they were its own.
- 6.2.4. Contracts between the Contractor and any approved sub-contractors shall contain terms, conditions and obligations as may be necessary to enable the Contractor to meet all its obligations to the Authority under this Agreement.

6.3. Instructions

- 6.3.1. The Contractor shall comply with the reasonable instructions of the Commissioning Manager which are consistent with the terms and objectives of the Agreement and, if the Contractor is working in the Authority's premises, with the office rules of the Authority.

6.4. Financial Control

- 6.4.1. The Contractor shall keep accurate books and accounts in respect of the Services and, if requested in writing by the Authority, shall (at its own expense) have them certified by a professional firm of auditors.
- 6.4.2. The Contractor shall permit the Authority to inspect and take copies (at the Authority's expense) of any financial information or records the Authority requires which relate to this Agreement.

6.5. Communication

- 6.5.1. The Contractor shall ensure that all communications with the Authority concerning the Services shall only be between the nominated representatives of both Parties, that is, the Authority's Commissioning Manager who shall be the manager nominated by the Authority from its own staff, or such other person as the Authority shall nominate in writing and the nominated manager of the Contractor.

6.6. Laws and Regulation

- 6.6.1. The Contractor shall adhere to all laws and regulations relating to the provision of the Services.

- 6.6.2. The Contractor shall comply in all material respects with applicable environmental laws and regulations in force from time to time in relation to the Services. Where the provisions of any such legislation are implemented by the use of voluntary agreements or codes of practice, the Contractor shall comply with such agreements or codes of practices as if they were incorporated into English law subject to those voluntary agreements being cited in tender documentation.
- 6.6.3. While at the Location, the Contractor shall comply, and shall ensure that its employees comply with, the requirements of relevant Health and Safety and other relevant legislation, including regulations and codes of practice issued there under, and with the Authority's and any Beneficiary's own policies and procedures.
- 6.6.4. The Contractor shall at all times maintain a specific Health and Safety at Work policy relating to the employment of his own staff whilst carrying out their duties in relation to the Agreement on the Authority's or any Beneficiary's premises. The Contractor shall ensure the co-operation of its employees in all prevention measures designed against fire, or any other hazards, and shall notify the Authority of any change in the Contractor's working practices or other occurrences likely to increase such risks or to cause new hazards.

7. Obligations of the Authority

7.1. Monitoring

- 7.1.1. The Authority shall monitor the provision of the Services at its discretion. To assist in this, the Contractor shall provide such written reports as the Authority shall reasonably request.
- 7.1.2. The Authority shall use its best endeavours to meet its obligations under this agreement and those specified in Annex 4.

8. Timetable and Milestones

- 8.1. The Contractor shall implement the Services according to the timetable contained in Annex 1 and 4.
- 8.2. The timetable shall contain planned dates for major events in the implementation of the Services including:
- a Planned Acceptance Date for the Services; and
 - an Acceptance Completion Date in respect of the Services, which if no such date is specified in Annex 4, shall be thirty (30) days after the Planned Acceptance Date. The Acceptance Completion Date for Services shall be a Contractual Date.
- 8.3. Delay or failure by the Contractor to meet any Contractual Date contained in the timetable specified shall be subject to the provisions of clause 11 (Delays), 12,

(Extension of Time), 13 (Liquidated Damages and Service Credit Liability), and 14, (Liability, Indemnity and Insurance).

9. Transition

9.1. Transition at Commencement

- 9.1.1. At commencement of this Agreement the Contractor shall co-operate in the development and implementation of the services under arrangements notified by the Authority.
- 9.1.2. Within any period specified in Annex 4 for such purpose or if no such period is stated in Annex 4 within twenty (20) working days of the date of commencement of the Agreement, the Contractor shall prepare a detailed plan for the completion of Transition incorporating the timetable dates contained in Annex 4 and obtain agreement to such plan by the Authority, such agreement not to be unreasonably withheld or delayed.
- 9.1.3. Within any period specified in Annex 4 for such purpose or if no such period is stated in Annex 4 within sixty (60) working days of the date of commencement of the Agreement or any other such period to be mutually agreed between the Parties, the Contractor and the Authority shall prepare a detailed acceptance criteria for the completion of Testing and Transition incorporating the timetable dates contained in Annex 4 and obtain agreement to such plan by the Authority, such agreement not to be unreasonably withheld or delayed.
- 9.1.4. The Transition shall include a period of trial operation. Any Service Levels to be achieved during such period shall be specified in Annex 4. The duration of such period of trial operation shall be specified in the Transition and may end, as specified therein, on or after acceptance of the Services (as specified in Annex 4).

9.2. Transition at Expiry or Termination

- 9.2.1. At expiration or termination of this Agreement the Contractor shall reasonably co-operate in the transfer to the new service Contractor under arrangements notified by the Authority in a written Exit Plan to be agreed 6 months prior to the end of this Agreement or on notification of termination.
- 9.2.2. Transfer of responsibility for facilities made available to the Contractor shall be the subject of a mutually agreed inventory between the interested parties at the time of transfer. The transfer shall be arranged between the Authority and the Contractor so as to reasonably reduce any interruption of the Services.
- 9.2.3. At expiration or termination of the Agreement the Contractor shall, subject to clause 22, hand-over all files, records, documents, plans, drawings, data and / or databases etc., how so ever generated under this Agreement, to the Authority or person or persons designated by the Authority, an inventory of such to be detailed in a written Exit Plan.

9.2.4. Skills Transfer

- 9.2.4.1. The Contractor shall arrange for the transfer of skills to be undertaken at the request of the Authority and to the specification agreed between the Authority, Contractor and appropriate third parties, in a written Exit Plan.

10. Acceptance

10.1. Acceptance process

- 10.1.1. The Services shall be required to meet the Acceptance Criteria specified in Annex 4 and 4a before being accepted by the Authority. The Authority shall notify the Contractor in writing of acceptance, such notification not to be unreasonably withheld or delayed, with the date on which such criteria were met in all material respects. Such date shall be the Acceptance Completion Date in respect of the Services. Acceptance of the Services may be completed in phases as indicated in Annex 4.
- 10.1.2. The Authority shall conduct Acceptance Tests and other acceptance procedures and the respective responsibilities of the parties in the performance of such tests and procedures shall be as specified in Annex 4.
- 10.1.3. In any event the Acceptance Completion Date shall be deemed to have occurred:
- 10.1.3.1. on the date which the Authority uses the Services for reasons other than Testing; or
- 10.1.3.2. ten (10) days after completion of the Acceptance Tests if the Authority fails to issue a certificate of acceptance or non-acceptance within such period.

10.2. Acceptance Tests

- 10.2.1. Following implementation of the Services in accordance with the timetable contained in Annex 4, the Contractor shall prepare for Acceptance Tests and notify the Authority when ready. On being so notified, the Authority shall conduct the relevant Acceptance Tests by the appropriate Planned Acceptance Date and if the relevant acceptance criteria specified in Annex 4 and 4a are met in all material respects, the Authority shall notify the Contractor of acceptance.
- 10.2.2. If Acceptance Tests show that the Services do not meet the relevant acceptance criteria specified in Annex 4a in any material respect, the Authority shall notify the Contractor of such failure without undue delay. The Contractor shall thereupon undertake all necessary steps to rectify such failure at no additional cost to the Authority and re-submit the Services for re-testing. If the relevant acceptance criteria are met in all material respects, the Authority shall notify the Contractor of acceptance.

10.3. Failure to gain acceptance

10.3.1. Failure to meet Planned Acceptance Date(s)

10.3.1.1. If the Services have failed to meet the required acceptance criteria specified in Annex 4a in any material respect by the Planned Acceptance Date(s) specified in relation to them, unless the provisions of clause 12.3 or 12.5 (Extension of Time) apply, without prejudice to any other remedies available to the Authority, it shall be entitled in respect of and as appropriate to such failure, to:

- a) grant further periods of time during which the Contractor shall be required to submit or re-submit the Services to the relevant Acceptance Tests in accordance with clause 10.2.2, 12.1 and 12.2 as applicable; or
- b) accept such Services and pay such amended Implementation Charge, if any, and / or apply such amended Agreement Charges as shall be agreed upon and the resulting changes to the Agreement shall be treated as amendments in accordance with clause 32 and subject to Annex 7.

10.3.1.2. If the Services have failed to meet the required acceptance criteria specified in Annex 4a in any material respect by the Planned Acceptance Date specified in relation to them, a grant of additional time under the provisions of clause 10.2.2, 12.1 or clause 12.2 shall not imply any change in the timetable in Annex 4 or be interpreted to mean that any subsequent Planned Acceptance Date or Acceptance Completion Date have been or shall be changed.

10.3.2. Failure to meet Acceptance Completion Date

10.3.2.1. If the Services have failed to meet the required acceptance criteria specified in Annex 4a in any material respect by the Acceptance Completion Date specified in relation to them, unless the provisions of clause 12.4 or 12.5 (Extension of Time) apply, the Contractor shall be deemed to be in default, thereon, without prejudice to any other remedies available to the Authority, it shall be entitled in respect of and as appropriate to such failure, to:

10.3.2.1.1. grant further periods of time during which the Contractor shall be required to submit or re-submit the Services to the relevant Acceptance Tests in accordance with clause 10.2.2, 12.1 and 12.2 as applicable; or

10.3.2.1.2. accept such Services and pay such amended Implementation Charge, if any, and / or apply such amended Agreement Charges as shall be agreed upon and the

resulting changes to the Agreement shall be treated as amendments in accordance with clause 32 and subject to Annex 7; or

- 10.3.2.1.3. terminate the Agreement.
- 10.3.2.2. If the Authority grants a further period of time under the provisions of clause 12.1 and the Contractor has failed to meet the relevant acceptance criteria before expiry of such period, the Authority shall be entitled, at that time, to exercise any of remedies to which it is entitled under clause 13.1.
- 10.3.2.3. If the Contractor's failure to meet the Acceptance Completion Date is due to a delay by the Authority, the provisions of clause 12.4 (extension of time) shall apply and the Acceptance Completion Date may be rescheduled as an amendment to the Agreement in accordance with clause 32. The Contractor shall not be liable for any Liquidated Damages where delay is by the Authority.
- 10.3.2.4. In the event that, subject to clause 12.5 and clause 29 (Force Majeure), the Acceptance Tests in respect of the Services have not commenced by the Acceptance Completion Date, unless the provisions of clause 12.1 (Extension of Time) apply, any damages payment under clause 13.1 (Liquidated Damages), which would have become due on failure of completion of such Acceptance Tests shall be delayed by:
 - 10.3.2.4.1. by an equivalent period of extension time, equal to the Force Majeure delay.
- 10.3.2.5. Any acceptance of delay(s), subject to clause 13.1, by the Authority shall not be construed as a waiver by the Authority of the damages payable, and in the event of any subsequent failure of the Services to meet the required acceptance criteria such damages payments detailed in clause 13 shall remain applicable.

11. Delays

- 11.1. The provisions of clause 11.1 or 11.2 shall apply to delay by the Contractor in meeting any Contractual Dates, notwithstanding the previous application of such provisions to delay or failure by the Contractor to meet any other Contractual Dates.
- 11.2. The Authority acknowledges that the Contractor's ability to meet its obligations under the Agreement according to the timetable in Annex 4 may depend on the Authority likewise meeting its obligations, including those specified in Annex 4. Each such obligation together with the latest date by which the Authority ought to have met those without potentially risking the Contractor to be delayed in meeting its obligations are expressly identified in Annex 4 as the Authority's obligations. The Authority shall not bear any liability to the Contractor in respect of any failure to

meet its obligations but, to the extent that the Contractor is prevented from fulfilling any of its obligations as a direct result of an Authority delay.

- 11.3. Consequently, insofar as the Contractor is prevented from fulfilling any of its obligations as a direct result of a delay by the Authority, it shall not be liable to the Authority for such failure and shall be entitled to an extension of time and recovery of additional costs under the provisions of clause 12.4.

12. Extension of time

- 12.1. If the performance of the Agreement by the Contractor be delayed by reason of Default by the Contractor or by its employees or agents or by other Contractors of the Contractor, the Authority shall be entitled to grant a reasonable extension of time at no additional cost to the Authority, subject to clause 13.1 and Annex 4.
- 12.2. Should an extension of time, post the Acceptance Completion Date, be granted under clause 12.1, the contractor shall be liable to pay the Authority, as Liquidated Damages, a sum of money subject to clause 13.1 and specified in Annex 4 for each day of delay up to the expiry date of the extension of time that may be granted under 12.1.
- 12.3. Subject to 12.1, 12.2 and 13.1, any extension of time granted by the Authority shall be in thirty (30) day periods or less, as defined in Annex 4. The Contractor agrees that any such extension period granted by the Authority shall be a maximum period of extension and that the Contractor shall continue to meet its obligations under clause 10 (Acceptance) and that time shall be of the essence.
- 12.4. Subject to clause 11.2, if the performance of the Agreement by the Contractor be delayed by reason of Default by the Authority or by its employees or agents or by other Contractors of the Authority, the Contractor shall be entitled to a reasonable extension of time and to any reasonable additional costs which it can show were directly incurred as a result of the delay, to be agreed by the Authority in writing without undue delay.
- 12.5. If the performance of the Agreement by either party be delayed by reason of any event of force majeure (as defined in clause 29), both parties shall be entitled to a reasonable extension of time provided that the party so delayed notifies the other party in writing without undue delay. Neither party shall be entitled to any additional costs incurred as a result of such delay.

13. Liquidated Damages and Service Credit Liability

13.1. Liquidated Damages – Not Used Liquidated Damages do not apply

- 13.2. Subject to 11 (Delays) and 12 (Extension of Time), if the Contractor fails to meet any Acceptance Completion Date specified in the timetable contained in Annex 4, by reason of Default by the Contractor or by its employees or agents or by other Contractors of the Contractor, the Contractor shall be liable to pay to the Authority, the Liquidated Damages:

- 13.2.1. *Service Continuity Damages*, as a sum of money specified in Annex 4 - 4.8, for any delay over the specified timetable contained in Annex 4; and

13.2.2. *Implementation Liquidated Damages*, a sum of money specified in Annex 4 - 4.8, for each day of delay or until the service is implemented or the Contract is terminated, whichever is sooner.

13.3. Liquidated Damages Period

13.3.1. The Liquidated Damages Period, subject to clause 11.2, 11.3, 12.4 and 12.5, shall commence on the first day after the Acceptance Completion Date and shall continue in thirty (30) day (or less) extension periods to the maximum extension period granted by the Authority, as detailed in Annex 4 - 4.8.

13.3.2. Any payments due during the Liquidated Damages Period shall be in full and final settlement of the Contractor's liability for all such loss incurred by the Authority for any delays in the implementation of the service to the Termination Consideration Date (s) as defined in Annex 4 and Annex 4 - 4.8. If the cause of such delay has not been rectified, at the expiry of the extension period granted under 12.1 during which liquidated damages are payable as detailed in Annex 4 - 4.8, the Authority shall be entitled to:

13.3.2.1. during the Liquidated Damages Period, serve a notice on the Contractor placing the Contractor on notice that if, at the end of the extension period granted under 12.1, the delay is not remedied, at the sole discretion of the Authority a further Liquidated Damages Period shall commence as detailed in Annex 4 and Annex 4 - 4.8, or;

13.3.2.2. terminate this agreement with immediate effect;

13.3.2.3. Seek any remedy available to it for all losses, costs, damages or expenses incurred as a result of such delay after the end of the Liquidated Damages Period under 13.1.2.1 and 13.1.2.2.

13.3.3. Both parties acknowledge that any Liquidated Damages specified in Annex 4 - 4.8, represented as a sum of money relating to either the Service Continuity Damages and/or Implementation Liquidated Damages is a genuine pre-estimate of the loss likely to be suffered by the Authority in the event of delay and that the figures specified therein are reasonable.

13.3.4. Subject to 13.1, the Contractor agrees to pay the Authority within thirty (30) days of receipt of the invoice to be issued by the Authority, the Service Continuity Damages as detailed in Annex 4 - 4.8.

13.3.5. Subject to 13.1, the Contractor agrees to pay the Authority within thirty (30) days of receipt of the invoice to be issued monthly by the Authority, the Implementation Liquidated Damages as detailed in Annex 4 - 4.8. Invoices for the Implementation Liquidated Damages shall be issued to the Contractor from the Authority in week one (1) of each following month to which the Implementation Liquidated Damages are applicable.

13.3.6. Subject to 13.1, the Authority agrees that the maximum Liquidated Damages payable for the Implementation Liquidated Damages shall be 16.5% of the contract value. For the avoidance of doubt, the Service Continuity Damages shall not be included in the 16.5% maximum Implementation Liquidated Damages above. The Service Continuity Damages costs are fixed.

13.4. Service Credits – For the avoidance of doubt, Service Credits shall not apply to this contract.

13.4.1. Rights to Termination

13.4.1.1. The Authority may exercise its right to terminate this agreement under clause 28 Termination where:

13.4.1.1.1. the Contractors performance reaches Failure Level 3 of KPI 001, 002, 003, 004 and 005;

13.4.1.1.2. the Contractor performance is in persistent breach of Failure Level 2 in any KPI.

13.5. The Contractor warrants to the Authority that all data provided in relation to the Service Levels are accurate and the Contractor grants to the Authority, and to any statutory or regulatory auditors of NICE and to authorised agents the right of reasonable access to (and if necessary to copy) the records relating to the Service Levels during normal business hours on reasonable prior notice.

14. Liability, Indemnity and Insurance

14.1. Neither Party excludes or limits liability to the other Party for:

14.1.1. death or personal injury caused by its negligence; or

14.1.2. fraud; or

14.1.3. fraudulent misrepresentation; or

14.1.4. any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

14.2. Subject to clauses 14.3 and 14.4, the Contractor shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Agreement or the presence of the Contractor or any staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given under this Agreement or advice that should have been given under this agreement but was omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.

- 14.3. The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Agreement.
- 14.4. Subject always to clauses 14.1 and 14.5, in no event shall either Party be liable to the other for any:
- 14.4.1. loss of profits, business, revenue or goodwill; and/or
 - 14.4.2. loss of savings (whether anticipated or otherwise); and/or
 - 14.4.3. indirect or consequential loss or damage.
- 14.5. For the avoidance of doubt:
- 14.5.1. the Parties agree on the date of this Agreement, that any Third Party Losses that arise shall be considered to arise naturally, according to the normal course of things, from the breach of this Agreement by the Contractor and/or that such Third Party Losses are in the contemplation of the Parties as a result of the breach of this Agreement by the Contractor; and
 - 14.5.2. clause 14.4 shall not apply in respect of any Third Party Losses;
 - 14.5.3. the aggregate liability for any Third Party Losses in each 12 month contract period from the commencement date of this Agreement, in connection with the Agreement shall in no event exceed £2 million.
- 14.6. The Contractor shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Contractor.

15. Limitation of Liability

- 15.1. Subject to clause 15.2, the Authority shall not be liable to the Contractor for any indirect or consequent loss, damage, injury or costs whatsoever which arise out of or are connected with the Authority's adherence or non-adherence to the terms and conditions of this Agreement. Subject always to clause 14.1, the Contractor's liability for Defaults and any liability arising under any indemnities provided in this Agreement shall be subject to the following financial limits:
- 15.1.1. the aggregate liability for all Defaults arising in each twelve-month contract period from the commencement date of this Agreement, in connection with this Agreement shall in no event exceed 125% of the fees payable by the Authority to the Contractor. This limit shall exclude Third Party Losses and be inclusive of any Service Continuity Damages and Implementation Liquidated Damages.
 - 15.1.2. the aggregate liability in circumstances where the Authority terminates this Contract pursuant to clause 13.1.2.2, 13.2.8 and 28 shall in no event exceed 125% of the fees payable by the Authority to the Contractor. This

limit shall exclude Third Party Losses and be inclusive of any Service Continuity Damages and Implementation Liquidated Damages.

- 15.2. The aggregate liability for all Data Protection breaches arising in the contract period from the commencement date of this Agreement, in connection with this Agreement shall in no event exceed £5m.

16. Insurance

- 16.1. The Contractor shall maintain an appropriate insurance policy to cover its liabilities to the Authority under this Agreement.
- 16.2. The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Agreement Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Agreement.
- 16.3. The Contractor shall hold employer's liability insurance in respect of staff in accordance with any legal requirement from time to time in force.
- 16.4. The Contractor shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 16.5. If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Agreement the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- 16.6. The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Agreement. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability under this Agreement.

17. Contractor's Warranty

- 17.1. The Contractor warrants that the Services shall meet the Contractor Undertakings in all material respects. The Contractor and its sub-contractors shall use all reasonable skill and care performing all Services and any other work hereunder and shall use personnel of appropriate skill and experience for performance of such services.
- 17.2. The Contractor warrants that it has authority to grant to the Authority any rights to be granted hereunder and owns or has obtained valid licences to any Intellectual Property Rights necessary for the fulfilment of all its obligations under the Agreement.

18. Standards

- 18.1. The Contractor warrants that in performance of the Agreement it shall meet all relevant standards listed in Annex 1, 2 and 4.

19. Viruses

- 19.1. The Contractor warrants that it has taken all practical steps, in accordance with good industry practice, to prevent the introduction of any Virus into data or Software owned by or under the control of the Authority including Authority Software.
- 19.2. The warranty and undertakings set out in clauses 20.1 and 20.2 shall not be limited in time and constitute fundamental terms of the Agreement. In the event of any breach of the same, the Contractor shall forthwith, at its own expense, carry out all such alterations or corrections as are necessary to ensure that the Services comply fully with this Agreement and the Contractor shall remain liable for all loss, costs, claims, liabilities, damages and expenses incurred by the Authority in respect of any breach.

19.3. Viruses and Malicious Software

- 19.3.1. The Contractor shall, as an enduring obligation throughout the term of this Agreement, use the latest versions of anti-virus definitions and software available [from an industry accepted anti-virus software vendor] to check for, contain the spread of and minimise the impact of malicious software.
- 19.3.2. Notwithstanding clause 19.3.1, if Malicious Software is found, the parties (or Contractor and the Authority) shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

20. Payment and VAT

- 20.1. Subject to the due performance of the Contractor's obligations pursuant to this agreement and its Annexes, the Authority shall pay all invoices (by BACS or such other method that may be agreed) submitted by the Contractor in accordance with Annex 3 within thirty (30) days of their receipt.
- 20.2. The Authority shall not be liable to pay any invoices which are received other than in accordance with clauses 20.1, 20.3, 20.4 and 20.5.
- 20.3. The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Authority to substantiate the invoice including:
- 20.3.1. the agreement number;
- 20.3.2. the period to which the invoice relates;

- 20.3.3. the Services provided by the Contractor together with any other details that the Authority may require.
- 20.4. All invoices sent to the Authority must:
- 20.4.1. include a claim for Value Added Tax (if applicable) at the prevailing rate as applicable, the invoice must give the requisite details of the taxable supply;
- 20.4.2. be accurate and correct in all respects;
- 20.4.3. be from the Contractor.
- 20.5. The Contractor shall send invoices either in **hard copy** to:
- 20.5.1. National Institute for Health and Care Excellence (NICE),
(Shared Business Services)
T53 Payables 4545
Phoenix House
Topcliffe Lane
Wakefield
WF3 1WE
West Yorkshire; or
- 20.5.2. **Electronic copies:** To submit and monitor invoice progress, the Supplier must register an account with SBS using the link:
<http://tradeshift.com/supplier/nhs-sbs>
- 20.6. If at any time an overpayment has been made to the Contractor for any reason whatsoever the amount of such overpayment shall be repaid forthwith.
- 20.7. The Authority shall be entitled to deduct from any monies due or to become due to the Contractor any monies owing to the Authority from the Contractor.
- 20.8. The Authority reserves the right to withhold payment of invoices in relation to the Services not delivered, in whole or in part, until the Services (and/or any Deliverables to which any invoices relate), in whole or in part is successfully concluded, completed and/or delivered to the satisfaction of the Authority (acting reasonably). Any payments withheld will relate to only that portion of supply or deliverables in question and not as a whole.
- 20.9. In the event that the Agreement is varied under clause 32 in such a way as to affect the Agreement Price and if agreement between the Parties cannot be reached on the adjustment to the Agreement Price within 3 months both Parties shall jointly act to resolve the dispute in accordance with clause 31.
- 20.10. If the adjusted Agreement Price is not so agreed or certified until after such variation has taken effect, the Authority shall continue to pay the Contractor at the rate current prior to the variation. The Contractor shall be entitled to recover from the Authority and the Authority shall be entitled to recover from the Contractor as the case may be such sum if any as is equal to the difference between the amount which should have been paid in accordance with the adjusted Agreement Price and the amount which was actually paid.

- 20.11. The Authority may request at any time such evidence as may reasonably be required that the Contractor has in fact expended the amounts paid. To facilitate this, the Contractor shall maintain financial records relating to the Services for a period not less than 6 (six) years after the end of the Agreement Period.
- 20.12. The Contractor grants to the Authority, and to any statutory or regulatory auditors of the Authority and to authorised agents the right of reasonable access to (and if necessary to copy) the financial records relating to the Services during normal business hours on reasonable prior notice.
- 20.13. The Contractor shall provide all reasonable assistance at all times during the Agreement Period and during the period of 6 (six) years thereafter for the purposes of allowing the Authority to obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, governmental judicial or other administrative purposes and/or to carry out an audit of the Contractor's compliance with this Agreement including all activities, performance security and integrity in connection therewith.
- 20.14. If there is dispute over all or any of the charges made by the Contractor, the Authority may, without prejudice to its other rights and remedies, notify the Contractor that, the Contractor will be paid the sum that is not in dispute, or that the Contractor will not be paid the invoiced amount, until the dispute has been resolved pursuant to clause 31 (Dispute Resolution Procedure).

21. Monitoring and Reporting

- 21.1. Pursuant to clause 25.4, the Contractor must provide the Authority with a disaster recovery plan that will alert all users to any loss of service that occurs, inclusive of an outline of the disaster recovery and resolution plan, and in line with the SLA.
- 21.2. The Contractor shall attend quarterly contract review meetings and an annual service review meeting with the Authority. The Authority to take minutes of the meeting and circulate to all within twenty (20) working days of the meeting.
- 21.3. The Contractor shall provide a quarterly contract review report, as detailed in Annex 2 and 2.1, no later than five (05) working days before the scheduled quarterly contract review meeting, to summarise performance against the KPIs. A quarterly management reporting template will be provided by the Authority to the Contractor for this purpose and will include items such as (but not limited to):
- Work undertaken in the last quarter and future work planned.
 - Details of enquiries received and resolution.
 - Details of Scheduled Downtime showing the notice given, start and finish date and time of each period.
 - Financial reporting.
 - Risk, issue and change management.
 - Service performance against Key Performance Indicators.
 - Details of service incidents showing the date the incident was reported, start and finish date and time of each incident.

- Details of significant Technical Changes and developments showing the date notice was given to The Authority and the date of implementation.
- Service usage statistics.

21.4. The Contractor shall provide an annual service report no later than five (05) working days before the scheduled annual review meeting. An annual management reporting template will be provided by the Authority to the Contractor for this purpose.

22. Intellectual Property and Copyright

22.1. All Intellectual Property owned by or licensed to either Party prior to the commencement of this Agreement will remain the property of that Party or the licensor to that Party as appropriate.

22.2. Authority's IPR

22.2.1. The Authority shall own:

22.2.1.1. The Authority's Background IPR;

22.2.1.2. The Authority's Personal Data;

22.2.1.3. the Data.

22.2.2. The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Agreement or the performance of the Agreement. For the avoidance of doubt, waiver of any moral rights subsisting in the Contractors Software shall not be included in this clause 22.2.2.

22.3. Contractor's IPR

22.3.1. The Contractor shall own:

22.3.1.1. The Contractor's Background IPR;

22.3.1.2. The Contractors Software and any developments of such Software produced by this Agreement.

22.4. Authority's Licence

22.4.1. The Authority hereby grants to the Contractor for the term of the Agreement a non-exclusive, non-transferable licence to use the Authority's Personal Data and Data solely as contemplated hereunder for the purposes of the Services.

22.5. Contractor Software

22.5.1. Licence

- 22.5.1.1. The Contractor hereby grants to the Authority for the term of the Agreement a non-exclusive, non-transferable licence to use the Contractor Software, the Contractors background IPR and any developments of such software produced by this agreement solely as contemplated hereunder for the purposes of the Services.

23. Confidentiality

- 23.1. In respect of any Confidential Information it may receive from the other party (“the Discloser”) and subject always to the remainder of this clause 23, each party (“the Recipient”) undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser’s prior written consent provided that:
 - 23.1.1. the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of the Agreement;
 - 23.1.2. the provisions of this clause 23 shall not apply to any Confidential Information which:
 - 23.1.3. is in or enters the public domain other than by breach of the Agreement or other act or omissions of the Recipient;
 - 23.1.4. is obtained by a third party who is lawfully authorised to disclose such information; or
 - 23.1.5. is authorised for release by the prior written consent of the Discloser; or
 - 23.1.6. the disclosure of which is required to ensure the compliance of the Authority with the Freedom of Information Act 2000 (the FOIA).
- 23.2. Nothing in this clause 23 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law or, where the Contractor is the Recipient, to the Contractor’s immediate or ultimate holding company provided that the Contractor procures that such holding company complies with this clause 23 as if any reference to the Contractor in this clause 23 were a reference to such holding company.
- 23.3. The Contractor authorises the Authority to disclose the Confidential Information to such person(s) as may be notified to the Contractor in writing by the Authority from time to time to the extent only as is necessary for the purposes of auditing and collating information so as to ascertain a realistic market price for the goods supplied in accordance with the Agreement, such exercise being commonly referred to as "benchmarking". The Authority shall use all reasonable endeavours to ensure that such person(s) keeps the Confidential Information confidential and does not make use of the Confidential Information except for the purpose for which the disclosure is made. The Authority shall not without good reason claim that the lowest price available in the market is the realistic market price.

- 23.4. The Contractor acknowledges that the Authority is or may be subject to the FOIA. The Contractor notes and acknowledges the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) and the Environmental Information Regulations 2004 as may be amended, updated or replaced from time to time. The Contractor will act in accordance with the FOIA, these Codes of Practice and these Regulations (and any other applicable codes of practice or guidance notified to the Contractor from time to time) to the extent that they apply to the Contractor's performance under the Agreement.
- 23.5. The Contractor agrees that:
- 23.5.1. without prejudice to the generality of clause 23.2, the provisions of this clause 23 are subject to the respective obligations and commitments of the Authority under the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) and the Environmental Information Regulations 2004;
 - 23.5.2. subject to clause 23.5.3, the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for the Authority;
 - 23.5.3. where the Authority is managing a request as referred to in clause 23.5.2, the Contractor shall co-operate with the Authority and shall respond within five (05) working days of any request by it for assistance in determining how to respond to a request for disclosure.
- 23.6. The Contractor shall and shall procure that its sub-contractors shall:
- 23.6.1. transfer the any request for information, as defined under section 8 of the FOIA, to the Authority as soon as practicable after receipt and in any event within five (05) working days of receiving a request for information;
 - 23.6.2. provide the Authority with a copy of all information in its possession or power in the form that the Authority requires within five (05) working days (or such other period as the Authority or a Beneficiary may specify) of the Authority or a Beneficiary requesting that Information; and
 - 23.6.3. provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a request for information within the time for compliance set out in section 10 of the FOIA.
- 23.7. The Authority may consult the Contractor in relation to any request for disclosure of the Contractor's Confidential Information in accordance with all applicable guidance.

- 23.8. This clause 23 shall remain in force without limit in time in respect of Confidential Information which comprises Personal Data or which relates to a patient, his or her treatment and/or medical records. Save as aforesaid and unless otherwise expressly set out in the Agreement, this clause 23 shall remain in force for a period of 3 years after the termination or expiry of this Agreement.
- 23.9. In the event that the Contractor fails to comply with this clause 23, the Authority reserves the right to terminate the Agreement by notice in writing with immediate effect.

24. Data Protection

- 24.1. The Contractor shall comply with the Data Protection Legislation. In particular the Contractor agrees to comply with the obligations placed on the Authority as set out in Data Protection Legislation, namely:
- 24.1.1. to maintain technical and organisational security measures sufficient to comply with the obligations imposed on the Authority and the Contractor by the Data Protection Legislation;
 - 24.1.2. only to process Personal Data for and on behalf of the Authority, in accordance with the instructions of the Authority as described in Annex 8: Personal Data Processing Instructions to the “Terms and Conditions of Contract” and for the purpose of performing the Services in accordance with the Agreement and to ensure compliance with the Data Protection Legislation.
- 24.2. The Parties acknowledge that for the purposes of the Data Protection Legislation, that the Authority is the Controller, and the Contractor is the Processor.
- 24.3. The Contractor shall only process Personal Data as authorised by the Authority and described in Annex 8 of the Terms and Conditions of Contract” and shall not process or use the Personal Data for any other purpose. The details in Annex 8 to the “Terms and Conditions of Contract” may not be determined by the Contractor.
- 24.4. The Contractor shall notify the Authority immediately if it considers that any of the Authority’ instructions infringe the Data Protection Legislation.
- 24.5. The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:
- 24.5.1. a systematic description of the envisaged processing operations and the purpose of the processing;
 - 24.5.2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 24.5.3. an assessment of the risks to the rights and freedoms of Data Subjects; and

- 24.5.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 24.6. The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
 - 24.6.1. process that Personal Data only in accordance Annex 8 to the “Terms and Conditions of Contract”, unless the Contractor is required to do otherwise by Law. If it is so required, the Contractor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
 - 24.6.2. ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:
 - 24.6.2.1. nature of the data to be protected;
 - 24.6.2.2. harm that might result from a Data Loss Event;
 - 24.6.2.3. state of technological development; and
 - 24.6.2.4. cost of implementing any measures;
 - 24.6.3. ensure that:
 - 24.6.3.1. the Contractor’s Personnel do not process Personal Data except in accordance with this Agreement (and in particular Annex 8);
 - 24.6.3.2. it takes all reasonable steps to ensure the reliability and integrity of any Contractor’s Personnel who have access to the Personal Data and ensure that they:
 - 24.6.3.2.1. are aware of and comply with the Contractor’s duties under this clause;
 - 24.6.3.2.2. are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - 24.6.3.2.3. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Authority or as otherwise permitted by this Agreement; and
 - 24.6.3.2.4. have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - 24.6.3.2.5. not transfer Personal Data outside of the UK and the EU unless the prior written consent of the Authority has been

obtained and the following conditions are fulfilled:

- 24.6.3.2.5.1. that the Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Authority;
 - 24.6.3.2.5.2. the Data Subject has enforceable rights and effective legal remedies;
 - 24.6.3.2.5.3. the Contractor 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 Authority in meeting its obligations); and
 - 24.6.3.2.5.4. the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
- 24.6.4. at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.
- 24.7. Subject to clause 24.8, the Contractor shall notify the Authority without undue delay if it:
- 24.7.1. receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 24.7.2. receives a request to rectify, block or erase any Personal Data;
 - 24.7.3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 24.7.4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - 24.7.5. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 24.7.6. becomes aware of a Data Loss Event.

- 24.8. The Contractor's obligation to notify under clause 24.7 shall include the provision of further information to the Authority in phases, as details become available.
- 24.9. Taking into account the nature of the processing, the Contractor shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 24.7 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
- 24.9.1. the Authority with full details and copies of the complaint, communication or request;
 - 24.9.2. such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 24.9.3. the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 24.9.4. assistance as requested by the Authority following any Data Loss Event;
 - 24.9.5. assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- 24.10. The Contractor shall maintain complete and accurate records and information to allow the Authority to audit the Contractor's compliance with the requirements of this clause 24 on reasonable notice and/or to provide the Authority with evidence of its compliance with the obligations set out in this clause 24 and to demonstrate its compliance with this clause.
- 24.11. The Contractor shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor.
- 24.12. The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 24.13. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
- 24.13.1. notify the Authority in writing of the intended Sub-processor and processing;
 - 24.13.2. obtain the written consent of the Authority;
 - 24.13.3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 24 such that they apply to the Sub-processor; and
 - 24.13.4. provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

- 24.14. The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 24.15. The Authority may, at any time on not less than thirty (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).
- 24.16. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than thirty (30) working days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 24.17. The Contractor agrees to indemnify and keep indemnified the Authority against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith by the Authority and any Beneficiary as a result of any claim made or brought by any individual or other legal person in respect of any loss, damage or distress caused to that individual or other legal person as a result of the Contractor's unauthorised processing, unlawful processing, destruction of and/or damage to any Personal Data processed by the Contractor, its employees or agents in the Contractor's performance of the Agreement or as otherwise agreed between the Parties.
- 24.18. For clarity, the Contractor shall be wholly responsible for any fines enforced on the Contractor by the Information Commissioners Office (ICO) where the ICO deems the Contractor to be responsible for any Data Protection breach, this is excluded from the general liability clauses of 15.1.1 and 15.1.2.

25. Data security

- 25.1. The Contractor shall be liable to the Authority for loss or corruption of any data or Software owned by the Authority or for which the Authority is responsible to the owners for its security, including loss or corruption resulting from the introduction of a Virus, when such loss or corruption results from a wilful act or Default of the Contractor. Or any failure to comply with the provisions of this clause 25.1 which, without prejudice to the Authority's remedies for any other failure to comply with such provisions, results from the disposal, re-assignment or re-use by the Contractor of any magnetic or other media which is or has been used to store data owned by the Authority or for which the Authority is responsible to the owners for its security. Where such wilful act or Default shall occur, the Contractor shall return such data and Software to a fully operational state with all possible speed. The liability by the Contractor shall be subject to the Authority having exercised data security and data management procedures, in accordance with good practice in the health industry or the information technology industry as appropriate, to avoid such loss or corruption where possible and to mitigate the effects thereof.

25.2. Information Security

- 25.3. The Contractor shall have and maintain a Business Continuity and Disaster Recovery (BCDR) plan which sets out the requirements for ensuring continuity of

the business processes and operations supported by the Services in circumstances of Service disruption or failure and for restoring the Services through business continuity and as necessary disaster recovery procedures. It also includes the requirement on the Contractor to develop, review, test, change, and maintain a BCDR plan in respect of the Services.

- 25.4. The Contractor shall ensure that its Sub-contractors' disaster recovery and business continuity plans are integrated with the BCDR Plan.
- 25.5. The Contractor shall have and maintain a security management policy and plan which sets out security standards, business processes for security testing, and incident management and resolution processes for any breach of security.
- 25.6. The Contractor shall comply, and shall procure the compliance of the Contractor Personnel, with the security management policy and plan and the Contractor shall ensure that the security plan produced by the Contractor fully complies with the security policy.
- 25.7. Both the BCDR and the security management plan will be available to the Authority on request.

26. Platform Accessibility Statement

- 26.1. The Contractor will publish an accessibility statement on the Contractor's publicly available website in relation to this Service and will make best efforts to ensure the Service meets accessibility standards in accordance with the Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018 and complies with accessibility standards (EN 301 594 / WCAG 2.1 Level AA). Where the Service is only partially compliant with the EN 301 594 / WCAG 2.1 Level AA accessibility standard, the Contractor must publish those areas where it is non-compliant and provide the Authority with a VPAT (Voluntary Product Accessibility Template) on non-compliance issues at the Authority's request.

27. Staff and Resources

- 27.1. The Contractor shall be fully responsible in every way for all its staff and all consultants (whether part-time or full-time).
- 27.2. The Contractor shall ensure that it complies with all current employment legislation and in particular, does not unlawfully discriminate within the meaning of the Equality Act 2010 (as amended) the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, or any other relevant legislation relating to discrimination in the employment of employees for the purpose of providing the Services. The Contractor shall take all reasonable steps (at its own expense) to ensure that any employees employed in the provision of the Services do not unlawfully discriminate within the meaning of this clause 27.2 and shall impose on any Sub-Contractor obligations substantially similar to those imposed on the Contractor by this clause 27.2; and

- 27.3. The Contractor shall not discriminate directly or indirectly or by way of victimisation or harassment against any person on racial grounds within the meaning of the Equality Act 2010.
- 27.4. The Contractor shall notify the Authority immediately of any investigation of or proceedings against the Contractor under the 2010 Act and shall cooperate fully and promptly with any requests of the person or body conducting such investigation or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested.
- 27.5. The Contractor shall indemnify the Authority against all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by the Authority arising out of or in connection with any investigation conducted or any proceedings brought under the 2010 Act due directly or indirectly to any act or omission by the Contractor, its agents, employees or sub-contractors.
- 27.6. The Contractor shall impose on any sub-contractor obligations substantially similar to those imposed on the Contractor by this clause 27.
- 27.7. Where the Authority has notified the Contractor that it intends to tender or retender any services, the Contractor shall on written request and in within twenty (20) operational days of such a request provide the Authority with anonymised details of staff engaged in the provision of such services to be tendered or retendered that may be subject to TUPE.

28. Termination

- 28.1. This Agreement shall terminate in the following circumstances:

28.2. Breach

- 28.2.1. In the event that either Party fails to observe or perform any of its obligations under this Agreement in any way then the other Party may end this Agreement on thirty (30) days written notice; but
- 28.2.1.1. If the breach complained of by a Party in relation to the Service Specification, the SLA and the KPIs, cannot be remedied to the satisfaction of that Party, then this Agreement shall end immediately on the service of such notice on the other Party;
- 28.2.1.2. In every other case if the breach complained of is remedied to the satisfaction of a Party within the notice period this Agreement shall not end.

28.3. Repeat of Breach

- 28.3.1. Either Party reserves the right to end this Agreement immediately by written notice if a Party repeats any breach of this Agreement after receiving a written notice from the other Party warning that repetition of the breach shall or may lead to termination (whether or not the repeated breach is remedied within thirty (30) days);

28.4. Insolvency

- 28.4.1. This Agreement shall end immediately if the Contractor goes into liquidation or suffers a receiver or administrator to be appointed to it or to any of its assets or makes a composition with any of its creditors, or is in any other way unable to pay its debts.

28.5. Change of Management Control

- 28.5.1. The Authority reserves the right to immediately end this Agreement upon any change of the Contractor's management or control within twenty-eight (28) days of the Authority finding out of such change. The Contractor shall promptly notify the Authority of any such change of management or control.

28.6. Unsatisfactory Evaluation of the Services

- 28.6.1. In the event that the outcome of any evaluation of the Services Party in relation to the Service Specification, the SLA and the KPIs, carried out by the Authority under this Agreement is unsatisfactory the Authority may terminate this Agreement on thirty (30) days' written notice.

- 28.7. In addition to its rights under any other provision of the Agreement the Authority may terminate the Agreement at any time by giving the Contractor three months' written notice

28.8. Consequences of Termination

- 28.8.1. In the event of the termination or expiry of this Agreement:
- 28.8.1.1. the Contractor shall repay forthwith to the Authority any advance payments made by the Authority relating to any Service not performed by the Contractor in accordance with the Agreement;
 - 28.8.1.2. the Contractor shall provide to the Authority or a replacement Contractor nominated by the Authority any data belonging to the Authority in its possession either in its then current format or in a format nominated by the Authority (in which event the Authority will reimburse the Contractor's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Authority;
 - 28.8.1.3. the Contractor shall cease to use the data belonging to the Authority;
 - 28.8.1.4. each party shall return all items supplied to it in connection with the Agreement by the other party;
 - 28.8.1.5. the Contractor shall render reasonable assistance to the Authority, if requested, to the extent necessary to effect an orderly assumption by a replacement Contractor of the Managed Services performed previously by the Contractor hereunder and the Authority shall reimburse the Contractor for such assistance at the rates then

prevailing for customers of the Contractor for the same or similar services.

29. Force Majeure

- 29.1. For the purposes of this Agreement the expression 'Force Majeure' shall mean any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond their reasonable control including (but without limiting the generality thereof) government regulations, fire, flood, interruption to electricity supply or any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available. Such cause shall only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the Party claiming Force Majeure or its servants, agents or employees.
- 29.2. Neither Party shall in any circumstances be liable to the other for any loss or delay or failure to perform of any kind whatsoever including but not limited to any damages or abatement of charges whether directly or indirectly caused to or incurred by the other Party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure.
- 29.3. If either of the Parties shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.
- 29.4. It is expressly agreed that any failure by the Contractor to perform or any delay by any of the Parties in performing their obligations under this Agreement which results from any failure or delay in the performance of their obligations by any person, firm or company with which the Contractor shall have entered into any contract, supply arrangement or sub-contract or otherwise, shall be regarded as a failure or delay due to Force Majeure only in the event that the said person, firm or company shall itself be prevented from or delayed in complying with its obligations under such contract supply arrangement or sub-contract or otherwise as a result of circumstances of Force Majeure.
- 29.5. Subject to clause 11 and 12, for the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure herein.

30. Escalation procedure

- 30.1. Any dispute that may arise shall follow the following escalation procedure prior to enactment of clause 31, Dispute Resolution Procedure. Where the nominated manager of the Contractor and the Authorities Commissioning Manager are unable to resolve any dispute or breach, the dispute or breach shall be escalated further to senior management within each organisation as described in Annex 1.

31. Dispute Resolution Procedure

31.1. Application

- 31.1.1. Any Dispute shall be resolved in accordance with this Dispute Resolution Procedure.
- 31.1.2. Nothing in this Dispute Resolution Procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 31.1.3. Where a Dispute has arisen (and the parties have not resolved the Dispute in accordance with the relevant terms of this Agreement, if applicable) either Party may invoke this procedure by notice in writing to the other ("Procedure Initiation Notice") and shall consult in good faith in an attempt to come to an agreement in respect of the Dispute. The Procedure Initiation Notice may only be given by either the Institute's representative or the Contractor's representative. The receiving Party shall then send a notice in writing in reply ("Counter Notice") confirming receipt of the Procedure Initiation Notice as soon as reasonably practicable (and in any event within two (02) working days of receipt of the Procedure Initiation Notice). The Party representatives shall meet within ten (10) working days of receipt of the Counter Notice and shall attempt to resolve the Dispute within five (05) working days of meeting.

31.2. Management Referral

- 31.2.1. If the Dispute is not resolved between the Party representatives within five (05) working days of meeting pursuant to clause 31.1.3 above, either Party may require by notice in writing ("Management Referral Notice") to the other that the Dispute be referred to the relevant Director of the Institute, the Department of Health and the Managing Director of the Contractor (together "Management") (in either case, if such individuals are unavailable, the Institute or the Contractor (as appropriate) shall nominate in writing to the other an alternative senior officer), both of whom may bring a technical representative to the meeting. These individuals shall meet for discussion within ten (10) working days of service of the Management Referral Notice at a mutually agreed time and place or failing agreement within five (05) working days of the service of the Management Referral Notice at the time and place specified by the Party serving notice provided such place is at a neutral location within England and that the meeting is to take place within normal business hours.

31.3. Mediation

- 31.3.1. If the Dispute is not resolved between the Parties through any of the applicable procedures provided for under clause 31.1 and 30.2, then the Parties shall consider whether to refer the Dispute to mediation and it shall be referred to mediation unless either (a) the Institute considers that the Dispute is not suitable for resolution by mediation or (b) the Contractor does not agree to mediation. The mediation shall be conducted in accordance with the Centre for Effective Dispute Resolution

Model Mediation Procedure and the following shall prevail in the event of a conflict with that procedure:

- 31.3.2. the mediation shall be conducted by a single mediator who shall be appointed by agreement in writing between the Parties or, if the Parties are unable to agree on the identity of the mediator within ten (10) working days of the date of the request that the Dispute be determined by a mediator, or if the mediator appointed is unable or unwilling to act, shall be appointed by the Centre for Effective Dispute Resolution on the application of either Party;
- 31.3.3. the mediation shall be conducted in a location agreeable to both parties and in the English language;
- 31.3.4. the mediation shall be conducted in private and without prejudice to the rights of the Parties in any future proceedings; and
- 31.3.5. the mediation shall be held within thirty (30) working days of the appointment of the mediator pursuant to clause 31.3.1 above.

31.4. Litigation

- 31.4.1. If the Dispute has not been resolved to the satisfaction of both Parties pursuant to the mediation procedure set out in clause 31.3 above; or
- 31.4.2. if the Institute considers that the Dispute is not suitable for resolution by mediation in accordance with clause 31.3 above; or
- 31.4.3. if the Contractor does not agree to mediation in accordance with clause 31.3 above; or
- 31.4.4. if a Procedure Initiation Notice has not been given in accordance with clause 31.1.3 above; or
- 31.4.5. if in any event the Dispute is not resolved within ninety (90) days after it has arisen, then either Party shall be entitled to issue proceedings and the Courts of England shall have exclusive jurisdiction to hear and determine the Dispute.

32. Agreement Change or Variation

- 32.1. Where either Party see a need to make an Agreement Change, the Authority may at any time request such change and the Contractor may at any time recommend such change, provided that each party give the other at least one month's written notice of any change or addition and provided that either (a) such change or addition can be achieved without need for additional funding; or (b) that the Authority agrees to provide any additional funding reasonably required by the Contractor in respect of such change or addition; or (c) should the change require an adjustment to the approved cost in Annex 3, that such adjustment is agreed by both parties. The notice shall give details of the variation or addition and the date on which it is to take effect.

- 32.2. Any request for an Agreement Change shall be provided in writing using the form at Annex 7.
- 32.3. Neither Party shall unreasonably withhold its agreement to any Agreement Change. For the avoidance of doubt any withholding of agreement by the Authority shall not be considered to be unreasonable where any Agreement Change recommended by the Contractor would or might (in the opinion of the Authority) result in the Contractor's provision of services failing to conform to the terms of this Agreement or to the Approved Cost being exceeded.
- 32.4. No such variation or addition shall affect the continuation of the Agreement.
- 32.5. Until such time as an Agreement Change is made the Contractor shall, unless otherwise agreed in writing, continue to provide the services pursuant to the Agreement as if the request or recommendation had not been made.
- 32.6. Any discussions which may take place between the Parties in connection with a request or recommendation before the authorisation of a resultant Agreement Change shall be without prejudice to the rights of either Party.
- 32.7. Discussion between the Parties concerning an Agreement Change shall result in one of the following:
- 32.7.1. no action being taken; or
 - 32.7.2. the request to make an Agreement Change by the Authority being implemented; or
 - 32.7.3. the recommendation to make an Agreement Change by the Contractor being implemented.
- 32.8. Subject to clause 32.7, this Agreement cannot be varied except in writing and signed by the lawful representatives of both Parties.

33. Procurement Transparency

- 33.1. The Contractor acknowledges that this Agreement and any tender documentation that forms part of this Agreement will be published in its entirety in order to comply with the UK governments Transparency Agenda. Limited redactions may be made before publication in order to comply with existing law and for the protection of national security.
- 33.2. Subject to 32.1, 32.3 and 32.4 the Contractor must notify the Authority of any sections of the tender documentation and/or this Agreement that they regard as Commercial in Confidence or subject to the non-disclosure clauses of the FOIA or DPA. Any such request must provide a clear justification for the proposed redaction.
- 33.3. The total value (bottom line) of the agreement is required to be published under current EU regulations and the UK governments Transparency Agenda.
- 33.4. The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA and/or the DPA, the content of this Agreement is not Confidential Information. The Authority shall be

responsible for determining in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA and/or the DPA.

- 33.5. Notwithstanding any other term of this Agreement, the Contractor hereby gives his consent for the Authority to publish the Agreement in its entirety, including from time to time agreed changes to the Agreement, to the general public. And agrees to the public re-use of the documents provided that such reuse cites the source and do not misuse or deliberately mislead.
- 33.6. Both Parties shall take reasonable steps to ensure that their servants, employees, agents, sub-Contractors, Contractors, professional advisors and consultants comply with this clause 32.

34. Gifts and Payments of Commission

- 34.1. The Contractor shall not offer or give to any member of staff of the Authority or a member of their family any gift or consideration of any kind (including the payment of commission) as an inducement or reward for doing something or not doing something or for having done something or having not done something in relation to the obtaining of or execution of this Agreement or any Agreement with the Authority. This prohibition specifically includes the payment of any fee or other consideration for any work in respect of or in connection with the Services carried out by a member of staff of the Authority to that member of staff or to a member of their family.
- 34.2. Any breach of this condition by the Contractor or anyone employed by the Contractor (with or without the knowledge of the Contractor) or the commission of any offence under the Bribery Act 2010 shall entitle the Authority to terminate this Agreement immediately and/or to recover from the Contractor any payment made to the Contractor.

35. Transfer of Undertakings (Protection of Employment) TUPE

- 35.1. The Parties recognise that the Transfer of Undertakings (Protection of Employment) Regulations 2006 SI 2006 No 246 may apply in respect of the future next award of the Agreement and that The Contractor shall comply with the requirements of those Regulations.

35.1.1. Subject to clause 35.1.2, any provisions relating to the transfer of personnel which results from the transition of responsibility for the Services and/or to which TUPE shall apply, shall be specified as part of the transition and in the Exit Plan, subject to clause 9.2.1. The parties shall be responsible for the fulfilment of obligations in respect of such personnel which result from such transfer and which may be specified the Exit Plan, for obligations of the Contractor and for obligations of the Authority.

35.1.2. The Contractor shall indemnify the Authority (and any replacement contractor) against all losses arising on or after the expiry or termination

of all or any part of this Contract out of or in connection with or in respect of the actions or omissions of the Contractor (or its subcontractors) with regard to the employment or termination of employment of any person, including but not limited to; breach of contract, loss of office, unfair dismissal, redundancy, loss of earnings or otherwise (and all damages, penalties, awards, legal costs, expenses and any other liabilities incurred by the Authority), by the Contractor (or subcontractor) before the date of transfer and who has (or would have) transferred to the Authority (or any replacement contractor) pursuant to TUPE (save to the extent that such losses arise out of or are a result of the actions or omissions of the Authority or replacement contractor).

36. Miscellaneous

36.1. It is further agreed between the Parties:

36.1.1. Assignment

36.1.1.1. The Contractor shall not assign, novate, sub-contract or otherwise dispose of the Agreement or any part thereof or the benefit or advantage of the Agreement or any part thereof without previous consent in writing of the Authority.

36.1.1.2. The Authority shall have the right to assign, novate, sub-contract or otherwise dispose of its rights and obligations under the Agreement. The Authority may without the Contractor's consent and at any time assign all of its rights under the Agreement and the Contractor hereby consents to the novation of those rights and obligations. The Contractor irrevocably appoints the Authority as its agent for the execution of each Deed of Novation.

36.1.2. Waiver

36.1.2.1. No waiver or delay in acting upon or by the Authority of any of the requirements of this Agreement shall release the Contractor from full performance of its remaining obligations in this Agreement.

36.1.3. Public Reputation of the Parties

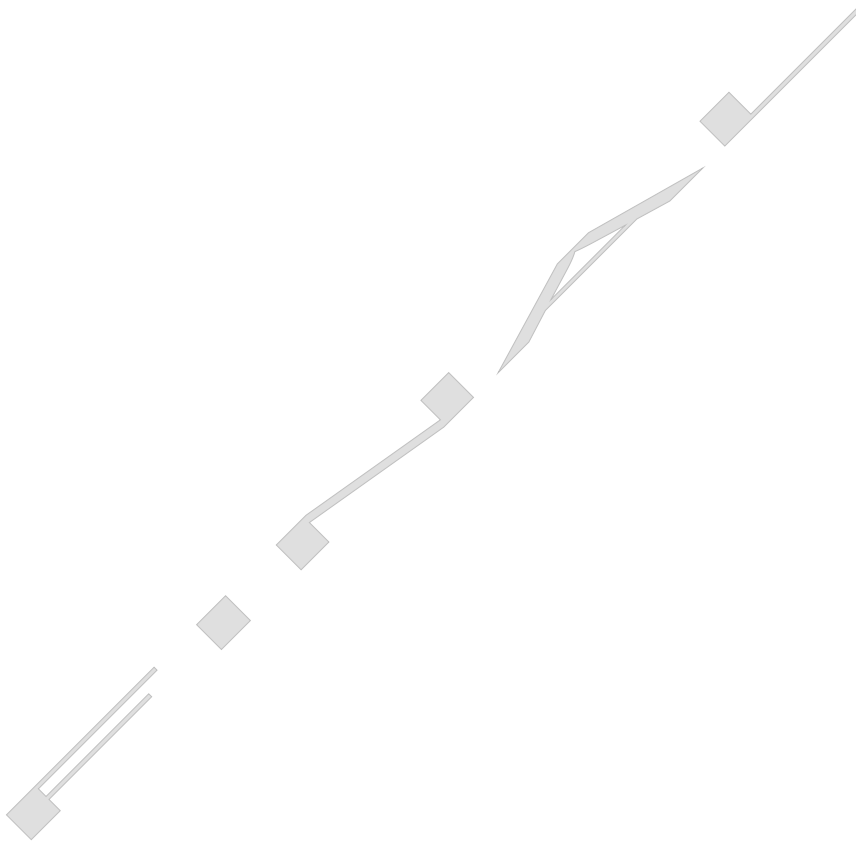
36.1.3.1. Both Parties recognise the other Party's public reputation and legal responsibilities. Each Party shall use all reasonable endeavours not to harm or compromise these.

36.1.4. Whole Agreement

36.1.4.1. The Parties acknowledge that this Agreement contains the whole Agreement between the Parties and supersedes all previous agreements whether express or implied.

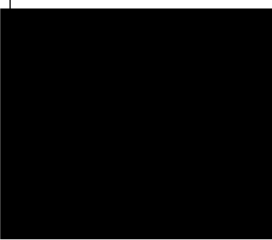

36.1.5. Governing Law

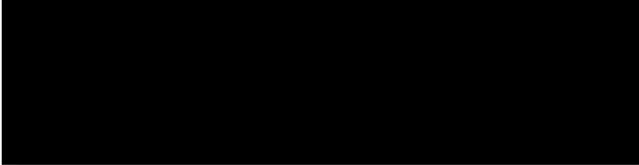
36.1.5.1. This Agreement shall be governed in all respects by English Law.

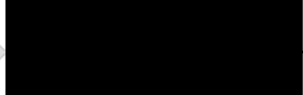


37. Agreement Signatures

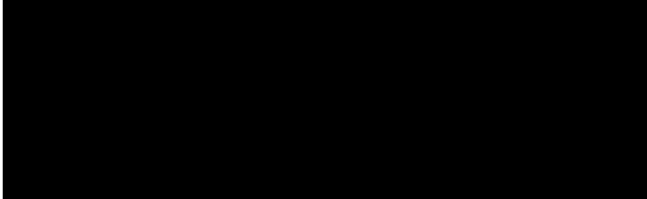
Signed for and on behalf
of the Authority

	Signature	Name and title	Date
Procurement Manager		 (Procurement Manager)	27 May 2022

Commissioning Manager Celestine Johnston (Programme Manager)			11 May 2022
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Budget Holder Sam Roberts (Chief Executive)		(Chief Executive)	27 May 2022
			

Signed for and on behalf
of the Contractor

	Signature	Name and title	Date
Authorised Signatory:			11 May 2022

This Agreement is not valid until all Signatures have been completed.

ANNEX 1

1.1 The Services Specification

1. Introduction

- 1.1. The Contractor will provide the OpenAthens identity management and access management service (The Service). The Service will provide secure Authentication and Authorisation, verifying eligible users' access to Content based on user or organisational entitlement.
- 1.2. The Service provides access to digital knowledge resources (such as databases, journals, evidence summaries, e-books and point of care tools - collectively referred to as Content throughout this document) purchased from Content Providers for the NHS and wider health and social care staff. This Content may be purchased nationally or regionally by Health Education England (HEE), as well as locally or collectively (consortia) by individual NHS Trusts or healthcare related organisations, for eligible users. Eligible users (Users) are UK healthcare professionals working in the NHS and other eligible organisations in line with the national Eligibility Criteria.
- 1.3. Content is made available through nationally provided digital products or services, such as [NICE Journals and Databases](#), [HEE e-Learning for Healthcare](#), the new [HEE national resource discovery service](#) (the "NHS Knowledge and Library Hub") or directly from the Content Provider's native interfaces.

2. Identity Provider

- 2.1. The Contractor will provide an Identity Provider (IdP) that is responsible for:
 - Providing an administration interface;
 - Providing identifiers for users looking to interact with a system;
 - Asserting to such a system that the identifier presented by a user is known to the provider;
 - Providing other information about the user that is known to the provider as specified in section "Data attributes".
- 2.2. The Contractor will provide this as a cloud service, in line with the Government Digital Service Technology Code of Practice [use cloud first](#) principles.

Application Programming Interface (API)

- 2.3. The Contractor will supply a Representational State Transfer (REST) API. All operations using the REST API will use HTTPS over TLS, supporting TLS 1.2. The API will use JSON as the data payload format of API messages.

- 2.4. The API will allow NICE to provide an interface to support user registration and account management operations.
- 2.5. The API will be available in a user acceptance testing environment configured to replicate the live service. This test environment will be available at all times for access by NICE.
- 2.6. The API will support the ability to define the fields associated with a User Account and retrieve account details by referencing the fields directly or via their unique User identifier (see Data attributes).
- 2.7. The API will support the secure Authentication of User credentials.
- 2.8. The API will support User Accounts creation and modification and provides full validation and detailed error reporting in the event of validation errors for submitted data.
- 2.9. The API will provide on request a list of available Content Providers for each User account.

Creation of User Accounts

- 2.10. The Contractor will ensure The Service enables the creation of User Accounts appropriate to each User Account State and Organisational Entity to comply with Content licence conditions.
- 2.11. On registration the User will receive an email notification of account creation and request to complete account Activation. The notification will confirm their User Account details, provide their Administrator details, and include details of how to activate their User Account.

Data Attributes

- 2.12. The Service will allow all User Accounts to have unique User identifiers.
- 2.13. User Accounts will include mandatory data attributes listed below as part of each User Account record:
 - First Name;
 - Last Name;
 - Unique User identifier;
 - Email address;
 - Organisational Entity;
 - Role;
 - Activation State;
 - Account expiry date;
 - Acceptance of the terms and conditions of The Service, including the NICE and the Contractor's privacy notices.

- 2.14. User Accounts will also include optional data attributes listed below as part of each User Account record:
- Consent to be contacted occasionally by NICE for surveys and research to improve NICE products;
 - Contract type;
 - Title;
 - Department;
 - Position;
 - Phone number;
 - Fax number;
 - Staff/student number;
 - Postal address.
- 2.15. The Service will ensure the data attributes assigned to the User Account are determined by the choices the User/Administrator makes when registering.
- 2.16. The data attributes Organisational Entity and Role are controlled lists defined by NICE.
- 2.17. The Contractor will ensure the choice of Organisational Entity within The Service enables Content Providers to determine which Content the User is able to access.

Post-registration process

- 2.18. The Service will create User Accounts which have an Eligibility State of either eligible, pending or ineligible:
- **Eligible User Accounts** are for Users who are affiliated to an Organisational Entity and are eligible to access all the Content allocated to that Organisational Entity;
 - **Pending User Accounts** have failed automatic verification and are referred to an Administrator for investigation or approval;
 - **Ineligible User Accounts** have failed automatic verification, have been rejected following the Administrator's investigation and will be automatically deleted after a configurable period.
- 2.19. The Service will allow the eligibility of a User Account to be automatically verified where the Applicant selects a known Organisational Entity and where:
- The network used to apply is a trusted network or other recognised IP address (on an Allowlist being maintained by the Administrator for the Organisational Entity); or

- The email address used to apply is an NHS email address or other recognised email domain (on an Allowlist maintained by the Administrator for the Organisational Entity).
- 2.20. Where a User Account is not automatically verified, an Eligibility State of Pending is automatically applied, and the registration is referred to the Administrator in the Administration Website for review.
- 2.21. Eligible User Accounts will have an Activation State of non-activated or activated:
- **Non-activated User Accounts** are new User Accounts which have not been activated by the User or Administrator;
 - **Activated User Accounts** have been activated by the User or Administrator.
- 2.22. OpenAthens User Accounts can only be activated by creating a password. The activation code sent to Users can be configured to expire up to 365 days after the account is created. On expiry the User Account will be deleted. Non-activated User Accounts will need to be activated before use.
- 2.23. The Service will ensure Users can securely activate their User Account. A secure link is sent to the email address registered with the User Account, enables the User to create their own password.

Log in credentials

- 2.24. The Service will allow Users to log in using an email address or the username assigned to their User Account.
- 2.25. The Service will use the [OpenAthens password policy](#) in line with [best practice password policy](#) from National Cyber Security Council.
- 2.26. The Service will ensure that Users cannot log into non-activated User Accounts.

Authentication and Authentication failures

- 2.27. The Service will provide a secure method of Authentication of the identity of registered Users, using industry standards such as OpenID Connect 1.0 protocol and standard Authorisation workflows.
- 2.28. The Service's Authentication points will be pre-configured with Authentication failure messages, which may be specific or non-specific (to protect the security of The Service) and which will tell the User what they need to do to correct the failure. These Authentication failure messages will be available via the API.

User Account management

- 2.29. The Service will ensure when a User changes their registered email address, a confirmation and Activation process will be invoked.
- 2.30. The Service will ensure when a User changes their Organisational Entity, they can select from a list of Organisational Entities.

2.31. The Service will ensure when a User Account moves from one Organisational Entity to another:

- The unique User identifier will not change;
- The User Account will not retain the previous eligibility rights;
- The User will be required to log in again to confirm their identity and display the self-registration form to give the user the opportunity to update their details;
- The User will be notified of their new Administrator.

User capacities

2.32. The Service will support 500,000 regular Users (regular user being defined as an individual creating a User Account and using The Service at least once within a 12-month period) and have the capacity to build up to support a maximum of 1.5 million Users during the lifetime of the contract as necessary.

2.33. The Service will support unlimited concurrent usage for all Users.

Expiry and renewal

2.34. User Accounts have a finite lifespan, either a default duration defined by NICE, or a contract duration set on registration or renewal, after which the account expires.

2.35. Users will be notified 30 days and 15 days in advance of their User Account expiry date with details on how to renew their User Account. The Service will provide a customisable email template to be sent to the User containing a URL to a renewal form.

2.36. When a self-renewed User Account cannot be automatically verified, a renewal request notification will be sent to the relevant Administrator and the User is informed of this action.

3. Access Management Federation (AMF)

3.1. The Contractor will provide a SAML2-based federation (the OpenAthens Federation) that all Content Providers are part of or can register to join.

3.2. The OpenAthens Federation will support third-party IdPs using SAML2 protocols.

3.3. The OpenAthens Federation will interact with Content Providers using the SAML2 standard protocols. The service also provides the ability to interoperate with Content Providers using OpenID Connect.

3.4. The OpenAthens Federation will allow new Content Providers to become members and support third party SAML based Content Providers.

- 3.5. The OpenAthens Federation will allow interoperability with existing Content Providers operating in other SAML based identity federations.
- 3.6. The OpenAthens Federation will maintain an up-to-date list of participating Organisational Entities and Identity Providers, available to Content Providers at login.openathens.net/org-list.
- 3.7. The OpenAthens Federation will maintain an up-to-date list of Content Provider resources available to Organisational Entities, curatable by Administrators.

Attribute release to Content Providers

- 3.8. The OpenAthens Federation will pass identifiers and attributes provided by Identity Providers to Content Providers to allow access using SAML2 protocols. The identifiers will include but not be limited to:
 - **Entity ID:** a unique and persistent identifier for the top-level organisation (NICE) managing all Organisational Entities;
 - **Scope:** a unique and persistent identifier for the Organisational Entity the User is affiliated with;
 - A unique and persistent User identifier.
- 3.9. The OpenAthens Federation will allow other data attributes to be specified to be sent to Content Providers, controlled through the attribute release policy which determines which attributes are exchanged with which Content Providers. Attributes can be set to release globally (to all Content Providers), to specific Content Providers only, or to specific SAML entity-categories. Additional attributes can be configured for individual Users, or groups of Users or roles.
- 3.10. The OpenAthens Federation will ensure that only data attributes specified by NICE to be sent to the Content Provider will be releasable, and only if it has been configured as such. The attribute release policy defines which attributes are sent to a particular Content Provider. The attribute release policy is only editable by the National Administrator.
- 3.11. The OpenAthens Federation allows Organisational Entities to elect to pass additional data attributes to Content Providers for groups of Users (permission sets). Such changes would be managed by the National Administrator taking into account relevant information governance standards.
- 3.12. The Service will use its Content Provider network to disseminate the vocabulary and syntax of data attributes to help Content Providers manage exclusions.

Authentication point and single sign-on

- 3.13. The Service supports a single sign-on solution to link the IdP to the Content Providers IdP service.

- 3.14. This will provide seamless Authentication ensuring Users who navigate between Content Provider resources will not be challenged for their credentials again during the same session.
- 3.15. The Service will authenticate Users against known IP addresses (on an Allowlist maintained by the Administrator) where available. This will allow Users to access Content directly when they are on a network on the Allowlist. When Users are accessing Content from outside the specified network, credentials will be requested.

Log out function

- 3.16. The OpenAthens Federation will provide a comprehensive log out function including:
- Session based timeout;
 - The ability to log out of the specific User session;
 - The ability to log out of all active sessions.

Content Provider relationships

- 3.17. The Contractor will have working relationships in place with Content Providers of health and social care resources. The working relationships will ensure Content purchased by or on behalf of the NHS and wider health and social care sector will be made available and accessible for Users and facilitate continuous improvement to The Service and to the benefit of the User.
- 3.18. The Contractor will develop relationships with any new Content Providers that enter into agreement to supply Content to the NHS and wider health and social care, to enable these Content Providers to make their Content available and accessible for Users.
- 3.19. The Contractor will work with Content Providers to create the OpenAthens resource catalogue of Content available to Organisational Entities within The Service. The catalogue will have the ability to be updated by the Content Providers (if required) via the OpenAthens service provider dashboard and these changes will be automatically cascaded to every Organisational Entity.
- 3.20. Administrators will be able to make local adaptations to the catalogue of Content to make descriptions and URLs more meaningful for their Users. Local adaptations will not be overwritten by changes made by Content Providers as described in 3.19. When local adaptations are made to a Content resource, a 'Revert to default' button appears against that resource as a visual cue to indicate at least one of the default properties has been changed. Clicking the button will retrieve all the default properties a Content Provider has assigned to a resource, including those made by Content Providers as described in 3.19.
- 3.21. The Contractor will ensure all Content Providers have access to the service desk by email (help@openathens.net), telephone (0300 121 0043), and web interface (<https://support.openathens.net>).

Content Provider software

- 3.22. The OpenAthens service provider (web-based) dashboard is provided for Content Providers to register to join the OpenAthens Federation.
- 3.23. The OpenAthens Federation will allow Content Providers to access a common set of standards for the implementation of the web-based solution on their own infrastructure.
- 3.24. The OpenAthens Federation will allow Content Providers to use SAML protocols to make their Content available to Users.
- 3.25. Via the OpenAthens service provider dashboard, The Service will allow Content Providers to manage configurations and view aggregated transfer activity statistics solely for their own products, i.e., when a User requests access to the Content Provider's content via OpenAthens. This data does not state whether access has been granted because the authorisation decision is made by the Content Provider and the outcome of whether the user was successfully authorised to view the Content is not passed to OpenAthens.

4. Administration Website

- 4.1. The Service will provide a secure (HTTPS) web browser-based administration interface (Administration Website) with User, Organisational Entity and Content management functionality for use by a network of Administrators.
- 4.2. The Contractor will provide this as a cloud service in line with the Government Digital Service Technology Code of Practice – [use cloud first](#) principles.
- 4.3. Administrator Accounts will use multi-factor Authentication.
- 4.4. The Administration Website will allow one or multiple Administrators to manage a single Organisational Entity.
- 4.5. The Administration Website will allow an Administrator to manage multiple Organisational Entities from a single Administration Account. This can be done by creating the Administrator Account in the appropriate place in the OpenAthens account hierarchy to manage every Organisational Entity beneath it. Alternatively, Administrators can have multiple Administrator Accounts, 1 for each Organisational Entity they are responsible for.
- 4.6. The Administration Website will allow Administrators to create, manage and delete User Accounts (individually and in bulk).
- 4.7. The Administration Website will include functionality for Administrators to view statistical data on Users and Content Activity.

Creation of User Accounts

- 4.8. The Administration Website will enable Administrators to create User Accounts and to set preferences that determine how account creation is managed for the Organisational Entity or Entities they are responsible for, including:
- Activation method for User Accounts;
 - Activation code distribution for User Accounts;
 - Activation code expiry for User Accounts;
 - Default User Account expiry.
- 4.9. The Administration Website will enable Administrators to edit the account details for every User in the Organisational Entity or Entities they are responsible for. All data attributes will be editable, except the username and unique User identifier.
- 4.10. The Administration Website will include User Account information validation processes to ensure that accurate information is entered, for example, valid data for usernames, passwords, dates and email addresses.
- 4.11. The Administration Website will allow Administrators to manage access to Content by grouping a subset of users from an individual Organisational Entity and assigning permission set(s). For example, if content has been purchased for a group of Users within an Organisational Entity rather than for all Users within that entity.

Post-registration process

- 4.12. The Administration Website will facilitate management of all User Accounts via the same interface regardless of Activation State.
- 4.13. Administrators will be able to identify User Accounts which have recently been created, for example, to check whether the User has selected the correct Organisational Entity.
- 4.14. The Administration Website will enable Administrators to change a User's Organisational Entity.
- 4.15. For pending User Accounts, the Administration Website will have the functionality for Administrators to:
- View a list of pending User Accounts for the Organisational Entity or Entities they manage;
 - Approve or reject pending User Account registrations, individually and in bulk;
 - Select and delete User Accounts;
 - View a list of deleted User Accounts for their Organisational Entity;
 - Select User Accounts for the generation of new Activation codes, to be sent to the User via email.

- 4.16. On rejection of a pending User Account registration an email notification will be sent to the Applicant to explain the reasons for account rejection.
- 4.17. For expired User Accounts, the Administration Website will have the functionality for Administrators to:
- View a list of User Accounts that have expired, for a configurable number of days after the expiry date;
 - Select User Accounts for deletion, including the ability to specify the number of days after which User Accounts will be deleted;
 - Delete User Accounts.

Organisational structure

- 4.18. The Service will provide an overall organisational structure to demonstrate how eligibility and access rights flow through the system. The structure will allow Organisational Entities to be grouped together to allow Administrators to collectively manage access to Content purchased on behalf of the NHS and wider health and social care sectors. Content may be purchased nationally, regionally, or by Organisational Entities either collectively (consortia) or individually.
- 4.19. Where a single Organisational Entity purchases Content, The Service will allow Administrators to manage access to Content on an Organisational Entity level.
- 4.20. Where multiple Organisational Entities purchase Content either regionally or in consortia, The Service will allow Administrators to manage access to Content across the relevant Organisational Entities.
- 4.21. Where Content is purchased nationally, The Service will allow the National Administrator to manage access to Content to all Users once.
- 4.22. In the same way that access to Content is managed at individual Organisational Entity, multiple Organisational Entity and national levels, The Service will allow access rights to be revoked. For example, the National Administrator will be able to remove access rights for all Users at once and the Administrator of an Organisational Entity will be able to remove access rights for all the Organisational Entity's Users at once.
- 4.23. The Service will allow the National Administrator to create and delete Organisational Entities, and manage Administrators, Users and Content for all Organisational Entities.

Management of Organisational Entities

- 4.24. The Service will ensure Organisational Entities can be grouped in the Administration Website in line with the overall organisational structure.
- 4.25. The Administration Website will enable Administrators to create and manage Allowlists of email domains for the Organisational Entity or Entities they are

responsible for to enable automatic access to the Content on User Account creation.

- 4.26. The Administration Website will allow Administrators to set synonyms for their Organisational Entities that can be used in conjunction with the self-registration features.

Search and browse

- 4.27. The Administration Website will allow Administrators to browse a list of all the User Accounts in the Organisational Entity or Entities they are responsible for. The list will display the default data attributes first name, last name, email address, Organisational Entity and Activation State, and/or customisable data attributes.
- 4.28. Each page of the Administration Website will include:
- A simple User Account search function;
 - Access to advanced search options.
- 4.29. The simple search will search username, first name, last name and email address in the Organisational Entity or Entities the Administrator is responsible for.
- 4.30. The advanced search option will search on all data attributes and will allow Administrators to:
- Search username, first name, last name, email address, status and Organisational Entity of any User;
 - View all account details of any User in the Organisational Entity or Entities they are responsible for;
 - Search results retrieved which sit outside the Organisational Entities the Administrator is responsible for will display a padlock icon and the account username is not linked to the account record.
- 4.31. The advanced search will have 3 categories for the scope of a search:
- **Just me:** User Accounts in the Administrator's Organisational Entity;
 - **Me and all my sub-organisations:** User Accounts in all the Administrator's Organisational Entity and those below that point in the hierarchy they are responsible for;
 - **Any organisation:** all OpenAthens User Accounts registered for the NHS in England. Due to privacy settings, User Accounts included in the search results list which sit outside the Organisational Entities the Administrator is responsible for, will display a padlock icon and the account username is not linked to the account record.
- 4.32. The search results generated by either a simple or advanced search will display a list of all the relevant User Accounts. From this list Administrators will be able to:

- Sort or filter;
- Customise the default data attributes displayed;
- Perform functions such as move, delete or modify one, some or all User Accounts in the Organisational Entity or Entities which they are responsible for.

Administration Website features

4.33. The Service will provide the following functionality on all pages in the Administration Website:

- To return to the Administration Website home page;
- To access that Administrator Account details;
- View of the Organisational Entity or Entities the Administrator is responsible for including organisation name, Organisational Entity and total number of User Accounts per Organisational Entity;
- Context-sensitive help, displaying information relevant to the page being viewed at the time;
- A link to the OpenAthens Service Desk web-based interface where Administrators can raise a support call and to view all support calls raised by the Organisational Entity;
- The ability to logout of the Administrator Website.

Email functionality

4.34. The Service will provide the following email templates for communicating with Users:

- OpenAthens Account created (activation);
- OpenAthens Account created (password);
- OpenAthens Account request approved;
- OpenAthens Account expiring;
- Your OpenAthens access rights have expired;
- Your OpenAthens Account has been moved;
- OpenAthens Administrator Account activation;
- Reset your OpenAthens account password;
- Your OpenAthens Account - Application Rejected. Three rejection reason options are available, or the Administrator can overwrite these with their own text.

4.35. The National Administrator has editing rights for the email templates to allow the templates to be reworded from the Administration Website.

- 4.36. The email templates include a default subject field, reply-to field and message body which can be modified/edited by the Administrator before sending.
- 4.37. The email templates can be auto populated with User Account and Administrator attributes.
- 4.38. The Service will allow Administrators to add attachments to email templates before sending.
- 4.39. Via the advanced search option, The Service will allow Administrators to download the email address(es) for one, more than one or all User Accounts for the Organisational Entity or Entities they are responsible for.

Notifications for administrators

- 4.40. The Service will provide notifications for Administrators in the Administration Website and/or by email. Email notifications will include click-through access to the User Account details page in the Administration Website. Email aggregation options include individually (where relevant), daily, weekly and not at all.
- 4.41. The Service will provide notifications for Administrators for the following scenarios:
- Accounts awaiting activation;
 - Accounts suspended due to use from multiple locations;
 - Accounts suspended due to multiple login failures;
 - Number of files for download;
 - Users joined organisation;
 - Validation process on bulk upload files does not detect any errors with the file(s);
 - Validation process on bulk upload files detects errors, providing detail of relevant User Accounts and errors (by email only);
 - Accounts activated by Users;
 - Accounts created;
 - Accounts deleted;
 - Accounts due to expire in the next 30 days;
 - Accounts expired since last notification;
 - Accounts modified;
 - Email addresses changed by Users;
 - Logins to resources;
 - Passwords changed by Users;
 - Successful logins;
 - The current total number of expired accounts;

- The number of accounts awaiting activation by the User;
- The number of accounts due to expire in the next 30 days;
- The number of accounts that expired since the last notification;
- Total number of accounts;
- Total number of allocated resources;
- Total number of expired accounts;
- Users left organisation.

Audit functionality

4.42. The Administration Website will include the following auditing reporting functionality:

- Total number of Authentication attempts to Content Providers and the resulting success or failure;
- Total number of Authentications for each Content Provider;
- User Account created, expired, deleted, disabled, suspended banned;
- Authentication Activation State changed to activated;
- Authentication Eligibility State changed to eligible, pending or ineligible;
- Total number of User Accounts for an Organisational Entity by job role;
- Account changes for an individual or multiple User Accounts, for a configurable date period;
- User Accounts that have joined and left an Organisational Entity.

Data download and upload

4.43. The Administration Website will support the download of the following information for the Organisational Entity or Entities the Administrator is responsible for (including all Organisational Entities in the case of the National Administrator) in a machine-readable format:

- All User Account information held by The Service (except for a User's password);
- User Accounts that were created or modified in a configurable date range;
- Expired User Accounts.

4.44. The Administration Website will have a fully automated upload function to enable up to 5,000 User Accounts to be added, updated or deleted in bulk. To support processing data upload files in a standard format, a spreadsheet upload template will be available in the Administration Website which includes:

- Help text for each field or attribute;

- Options configured in the domain and organisation preferences, some of which can be overwritten in the upload file;
- Validation for fields where relevant, for example, minimum and maximum username lengths and where only a Yes or No is required;
- Customer-specific configuration items such as job role

4.45. The Administration Website will carry out automatic validation processes to ensure uploaded files are in the required format and ensure consistent application of account creation rules. If the validation process does not detect any errors with the file(s):

- The Administrator will be notified with a successful confirmation message;
- The file(s) will be uploaded.

4.46. If the validation process detects any errors with the file(s):

- The Administrator will be notified with a detailed error notification;
- User Account records that have no errors will be processed;
- User Account records with errors are saved in a new file for the Administrator to correct and re-uploaded.

5. Statistics

5.1. The Service will provide the capability to produce User and Content Activity statistics reports via the OpenAthens reporting module which can be accessed directly at reports.openathens.net or via the Administration Website.

5.2. Via the Administration Website, Administrators will be able to view and extract (download) User Account summaries and Content Activity statistics on an ad hoc basis for all Users within the Organisational Entity or Entities they are responsible for. The date range of reports will be configurable by Administrators and the reports will be downloadable in CSV and PDF formats.

5.3. The Service will provide monthly summary reports for the Organisational Entity or Entities an Administrator is responsible for:

- Number of new registrations;
- Number of new eligible User Accounts;
- Number of expired User Accounts;
- Number of deleted User Accounts;
- Total number of User Accounts;
- Total Content Activity for User Accounts by job role;
- Total Content Activity for User Accounts by the Organisational Entity;

- Content Activity for User Accounts by Content Resource;
- Content Activity by Organisational Entity by Content Resource (allowing comparisons to be made between unlimited numbers of Content resources).

6. Accessibility

- 6.1. The Service will work with, as a minimum, latest versions of common web browsers including but not limited to, Microsoft Edge, Google Chrome, Mozilla Firefox and Apple Safari browsers.
- 6.2. The Service will not require Users or Administrators to install any additional web-browser plugins to use OpenAthens web-based interfaces.
- 6.3. The Service will ensure that web pages provided as part of the solution adhere to the [Valid HTML](#) and [Accessibility](#) requirements defined by NHS Digital including the Contractor publishing an [accessibility statement](#) that explains how accessible the service is.

7. Security

- 7.1. The Service will guarantee the following security measures:
 - Automated lockout measures designed to prevent misuse or brute-force attacks, for example, repeated attempts to login using incorrect details;
 - Account monitoring tools that report potential misuse of User Accounts, including excessive login checks based on geolocation and analysis of requests to detect suspicious activity, including brute force attacks;
 - Publicly accessible web products will meet the [NHS Digital security specifications](#);
 - Servers and network protection by physical and network security measures;
 - Protection and mitigations against the top 10 common web application vulnerabilities relevant to the IdP and AMF (listed by OWASP 2020).
- 7.2. When User Accounts are automatically locked out on security grounds, the User's access rights to Content will be immediately removed. An email or email notification will be sent to the relevant Administrator with details of the locked User Account concerned.
- 7.3. All SAML tokens will be digitally signed, and signatures verified where they are at risk of being tampered with. Where SAML 2.0 is supported by the Content Provider, SAML messages will additionally be encrypted using XML encryption.

- 7.4. The Contractor will carry out and provide documentation on independent penetration testing at least annually, with an approved Contractor, in line with the [NHS Digital penetration specifications](#).
- 7.5. The Contractor will report on suspected account misuse, events that may indicate attempts to circumvent access controls, and events that may result in unauthorised access to Content or Service failure.

8. Data Protection

- 8.1. The Contractor will store, process and manage personal data according to the Data Protection Act 2018 and the General Data Protection Regulation including the principles of data minimisation and storage limitation.
- 8.2. The Contractor will work with NICE to complete a data protection impact assessment on The Service data protection and information governance standards and information security with regards to personal data.
- 8.3. Collection, storage and use of personal data by the Contractor in relation to The Service will be described in the OpenAthens privacy notice available at openathens.org/privacy.
- 8.4. Administrators are responsible for deleting Users Accounts via the Administration Website as soon as access is no longer required. The Service will ensure any personal data from these User Accounts stored on the Contractor's servers is deleted after a maximum of 1 year.
- 8.5. All personal data related to The Service stored on the Contractor's servers will only be accessible to authorised Contractor personnel and the National Administrator via the Administration Website.
- 8.6. Username, first name and last name will be available to all Administrators via the advanced search option. Other personal data associated with User Accounts will only be accessible to the local and regional Administrator(s) responsible for that Organisational Entity as well as the National Administrator.
- 8.7. The Contractor will respond promptly to any subject access requests made under the Data Protection Act and will ensure that NICE is made aware of them.
- 8.8. Data will be stored in data centres that are physically secure with appropriate security and protection arrangements available and monitored 24 hours, seven days a week. Access will be limited to authorised personnel only.
- 8.9. Data will be stored in data centres located in the UK, in the EEA or in any other country granted adequacy.

9. Implementation

- 9.1. Full details of any implementation and transition milestones and associated project plan will be set out in ANNEX 4 of the “Terms and Conditions of Contract”.

10. Service Level Agreements and Contract Management

Service Continuity and Service Desk

- 10.1. The Contractor will ensure continual service availability - 24 hours a day, 7 days per week, 365 days per year including English Bank Holidays and Public Holidays - and will work to restore service availability as soon as possible in the event of an interruption or suspension of The Service.
- 10.2. The Contractor is responsible for ensuring continuity of The Service including the provision of secure, up-to-date back-up and restore facilities in accordance with best commercial practices. The Service will satisfy a user ‘client-server’ transaction response time of within 1 second.
- 10.3. The Contractor will have a Business Continuity and Disaster Recovery (BCDR) plan in place, for example, [GOV.UK business continuity and disaster recovery schedule](#). The BCDR plan will detail the processes and arrangements which the Contractor will follow, to ensure continuity of the business processes and operations supported by The Service following any failure or disruption of any element of The Service and the recovery of The Service in the event of a disaster. The BCDR is to be shared with NICE on request.
- 10.4. The Contractor will have security management policy and plan in place, including but not limited to, security standards, business processes for security testing, and incident management and resolution processes for any breach of security, [for example, GOV.UK security requirements schedule, long form](#). The security management plan is to be shared with NICE on request.
- 10.5. Service availability is expected to be 99.9% calculated monthly, excluding Scheduled Downtime.
- 10.6. Core and non-core service hours are defined as:
- **Core service hours**
08:00 to 20:00 GMT, Monday to Friday, including English Bank Holidays and Public Holidays;
 - **Non-core service hours**
20:01 to 07:59 GMT, Monday to Friday, including English Bank Holidays and Public Holidays;
00:00 to 00:00 GMT, Saturday to Sunday.
- 10.7. The Contractor may have up to 6 hours per week of Scheduled Downtime during non-core service hours, subject to a total of no more than 15 hours in a rolling 4

week period. The Contractor will publish all scheduled maintenance work via their status service page (status.openathens.net) with a minimum of 2 working days' notice for periods of Scheduled Downtime. Exceptionally, downtime giving less than 2 working days' notice may be agreed with NICE.

- 10.8. If there is an issue with service continuity, including those reported via the service desk, the Contractor will follow standard service management processes to detect, replicate, report and resolve the incident. The Contractor is expected to work with other system partners where necessary to resolve issues. The Contractor will categorise any issue against the incident priority levels, proactively report the issue to NICE within the defined reporting periods and resolve the issue within the target resolution period – see **Annex 2_Terms, SLA, KPIs and Reporting (KPIs & Incident Priority Levels sheet)** for incident priority level classification and reporting and resolution periods. Reporting time, defined in the incident priority levels, is measured during core service hours only.
- 10.9. The Contractor will be able to communicate with all Users when required via their status service page (status.openathens.net), including service issues affecting service availability, service performance, Scheduled Downtime or emergency maintenance, and real time information on the status of The Service. The Service will enable the National Administrator to communicate with all Users when required by obtaining a list of email addresses for all Users from the Administration Website.
- 10.10. The Contractor will notify NICE and Users within 2 hours that an issue affecting service availability has been resolved and access to The Service has been restored.
- 10.11. For all priority level 1 and 2 incidents, the Contractor will share a formal incident report with NICE within 7 working days of the incident occurring. The incident report will provide a description of the incident, detail of any unscheduled downtime required for emergency maintenance plus details of any remedial action which have been taken by the Contractor to resolve the incident and prevent a similar occurrence in the future. For the avoidance of doubt, this reporting is additional to the scheduled monthly and annual contract reporting which will record and summarise such incidents.
- 10.12. The Contractor will provide a dedicated service desk team to provide support to all Administrators and Content Providers contactable by email (help@openathens.net), telephone (0300 121 0043), and web interface (<https://support.openathens.net>).
- 10.13. The service desk will be available 07:00 to 22:00 GMT, Monday to Friday, excluding English Bank Holidays and Public Holidays. All enquiries received via the service desk will be acknowledged within 2 hours of the enquiry being received, responded to within 5 working days with notification of actions (to be) taken to resolve the issue, and resolved within 20 working days.

- 10.14. The Contractor will keep training materials up to date throughout the contract period to support Administrators and Users.
- 10.15. The OpenAthens product roadmap is available at openathens.org/resources/product-roadmap. The Contractor will maintain and share a prospective digital roadmap with NICE relating to any major changes or developments which will impact The Service and /or require NICE to make any associated digital developments. The Contractor will give NICE a minimum of 90 working days' notice prior to changes going live.

Service Performance, Contract Reporting and Related Payment

- 10.16. The Contractor will assign a dedicated contract manager and technical lead to NICE. The contract manager will be fully responsible for all matters under the relationship, including, but not limited to, all contractual, financial, and service level reporting.
- 10.17. The contract manager will attend quarterly contract review meetings with NICE, an annual service review meeting with NICE, and quarterly service network meetings held by the National Authentication and Link Resolver Operational Management (NALROM) group. NALROM is made up of the National Administrator, Administrators responsible for regions, representatives from HEE and NICE, and relevant staff from the Contractor.
- 10.18. The Contractor will provide annual and quarterly contract review reports to summarise the service performance in the contracted period including a summary of enquiries, Scheduled Downtime, KPI exception reporting, financial overview, and risk, issue and change management details – see **Annex 2_Terms, SLA, KPIs and Reporting (Contract Review Report sheet)**.
- 10.19. The Contractor will provide quarterly reports to demonstrate the level of service performance against each key performance indicator – see **Annex 2_Terms, SLA, KPIs and Reporting (KPI Input sheet)**. The Contractor will monitor service performance against each key performance indicator and report to NICE quarterly and annually. The report will include remedial actions being taken to increase service performance where thresholds are breached.
- 10.20. The Contractor will also provide quarterly reporting detail of service incidents, Scheduled Downtime and service usage - see **Annex 2_Terms, SLA, KPIs and Reporting (Quarterly Report sheet)**.
- 10.21. All reports will be made available 1 week prior to contract review meetings.

2.1 Escalation

The Contractors escalation contacts:

Name	Title	Email address
Phil Leahy	OpenAthens Key Client Services Manager	phil.leahy@openathens.net
Matt Olive	Customer services manager	matt.olive@openathens.net
The Authority's escalation contacts:		
Name	Title	Email address
Mark Salmon	Programme Director	Mark.Salmon@nice.org.uk



ANNEX 2

Service Level Agreement, Key Performance Indicators (KPI) and Reporting

2.1 Service Levels and Key Performance Indicators

See “AIMS ANNEX 1 Terms, SLA, KPIs and Reporting.xls”

2.2 Quarterly Reporting

The Contractor shall provide the information as required in clause 21.3 and Annex 2 – 2.1 and Annex 2 – 2.2, quarterly to the Authority on the document “AIMS ANNEX 1 Terms, SLA, KPIs and Reporting.xls”.



ANNEX 3

Payment Schedule

The Contractor will invoice NICE quarterly in arrears according to the schedule below.

Service Payment Schedule			
Amount of Funding		Financial Year 1	Date(s) for Submission of Invoice(s)
1st Quarter	██████	2022/23	1 August 2022
2nd Quarter	██████	2022/23	1 November 2022
3rd Quarter	██████	2022/23	1 February 2023
4th Quarter	██████	2022/23	1 May 2023
Total	██████		
VAT (at prevailing rate)	██████		
Year 2 Total	██████		
Amount of Funding		Financial Year 2	Date(s) for Submission of Invoice(s)
1st Quarter	██████	2023/24	1 August 2023
2nd Quarter	██████	2023/24	1 November 2023
3rd Quarter	██████	2023/24	1 February 2024
4th Quarter	██████	2023/24	1 May 2024
Total	██████		
VAT (at prevailing rate)	██████		
Year 3 Total	██████		
Amount of Funding		Financial Year 3	Date(s) for Submission of Invoice(s)

1st Quarter	██████	2024/25	1 August 2024
2nd Quarter	██████	2024/25	1 November 2024
3rd Quarter	██████	2024/25	1 February 2025
4th Quarter	██████	2024/25	1 May 2025
Total	██████		
VAT (at prevailing rate)	██████		
Year 4 Total	██████		

AGREEMENT TOTAL (3yrs) excl. VAT	£825,000		
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ANNEX 4

Implementation and Transition, Acceptance and Liquidated Damages

This annex will only apply, where NICE requires any development and implementation of the End-user web interface pages for self-registration and account management by JISC. For clarity, clauses 4.8 Liquidated Damages of this ANNEX 4 will not apply to any such development or implementation.

4.1 Implementation and Transition

A fully detailed service implementation project plan must be completed by the Contractor and delivered to NICE no later than 6 weeks after a formal written request is made by NICE to the Contractor for the development of JISC hosted End-user web interface pages . The plan shall detail the key tasks, milestones, assurance points, dates and dependencies for all phases on the plan.

Should the plan not be completed by the agreed date, clauses 11 (Delays) and 12 (Extension of Time) shall become effective.

The final agreed project plan will form Annex 4 of this contract and shall be governed by the Variation to Agreement process.

The Contractor will provide appropriate documentation of any interfaces or APIs provided as part of the Services in order for the Authority to perform Acceptance Testing, as defined in this Annex 4, and to integrate with the live Services where required.

The Contractor will provide reasonable direct access to technical resource for members of the Authority for the purpose of resolving technical issues encountered during the Acceptance Testing phase(s).

4.2 Implementation and Transition Milestones and Project Plan

The Contractor will establish the project management team and project manage The Service implementation to ensure that all milestones agreed with NICE are delivered within the timescales for implementation and service start dates.

The Contractor will manage and co-ordinate all activity required to be performed by third parties, including NICE, Administrators and Users, and Content Providers to implement The Service.

4.3 Acceptance

The implementation of the Services will be delivered through a series of phases, milestones and deliverables to be detailed in the service implementation project plan and agreed with the Authority.

Acceptance criteria specified in Annex 4a are to be defined by the Contractor and agreed by both parties as part of the implementation project plan.

The Contractor will fully test the Services against the agreed acceptance criteria and share the Testing reports with the Authority.

The Contractor will provide a test environment for the Authority to perform Acceptance Tests of the Services against the acceptance criteria. The Contractor will ensure that

planned deliverables are deployed to the Contractor’s test environment, and the Services or features are in a good state for Testing, on or before the Planned Acceptance Dates, subject to clauses 10, 11 and 12.

Any issues identified in the Acceptance Test performed by the Authority against the acceptance criteria will be rated by the Authority against the following defect Priority Levels:

Priority 1	Critical defect, Services would be unusable or unavailable, no work around available or workaround unacceptable.
Priority 2	Serious defect, one or more key functions would be unusable or unavailable, no work around immediately available or workaround has high operational/User impact
Priority 3	Medium level defect with acceptable workaround available
Priority 4	Low level defect.

A release would be deemed acceptable on its due date as long as the defect levels are at or below:

- Zero non-compliances with agreed scope (i.e. release is feature complete)
- Zero unfixed Priority 1 defects
- Less than 3 Priority 2 defects with agreed resolution timeline
- Less than 10 Priority 3 defects with agreed resolution timeline
- Less than 20 Priority 4 defects with agreed resolution timeline.

4.4 Phase Deliverable Definitions and Acceptance Criteria

It is agreed that the phased deliverable definitions and acceptance criteria (Annex 4a under a separate document) represent the shared understanding of the Contracting Authority and the Contractor at the date where both parties sign this agreement.

For avoidance of doubt, this document shall be refined through the implementation of the Services with an up to date and maintained version of these deliverables managed under formal change control, the final agreed Annex 4a between both parties, shall be managed under Variation to Agreement.

4.5 Mobilization

The mobilization activities for the project will include a number of workshops and meetings between the Contractor and the Contracting Authority. The workshops and meetings shall clarify and refine the contents of each planned phase. The number of meetings and workshops will be reasonable, taking into account that the Contractor tendered for the contract on a fixed price basis. Meetings and workshops will be virtual (conducted on a remote basis) wherever possible.

The mobilization stage will include detailed planning and risk assessment activities performed by the Contractor and agreed with the Contracting Authority as which will document:

- Project release phase plan
- Specific scope of contents of each Releases
- RAID analysis of releases

- Requirements workshop dates for each release
- Development start dates for each work stream
- Testing start dates for each work stream
- Acceptance Test start dates for each work stream
- Go Live dates for each release
- Liquidated Damages dates as appropriate.

4.6 Authority's Obligations

Respond and action any instructions, decisions, information and access in a timely fashion and as reasonably requested by the Contractor.

Provide a central point of contact who will be available for fortnightly checkpoint meetings and contactable throughout the project duration.

Provide a named resource with appropriate authority who can authorise change requests in acceptable timescales that is able to:

- Agree and signoff progressing to the next phase of the project
- Review and agree timescales and Acceptance Criteria for each phase
- Perform Acceptance Tests on the dates agreed
- Discuss, review and agree all KPIs and SLAs
- Discuss and agree how contacting the Contractors technical support will work throughout the contract.

The above personnel are listed in 4.7 of this Annex 4.

4.7 Implementation Key Personnel and Communication

Any communication, enquiry or complaint in relation to the implementation of the Services as detailed in Annex 1 and 3 shall be managed between the following Key personnel. For the avoidance of doubt all other enquiries or complaint in regard to the existing AIMS service shall go through the Contractors Help Desk.

The Contractors Key personnel

Contract Management:

██████████

Technical:

██████████

The Authorities Key Personnel

Contract Management:

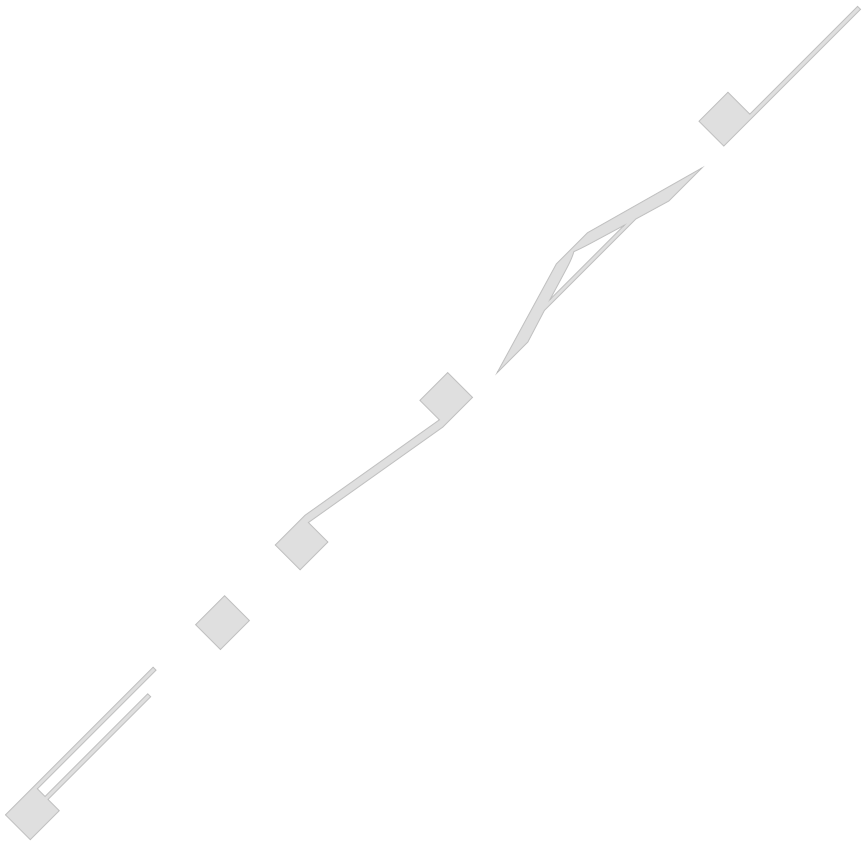
████████████████████

Programme Manager National Core Content Commissioning,
SEA Directorate

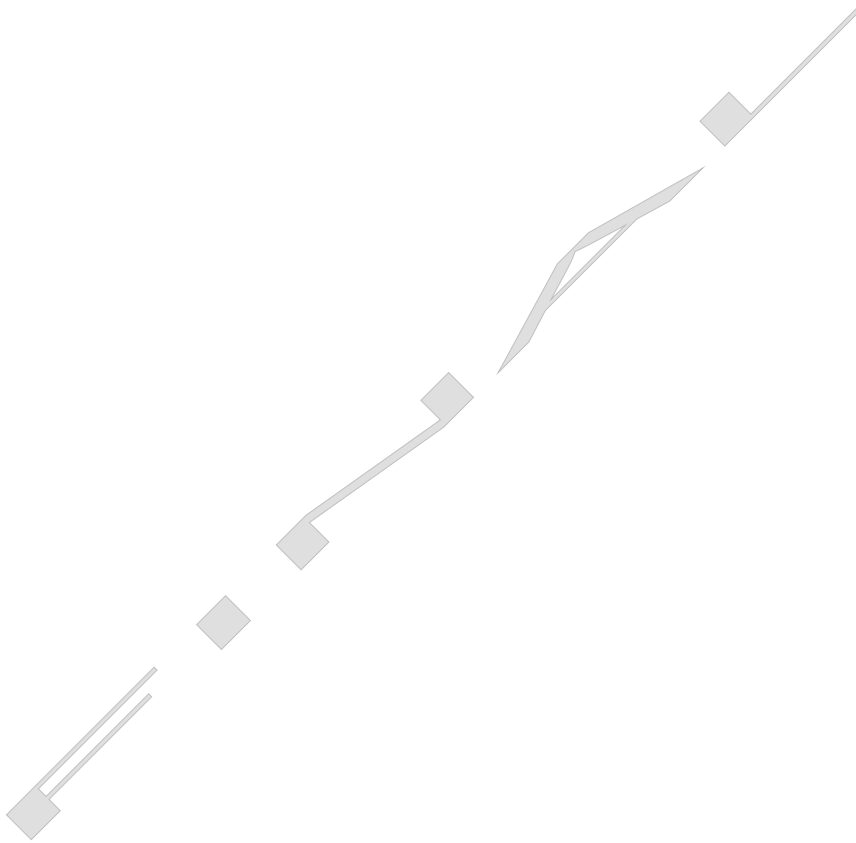
Technical:



Senior Service Delivery Manager, Digital, Information and Technology Directorate



4.8 Liquidated Damages – Not used Liquidated Damages do not apply

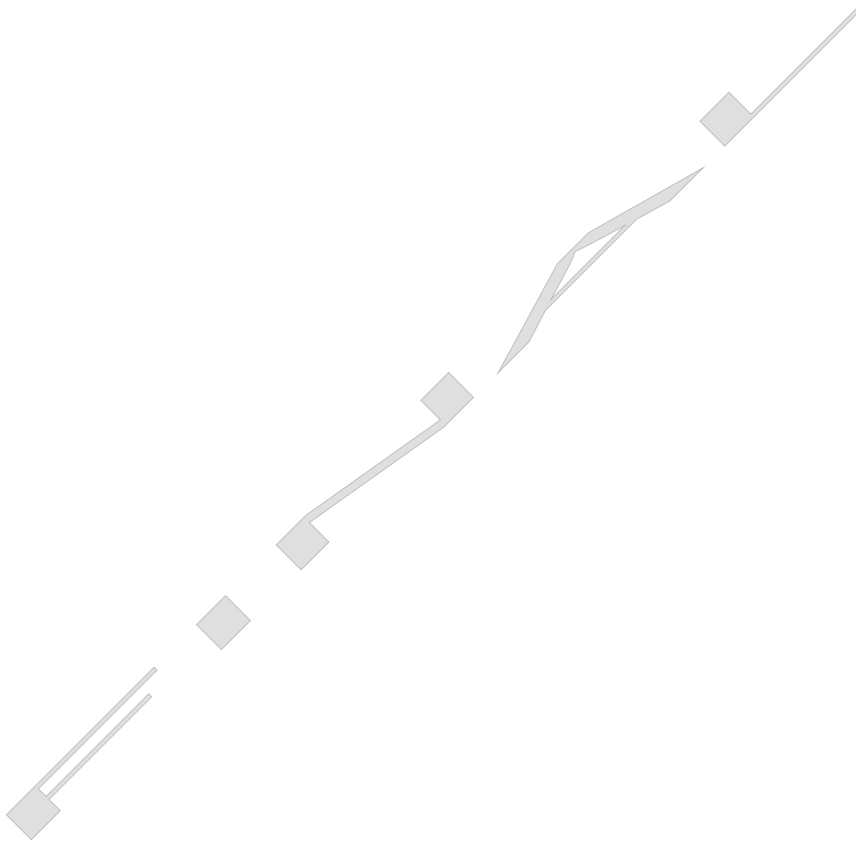


ANNEX 4a

Acceptance Criteria

The acceptance criteria are to be defined by the Contractor and agreed by both parties as part of the implementation project plan.

This annex will be agreed between the Parties where applicable e.g. for any development and implementation of any registration pages by JISC.



ANNEX 5

Sub-contractors

~~There are no sub-contractors used to deliver the Services~~

This extract is taken from the 04_SVQ Response Document_FINAL.docx which formed part of the Jisc OpenAthens bid:

Sub-contractors

JSL may from time to time use sub-contractors to perform all or any part of its obligations under this schedule. JSL shall notify the Customer prior to appointing a sub-contractor. The Customer may object to the appointment of any sub-contractor and JSL shall reasonably take into account the views of the Customer in appointing any such sub-contractor, but for the avoidance of doubt the appointment of any sub-contractor shall be at JSL's absolute discretion and JSL shall have no obligation to act in accordance with any objection raised by the Customer. Information regarding the sub-contractors JSL uses from time to time in connection with the performance of the Service can be found on the Website here:

<https://openathens.org/appointed-sub-contractors>.

JSL may from time to time disclose Personal Data to its sub-contractors (or allow its sub-contractors to access Personal Data) for Processing solely in connection with the fulfilment of the Permitted Purpose.

Where JSL uses a sub-contractor to Process Personal Data for or on its behalf, it will ensure that the subcontractor contract (as it relates to the Processing of Personal Data) is on terms which are substantially the same as, this schedule.

JSL shall remain liable to the Customer for the acts, errors and omissions of any of its sub-contractors to whom it discloses Personal Data, and shall be responsible to the Customer for the acts, errors and omissions of such sub-contractor as if they were JSL's own acts, errors and omissions to the extent that JSL would be liable to the Customer under this Agreement for those acts and omissions.

ANNEX 6

Contractors and Third Party Hardware and Software

This extract is taken from the 04_SVQ Response Document_FINAL.docx which formed part of the Jisc OpenAthens bid:

Sub-contractors

JSL may from time to time use sub-contractors to perform all or any part of its obligations under this schedule. JSL shall notify the Customer prior to appointing a sub-contractor. The Customer may object to the appointment of any sub-contractor and JSL shall reasonably take into account the views of the Customer in appointing any such sub-contractor, but for the avoidance of doubt the appointment of any sub-contractor shall be at JSL's absolute discretion and JSL shall have no obligation to act in accordance with any objection raised by the Customer. Information regarding the sub-contractors JSL uses from time to time in connection with the performance of the Service can be found on the Website here:

<https://openathens.org/appointed-sub-contractors>.

JSL may from time to time disclose Personal Data to its sub-contractors (or allow its sub-contractors to access Personal Data) for Processing solely in connection with the fulfilment of the Permitted Purpose.

Where JSL uses a sub-contractor to Process Personal Data for or on its behalf, it will ensure that the subcontractor contract (as it relates to the Processing of Personal Data) is on terms which are substantially the same as, this schedule.

JSL shall remain liable to the Customer for the acts, errors and omissions of any of its sub-contractors to whom it discloses Personal Data, and shall be responsible to the Customer for the acts, errors and omissions of such sub-contractor as if they were JSL's own acts, errors and omissions to the extent that JSL would be liable to the Customer under this Agreement for those acts and omissions.

ANNEX 7

Variation to Agreement

Annex 7 to Agreement between the Contracting Authority (NICE) and the Contractor of Access and Identity Management Service on the xx Day of xx 20xx (“the Agreement”).

For the purposes of this Variation to Contract:

NICE’s Commissioning Manager means the individual from time to time appointed by the NICE and notified to the Contractor in writing responsible for the co-ordination of the development specified below;

This Variation Agreement pertains to the Access and Identity Management Service (the “Services and Supply”) to be undertaken by the Contractor and is agreed by the Contractor and NICE as a current addition to Annex 1 of the Agreement (The Services Specification).

The Development Services and Supply will:

- be developed by the Contractor in compliance with the specifications contained in this Variation, and
- be developed and delivered in accordance with the terms and conditions of the Agreement.

This Development Services and Supply consists of:

- xx

To be completed

- xx

Milestones

Due Date	Milestone

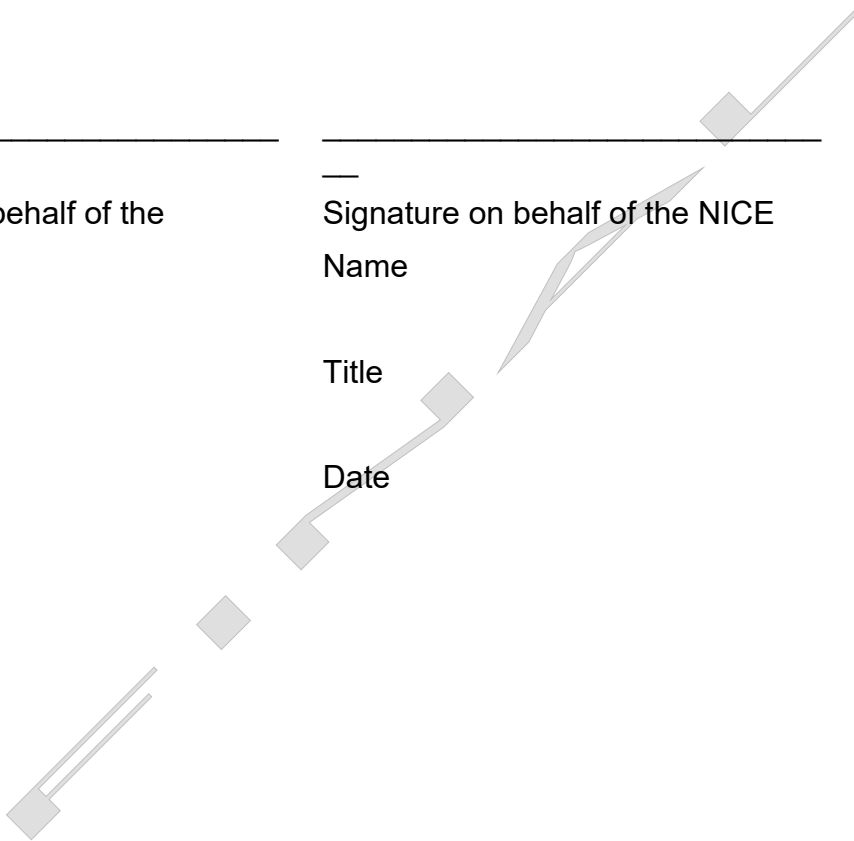
The Milestones for deliverables which are required by the NICE are detailed in this Variation.

The Contractor shall be deemed to have completed a Milestone by the Due Date notwithstanding any delay beyond the Due Date if such delay would not have occurred but for any act or omission of the NICE, anything done or omitted to be done on the NICE's instructions or any other act or omission of a third party which was beyond the reasonable control of the Contractor (for the avoidance of doubt such third parties do not include the Contractor's sub-Contractors,).

The Scope and this Variation may only be varied with the prior written agreement of the NICE, such agreement (if given) not to be unreasonably delayed.

Terms defined in the Agreement shall bear the same meanings in this Variation of Contract, unless otherwise stated, or the context otherwise requires.

_____	_____
Signature on behalf of the Contractor	Signature on behalf of the NICE
Name	Name
Title	Title
Date	Date



ANNEX 8

Data Protection

Subject matter of the processing	<p>The Service uses personal data in order to provide identity provision and access management service so that eligible staff as defined under Eligibility criteria in section 3.1 of the Terms and Conditions of Contract can access Content that they are eligible to access. It includes 2 types of personal data:</p> <ul style="list-style-type: none">i. Data about Administrators. This is to allow the administration of OpenAthens personal accounts.ii. Data about User Accounts. Granting (identify provision) and allowing access to Content (access management) by passing attributes to Content Providers from the OpenAthens service. This is data about OpenAthens Users.
Duration of the processing	Until 30/04/2025
Purposes of the processing	<ul style="list-style-type: none">i. Administrator data may be used to set up and deliver Administrator accounts and their functions.ii. OpenAthens user data may be used to identify Users with Content Providers in order to provide access to the Content they are eligible to access.
Nature of the processing	<ul style="list-style-type: none">i. The Contractor may collect and store Administrators' data to enable administrators to log into the system and to administer User accounts. The Contractor may also use the Administrators' data to communicate with administrators about the OpenAthens service.ii. The Contractor may use the User account data to collect, store and pass to Content Providers for the purpose of granting access to Content that the User is eligible to access, and to communicate with OpenAthens account holders about the OpenAthens service. Only the following attributes may be passed from the Contractor to Content Providers: Username, Role, Persistent user identifier, Entitlement, and Organisation ID.
Type of Personal Data	Administrator accounts

Mandatory:

- First name
- Last name
- Email address
- Organisation
- Role

Optional:

- Position
- Phone number
- Fax number
- Staff/student number
- Title
- Department
- Postal address
- Public contact details
- Discovery domain hint
- Geolocation
- Organisation Aliases
- Trusted email domain
- Trusted IP address

OpenAthens Users

Mandatory:

- First name
- Last name
- Email address
- Organisation
- Role
- Eligibility status (entered by administrator rather than User)
- Acceptance of terms and conditions

Optional:

- Position
- Contract type
- Phone number
- Fax number

	<ul style="list-style-type: none"> • Staff/student number • Title • Department • Postal address • Public contact details • Discovery domain hint • Geolocation • Organisation Aliases • Trusted email domain • Trusted IP address
<p>Categories of Data Subject</p>	<p>Members of staff employed as defined under Eligibility criteria in section 3.1 of the Terms and Conditions of Contract .These are further categorised by the job role field in the OpenAthens system.</p> <p>Data on Non-activated applicants are also stored, for example, students, people from outside of England. The Contractor will delete these from the system after 12 months.</p>
<p>Plan for return and destruction of the data once the processing is complete</p>	<p>i. Administrators: Where administrator changes their details, these are changed at the time the administrator changes them and deleted when an organisation is deleted.</p> <p>ii. OpenAthens Users: OpenAthens User accounts are automatically set to expire after 2 years.</p> <p>To enable the account to be restored if necessary, user accounts are maintained for one year after the organisation is deleted, unless the Data Controller requires otherwise.</p>



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Parties involved with this document

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Wed, 11th May 2022 15:55:21 BST	[REDACTED] - Signer [REDACTED]
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Fri, 27th May 2022 6:47:38 BST	Sent the envelope to ([REDACTED]) for signing. ([REDACTED])
Fri, 27th May 2022 6:47:38 BST	[REDACTED] signed the envelope. ([REDACTED])
Fri, 27th May 2022 6:46:01 BST	[REDACTED] viewed the envelope. ([REDACTED])
Thu, 26th May 2022 14:49:50 BST	[REDACTED] opened the document email. ([REDACTED])

Thu, 26th May 2022 14:48:41 BST
Tue, 24th May 2022 11:23:24 BST
Tue, 24th May 2022 11:20:47 BST
Mon, 23rd May 2022 17:35:58 BST
Mon, 23rd May 2022 17:35:55 BST
Mon, 23rd May 2022 17:17:56 BST
Mon, 23rd May 2022 17:17:49 BST
Mon, 23rd May 2022 13:50:54 BST
Mon, 23rd May 2022 13:49:32 BST
Mon, 23rd May 2022 12:53:15 BST
Mon, 23rd May 2022 12:52:49 BST
Mon, 23rd May 2022 11:50:56 BST
Mon, 23rd May 2022 11:50:56 BST
Mon, 23rd May 2022 11:50:28 BST
Mon, 23rd May 2022 11:49:22 BST
Mon, 23rd May 2022 11:48:55 BST
Mon, 23rd May 2022 11:38:04 BST
Mon, 23rd May 2022 11:29:52 BST
Mon, 23rd May 2022 11:02:31 BST
Mon, 23rd May 2022 11:02:21 BST
Mon, 23rd May 2022 11:01:46 BST
Mon, 23rd May 2022 11:01:01 BST
Sat, 21st May 2022 14:41:27 BST
Fri, 20th May 2022 16:01:51 BST
Fri, 20th May 2022 16:01:50 BST
Wed, 11th May 2022 17:09:19 BST
Wed, 11th May 2022 15:59:36 BST
Wed, 11th May 2022 15:56:17 BST
Wed, 11th May 2022 15:55:24 BST
Wed, 11th May 2022 15:55:22 BST
Wed, 11th May 2022 15:55:21 BST

Wed, 11th May 2022 15:55:21 BST
Wed, 11th May 2022 15:45:59 BST
Wed, 11th May 2022 15:44:26 BST
Wed, 11th May 2022 15:44:26 BST
Wed, 11th May 2022 15:43:42 BST
Wed, 11th May 2022 15:43:40 BST
Wed, 11th May 2022 15:43:40 BST

[redacted] opened the document email. ([redacted])
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[redacted] opened the document email. ([redacted])
[redacted] viewed the envelope. ([redacted])
[redacted] opened the document email. ([redacted])
[redacted] opened the document email. ([redacted])
Document emailed to ([redacted])
Sent [redacted] a reminder to sign the document. ([redacted])
[redacted] opened the document email. ([redacted])
[redacted] opened the document email. ([redacted])
[redacted] viewed the envelope. ([redacted])
[redacted] viewed the envelope. ([redacted])
Document emailed to ([redacted])
Sent the envelope to ([redacted]) for signing. ([redacted])
[redacted] ton signed the envelope. ([redacted])
[redacted] viewed the envelope. ([redacted])
[redacted] opened the document email. ([redacted])
[redacted] opened the document email. ([redacted])
[redacted] viewed the envelope. ([redacted])
Document emailed to ([redacted])
Sent the envelope to ([redacted]) for signing. ([redacted])

Wed, 11th May 2022 15:43:40 BST

[redacted] signed the envelope. [redacted]

Wed, 11th May 2022 15:42:23 BST

[redacted] viewed the envelope. [redacted]

Wed, 11th May 2022 11:30:42 BST

Document emailed to [redacted]

Wed, 11th May 2022 11:30:42 BST

Sent [redacted] a reminder to sign the document. ([redacted])

Thu, 5th May 2022 14:52:16 BST

Document emailed to [redacted]

Thu, 5th May 2022 14:52:15 BST

Sent the envelope to [redacted] for signing [redacted]

Thu, 5th May 2022 14:48:54 BST

[redacted] has been assigned to this envelope ([redacted])

Thu, 5th May 2022 14:48:54 BST

[redacted] been assigned to this envelope [redacted]

Thu, 5th May 2022 14:48:54 BST

[redacted] has been assigned to this envelope ([redacted])

Thu, 5th May 2022 14:48:54 BST

[redacted] has been assigned to this envelope ([redacted])

Thu, 5th May 2022 14:48:54 BST

[redacted] has been assigned to this envelope ([redacted])

Thu, 5th May 2022 14:47:09 BST

Document generated with fingerprint
[redacted] [redacted]

Thu, 5th May 2022 14:44:41 BST

Document generated with fingerprint
[redacted] ([redacted])

Thu, 5th May 2022 14:43:26 BST

Envelope generated by [redacted] ([redacted])