

HEALTH SYSTEMS SUPPORT FRAMEWORK

DYNAMIC PURCHASING SYSTEM FRAMEWORK **CALL OFF TERMS AND CONDITIONS**

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DYNAMIC PURCHASING SYSTEM FRAMEWORK - CALL OFF TERMS AND CONDITIONS - SUMMARY

Where an Order Form is issued by the Authority that refers to the DPS Framework Agreement, then the Contract is made between the Authority and the Suppliers on the date of that Order Form (which in accordance with the Ordering Procedure is the date on which the Order Form is signed by the Authority following signature by the Suppliers). The Contract is subject to and incorporates the terms set out in the schedules of these Call-Off Terms and Conditions listed below (“**Schedules**”).

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

The Suppliers shall supply to the Authority, and the Authority shall receive and pay for, the Deliverables on the terms of the Contract.

For the avoidance of doubt, any actions or work undertaken by the Suppliers prior to the Effective Date covering the relevant Deliverables shall be undertaken at the Suppliers’ risk and expense and the Suppliers shall only be entitled to invoice for Deliverables covered by a valid Order Form.

The Definitions in Schedule 3 of these Call-Off Terms and Conditions apply to the use of all capitalised terms in the Contract.

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Schedule 1 of these Call-Off Terms and Conditions

Key Provisions

1 Application of the Key Provisions

- 1.1 The standard Key Provisions at Clauses 1 to 12 of this Schedule 1 of these Call-Off Terms and Conditions shall apply to this Contract.
- 1.2 Extra Key Provisions shall only apply to this Contract where such provisions are set out as part of the Order Form.

2 Term

- 2.1 This Contract shall come into force on the Effective Date save for this Clause 2 (Term) of Schedule 1 of these Call-Off Terms and Conditions, Clauses 13 (Warranties), 19 (Limitation of Liability), 32 (Dispute Resolution and Expert Determination), 38 (Notice) and 42 (General) of Schedule 2 of these Call-Off Terms and Conditions, Schedule 3 of these Call-Off Terms and Conditions (to the extent necessary to provide definitions for any other provision listed in this Clause 2.1) Schedule 5 of these Call-Off Terms and Conditions and Schedule 6 of these Call-Off Terms and Conditions which shall be binding and enforceable as between the Parties from the Order Form Date.
- 2.2 The Term of this Contract shall be as set out in the Order Form.
- 2.3 The Term may be extended in accordance with Clause 21.2 of Schedule 2 of these Call-Off Terms and Conditions. The maximum Term of the Contract shall not exceed 5 years in total (including any extension periods agreed).
- 2.4 Within six (6) Months of the Effective Date the Parties shall develop and agree an exit plan which shall ensure continuity of the provision of the Deliverables (where appropriate) on expiry or earlier termination of this Contract. The exit plan must be consistent with the provisions of this Contract, including but not limited to the provisions set out at Clause 26 of Schedule 2 of these Call-Off Terms and Conditions. The Suppliers shall provide the Authority with the first draft of an exit plan within four (4) Months of the Effective Date. The Parties shall review and, as appropriate, update the exit plan on each anniversary of the Effective Date of this Contract. The Suppliers shall at any point during the Term provide the Authority with a written copy of their then current exit plan within five (5) Business Days of a request by the Authority for them to do so.

3 NOT USED

4 Contract Managers

4.1 The Contract Managers and Lead Contract Manager (if applicable) at the commencement of this Contract shall be as set out in the Order Form or as otherwise agreed between the Parties in writing.

5 Names and addresses for notices

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

6 Management levels for escalation and dispute resolution

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

Level	Authority representative	Suppliers' representative(s)
1	Contract Manager	Contract Manager/ Lead Contract Manager
2	Assistant Director or equivalent	Assistant Director or equivalent
3	Director or equivalent	Director or equivalent

7 Order of precedence

7.1 Subject always to Clause 1.10 of Schedule 3 of these Call-Off Terms and Conditions, should there be a conflict between any other parts of this Contract the order of priority for construction purposes shall be:

7.1.1 the Order Form (not including the Annexes to the Order Form)

7.1.2 Annex 2 of the Order Form - Extra Key Provisions

7.1.3 the applicable provisions of the DPS Framework Agreement as set out in this Contract;

7.1.4 the provisions on page 2 of these Call-Off Terms and Conditions (Summary);

- 7.1.5 Schedule 3 of these Call-Off Terms and Conditions: Definitions and Interpretations.
- 7.1.6 Schedule 1 of these Call-Off Terms and Conditions: Key Provisions;
- 7.1.7 Annex 1 of the Order Form - the Specification etc.
- 7.1.8 Annex 3 of the Order Form – Contract Price and Payment Terms
- 7.1.9 Schedule 2 of these Call-Off Terms and Conditions: General Terms and Conditions;
- 7.1.10 Schedule 5 of these Call-Off Terms and Conditions: Information Governance Provisions;
- 7.1.11 Any other Schedules to the Contract in the order in which they appear (with the exception of Schedule 4);
- 7.1.12 Any further Annexes to the Order Form in the order in which they appear;
- 7.1.13 Schedule 4 of these Call-Off Terms and Conditions: Blank Order Form; and
- 7.1.14 any other documentation forming part of the Contract in the date order in which such documentation was created with the more recent documentation taking precedence over older documentation to the extent only of any conflict.

8 Staff Transfer and Pensions

Staff Transfer

- 8.1 The Parties agree that where at any Relevant Commencement Date there is a Relevant Transfer the provisions of Schedule 12 of these Call-Off Terms and Conditions shall apply as follows:
 - 8.1.1 where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A of Schedule 12 of these Call-Off Terms and Conditions shall apply;
 - 8.1.2 where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Schedule 12 of these Call-Off Terms and Conditions shall apply;
 - 8.1.3 where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Supplier Employees, Parts A and B of Schedule 12 of these Call-Off Terms and Conditions shall apply; and
 - 8.1.4 Part C of Schedule 12 of these Call-Off Terms and Conditions shall not apply.
- 8.2 The Parties agree that where at any Relevant Commencement Date there is not a Relevant Transfer the provisions of Part C of Schedule 12 of these Call-Off Terms shall apply.

Pensions

- 8.3 The Suppliers shall comply with New Fair Deal, as amended from time to time.
- 8.4 The Suppliers shall use their best endeavours to procure that on and from the Staff Transfer Date any Transferring Employees who are immediately prior to the Staff Transfer Date entitled to be members of the NHS Pension Scheme are afforded membership or access to membership of the NHS Pension Scheme on the same terms to which they were entitled immediately prior to the Staff Transfer Date.
- 8.5 To the extent that there are any Transferring Employees who are eligible for membership of the NHS Pension Scheme, but are not members immediately prior to the Staff Transfer Date, the Suppliers shall use their best endeavours to procure that such employees are offered on or after the Staff Transfer Date membership of the NHS Pension Scheme and shall bear the cost of any actuarial assessment required in order to assess the employer's contribution rate in respect of any Transferring Employee who elects to join the NHS Pension Scheme on or after the Staff Transfer Date.
- 8.6 The Suppliers shall be responsible on and from the Staff Transfer Date for all employer contributions payable to the NHS Pension Scheme in respect of the Transferring Employees who are from time to time members of the NHS Pension Scheme and any other sum due to or requested by the NHS Pension Scheme in respect of such Transferring Employees.
- 8.7 The Suppliers shall expressly state to the Transferring Employees that are eligible to continue their membership of the NHS Pension Scheme that they shall continue to have access to membership of the NHS Pension Scheme for as long as they continue to be engaged by the Suppliers in the provision of the Services and this statement shall have contractual effect as between the Transferring Employees and the Suppliers and any subcontractor.
- 8.8 The Suppliers shall comply with the terms of any pension direction or determination from the NHS Business Services Authority (or other applicable authority).
- 8.9 The Suppliers shall:
- 8.9.1 maintain such documents and information as will be reasonably required to manage the pensions rights of and aspects of any transfer of any person engaged or employed by the Suppliers or any subcontractor in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the Transferring Employees or Subsequent Transferring Employees);
 - 8.9.2 promptly provide to the Authority such documents and information mentioned in Clause 8.9.1 which the Authority may reasonably request in advance of the expiry or termination of this Agreement; and
 - 8.9.3 fully cooperate with the reasonable requests of the Authority relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any person engaged or employed by the Suppliers or any

subcontractor in the provision of the Services on expiry or termination of the Agreement.

- 8.10 The Suppliers shall comply with any request or requirement of the NHS Business Services Authority (or other authority) which facilitates or maintains the access of the Transferring Employees to membership of the NHS Pension Scheme including (but not limited to):
- 8.10.1 compliance with the NHS Pension Scheme rules as amended from time to time;
 - 8.10.2 entry into any participation agreement;
 - 8.10.3 obtaining a pension direction or determination;
 - 8.10.4 payment of employer contribution rates, as amended from time to time;
 - 8.10.5 payment of any fee, guarantee or other sum;
 - 8.10.6 agreement to any indemnity or to procure any bond;
 - 8.10.7 payment of any penalty, late payment interest, other sum or demand due to the default of the Suppliers or breach by the Suppliers of any participation agreement or condition of the pension direction.
- 8.11 The Authority may deduct from any sums due to the Suppliers (and pay to the NHS Business Services Authority) such sums as may be demanded by the NHS Business Services Authority in the event that the NHS Business Services Authority informs the Authority that the Suppliers are in default or any sums are overdue.
- 8.12 The Authority may terminate this Contract or the provision of any affected Services, with immediate effect, by written notice to the Suppliers if the NHS Business Services Authority notifies the Authority that the Suppliers or any subcontractor have, in the opinion of the NHS Business Services Authority, failed in any material respect to comply with their obligations in relation to the NHS Pension Scheme (including their obligations under any pension direction issued) and, if such failure is capable of remedy, is not remedied within thirty (30) days of the Authority giving written notice to the Suppliers specifying the failure and requiring its remedy.
- 8.13 In the event that the Suppliers cannot comply with Clause 8.4, the Authority may, at its sole discretion, require the Suppliers to procure a GAD certified broadly comparable pension scheme of which the Transferring Employees can become members. At all times the Suppliers and the Authority shall continue to adopt and comply with New Fair Deal and these clauses shall continue to have effect as though in relation to that broadly comparable pension scheme.
- 8.14 The exercise of any right pursuant to Clause 8.11, 8.12 and 8.13 of this Schedule 1 of these Call-Off Terms and Conditions above shall be without prejudice to any other right of the Authority arising under these Call-Off Terms and Conditions in respect of the same circumstances.
- 8.15 The Parties agree that the Contracts (Right of Third Parties) Act 1999 shall apply to Clause 8 of this Schedule 1 of these Call-Off Terms and Conditions to the extent necessary for DHSC

to have the right to enforce on its own behalf against the Suppliers the relevant obligations owed to, and any indemnities given to, the Authority and/or any Successor by the Suppliers in this Clause 8 of this Schedule 1 of these Call-Off Terms and Conditions and in Schedule 12 of these Call-Off Terms and Conditions.

- 8.16 The Parties agree that the Contracts (Right of Third Parties) Act 1999 shall apply to Clause 8 of this Schedule 1 of these Call-Off Terms and Conditions to the extent necessary for the Transferring Employees to have the right to enforce on their own behalf against the Suppliers the relevant obligations owed to, and any indemnities given to, the Authority and/or any Successor by the Suppliers in this Clause 8 of this Schedule 1 of these Call-Off Terms and Conditions and in Schedule 12 of these Call-Off Terms and Conditions.

9 Obligations and Liabilities of Suppliers

- 9.1 The Authority shall, without prejudice to Clause 1.1 of Schedule 2 of these Call-Off Terms and Conditions, only accept delivery of those Deliverables indicated in the Specification and/or the Supplier Matrix to be supplied or performed by a Supplier from that Supplier. Where the Contract is made between the Authority and a number of suppliers (the Suppliers) the Specification and/or the Supplier Matrix shall indicate which Deliverables are to be supplied or performed by which Supplier. In the event of any inconsistency between the Specification and the Supplier Matrix (in this respect only) then the Supplier Matrix shall prevail.
- 9.2 Each of the Suppliers (where more than one Supplier is a Party to this Contract) or the single legal entity forming the Suppliers (where there is a single Supplier) shall, without prejudice to Clause 1.1 of Schedule 2 of these Call-Off Terms and Conditions, be responsible for the supply or performance of those parts of the Deliverables indicated to be supplied or performed by that Supplier in the Specification and/or the Supplier Matrix and shall be entitled to receive payment of that portion of the Contract Price related to such Deliverables.
- 9.3 Each of the Suppliers (where more than one Supplier is a Party to this Contract) shall act at all times in good faith towards each other, shall cooperate with each other, and shall act fairly and reasonably in the exercise of their rights and the performance of their obligations arising under this Contract.
- 9.4 Without limitation to the generality of Clause 9.3 of this Schedule 1 of these Call-Off Terms and Conditions, and subject always to Clause 2 of Schedule 5 of these Call-Off Terms and Conditions, the Suppliers shall share data and information with each Supplier forming part of the Suppliers where doing so would or would be likely to:
- 9.4.1 result in an increase in the efficiency with which the Deliverables are supplied or performed; and/or
 - 9.4.2 assist the Suppliers with achieving the KPIs or with meeting one (or several of) their other obligations pursuant to this Contract; and/or

9.4.3 result in an increase in the quality and/or the timeliness of the supply or performance of the Deliverables;

provided that, the Suppliers shall be under no obligation under this Clause 9.4 of this Schedule 1 of these Call-Off Terms and Conditions to disclose any Confidential Information which is not related to, or not concerned with, the Deliverables.

9.5 Subject to Clauses 9.6 and 9.7 and 9.9 of this Schedule 1 of these Call-Off Terms and Conditions, notwithstanding the provisions set out at Clauses 9.2 to 9.4 (inclusive) above of this Schedule 1 of these Call-Off Terms and Conditions, the Suppliers (where more than one Supplier is a Party to this Contract) shall be jointly and severally liable for:

9.5.1 the performance and discharge of each and every obligation of each and every Supplier under the Contract;

9.5.2 the performance and discharge of each and every obligation of the Suppliers under the Contract;

9.5.3 any other liability owed to the Authority and/or DHSC by any Supplier arising under or in connection with the Contract; and

9.5.4 any other liability owed to the Authority and/or DHSC by the Suppliers arising under or in connection with the Contract.

9.6 Where a Supplier has entered into this Contract solely on the basis that that Supplier was part of a group of bidders that bid together and were successful in the DPS Framework competition and jointly entered into the DPS Framework Agreement, but that Supplier is not listed in the Supplier Matrix as responsible for the supply or performance of any part of the Deliverables, then that Supplier shall not be jointly and severally liable as described in Clause 9.5 of this Schedule 1 of these Call-Off Terms and Conditions above.

9.7 Where the Order Form indicates that one or more of the Suppliers is a Principal Supplier, then before enforcing a liability of the Suppliers or any Supplier that arises under or in connection with this Contract and that is owed to the Authority and/or DHSC (as applicable) against the Non Principal Suppliers the Authority and/or DHSC (as applicable) shall use all reasonable endeavours to enforce any such liability against the Principal Supplier (or Principal Suppliers where more than one Supplier is a Principal Supplier).

9.8 Where more than one of the Suppliers is a Principal Supplier then those Principal Suppliers shall, without prejudice to Clause 9.5 of this Schedule 1 of these Call-Off Terms and Conditions, be jointly and severally liable for:

9.8.1 any liability of any Supplier and/or the Suppliers otherwise arising under or in connection with the Contract owed to the Authority and/or DHSC; and

9.8.2 for the purposes of any liability arising under Clause 9.7 of this Schedule 1 of these Call-Off Terms and Conditions above.

9.9 Subject to Clause 9.10 of this Schedule 1 of these Call-Off Terms and Conditions where the Order Form indicates that the provisions of Clause 9.5 of this Schedule 1 of these Call-Off

Terms and Conditions are to be varied, such variation shall be enacted through the inclusion of appropriate Extra Key Provisions in the Order Form. Such Extra Key Provisions could, at the election of the Authority (made, subject to Clause 9.10 of this Schedule 1 of these Call-Off Terms and Conditions, in its absolute discretion) include provisions that amend the provisions that establish joint and several liability between Suppliers set out Clause 9.5 of this Schedule 1 of these Call-Off Terms and Conditions with provisions that establish that where there is one or more Principal Suppliers that each Non Principal Supplier is severally liable only for their own acts and omissions in the performance of that portion of the Deliverables that such Non Principal Supplier is responsible for as set out in the Supplier Matrix.

- 9.10 The Authority may only elect to vary the provisions of Clause 9.5 of this Schedule 1 of these Call-Off Terms and Conditions pursuant to Clause 9.9 of this Schedule 1 of these Call-Off Terms and Conditions where it has obtained the prior written approval of DHSC.

10 Liabilities of the Authority

- 10.1 Where more than one Authority is party to this Contract, the liability of the Authorities shall be several and each Authority's liability shall extend only to any loss or damage arising out of its own breaches.

11 Status of Contract

- 11.1 To the extent that the Contract is between two legal entities that are health service bodies within the meaning of section 9 of the National Health Service Act 2006 (referred to as "**NHS Bodies**" and "**NHS Body**" in this Contract), this Contract shall operate as an NHS Contract but only:

11.1.1 in respect of obligations and liabilities between those of the Parties that are NHS Bodies; and

11.1.2 only for so long as such NHS Bodies both fall within the definition within section 9 of the National Health Service Act 2006.

- 11.2 For the avoidance of doubt:

11.2.1 where and to the extent that this Contract is between an Authority that is an NHS Body and a Supplier which is an NHS Body this Contract shall cease to be an NHS Contract between those Parties on the date such Supplier ceases to be an NHS Body and shall continue as a legally enforceable contract for the remainder of the Term.

11.2.2 without prejudice to Clause 11.2.1 of Schedule 1 of these Call-Off Terms and Conditions above, where this Contract is between an Authority that is an NHS Body and the Suppliers and the Suppliers comprise more than one Supplier, not all of whom are NHS Bodies, then this Contract shall:

- (a) be an NHS Contract in respect of all obligations and liabilities between the Authority and each Supplier that is an NHS Body; and
- (b) not be an NHS Contract in respect of any obligations and liabilities between the Authority and each Supplier that is not an NHS Body and all such obligations shall for the avoidance of doubt be legally enforceable.

11.3 For the purposes of Clause 9.5 of this Schedule 1:

- 11.3.1 “the performance and discharge of each and every obligation of each and every Supplier under the Contract”;
- 11.3.2 “the performance and discharge of each and every obligation of the Suppliers under the Contract”;
- 11.3.3 “any other liability owed to the Authority and/or DHSC by any Supplier arising under or in connection with the Contract”; and
- 11.3.4 “any other liability owed to the Authority and/or DHSC by the Suppliers otherwise arising under or in connection with the Contract”;

shall include any liabilities and/or obligations expressed as arising under an NHS Contract and such liabilities and/or obligations shall be determined and quantified as if they had arisen under a legally enforceable contract.

12 Extra Key Provisions

12.1 Any Extra Key Provisions set out in the Order Form shall be incorporated into the Contract.

Schedule 2 of these Call-Off Terms and Conditions

General Terms and Conditions

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1 Supply of Deliverables

- 1.1 The Suppliers shall ensure that all Deliverables are supplied and/or performed:
 - 1.1.1 promptly and in any event within any time limits as may be set out in this Contract;
 - 1.1.2 in accordance with all other provisions of this Contract;
 - 1.1.3 using reasonable skill and care and the provisions of the Order Form;
 - 1.1.4 in accordance with the Law and with Guidance;
 - 1.1.5 in accordance with the Standards;
 - 1.1.6 in accordance with the Baseline Security Requirements;
 - 1.1.7 in accordance with the Authority IT Strategy;
 - 1.1.8 in accordance with Good Industry Practice;
 - 1.1.9 in accordance with the Policies; and
 - 1.1.10 in a professional and courteous manner.
- 1.2 In the event that the Suppliers become aware of any inconsistency between the requirements of Clauses 1.1.1 to 1.1.10, the Suppliers shall immediately notify the Authority in writing of such inconsistency and the Authority shall, as soon as practicable, notify the Suppliers which requirement the Suppliers shall comply with.
- 1.3 The Suppliers shall:
 - 1.3.1 at all times allocate sufficient resources with the appropriate technical expertise to supply or perform the Deliverables in accordance with this Contract;
 - 1.3.2 obtain, and maintain throughout the duration of this Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) they may require and which are necessary for the performance of the Contract;
 - 1.3.3 minimise any disruption to the IT Environment and the Authority's operations when carrying out their obligations under this Contract;
 - 1.3.4 ensure that any Documentation and training provided by the Suppliers to the Authority are accurate and prepared in accordance with Good Industry Practice (including but not limited to with regard to the level and detail of information provided in such Documentation and/or training);
 - 1.3.5 provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply or performance of the Deliverables in accordance with this Contract;
 - 1.3.6 to the extent they are legally able to do so, hold on trust for the sole benefit of the Authority, all warranties, indemnities and guarantees provided by third parties or any subcontractor in respect of any Deliverables and, where any such warranties are held on trust, at their cost enforce such warranties in accordance with any

reasonable directions that the Authority may notify from time to time to the Suppliers;

- 1.3.7 unless they are unable to do so, assign to the Authority on the Authority's written request and at the cost of the Suppliers any such warranties and/or indemnities and/or guarantees as are referred to in Clause 1.3.6;
- 1.3.8 gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Suppliers' compliance with their obligations under this Contract;
- 1.3.9 notify the Authority in writing as soon as reasonably possible and in any event within one (1) month of any change of Control taking place;
- 1.3.10 notify the Authority in writing within ten (10) Business Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to their knowledge, threatened against them that might affect their ability to perform their obligations under this Contract;
- 1.3.11 ensure that neither they, nor any of their Affiliates, embarrass the Authority or otherwise bring the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Suppliers' obligations under this Contract; and
- 1.3.12 manage closure or termination of Services and end of life of Goods to take account of the Authority's disposal requirements, including recycling and scope for re-use, and all applicable Policies.

1.4 An obligation on the Suppliers to do, or to refrain from doing, any act or thing shall include an obligation upon the Suppliers to procure that all subcontractors and Suppliers' Personnel also do, or refrain from doing, such act or thing.

1.5 The Parties shall in relation to this Contract abide by and promote awareness of the NHS Constitution, including the rights and pledges set out in it. The Suppliers shall ensure that any and all subcontractors and all Supplier Personnel abide by the NHS Constitution in relation to their performance of this Contract.

1.6 Immediately following the Effective Date, the Suppliers shall carry out all implementation activities fully in accordance with the Implementation Plan (to include, as appropriate, the delivery, installation and commissioning of the relevant Deliverables). If the Implementation Plan is an outline plan, the Suppliers shall, as part of implementation, develop the outline plan into a full plan and agree this with the Authority. Once this is agreed, the Suppliers shall comply with the full Implementation Plan.

1.7 The Suppliers shall commence:

- 1.7.1 supply of the Deliverables on the Deliverables Commencement Date;

1.7.2 supply of the Goods on the Supply of Goods Commencement Date; and

1.7.3 delivery of the Services on the Services Commencement Date.

- 1.8 The Suppliers shall comply fully with their obligations set out in the Specification, the Call-Off ITT and the Order Form (to include, without limitation, the KPIs and all obligations in relation to the quality, performance characteristics, supply, delivery, installation, commissioning, maintenance and training in relation to the Deliverables and their use). Without prejudice to any other obligation on the Suppliers to provide written notification to the Authority contained within this Contract, the Suppliers shall notify the Authority promptly (and in any event within two (2) Business Days) in the event of any KPI Failure occurring.
- 1.9 Unless otherwise agreed by the Parties in writing, the Deliverables shall comply with any applicable specification set out in this Contract (to include, without limitation, the Authority's requirements set out in the Specification, the Call-Off ITT and the Order Form) and the Goods shall be new, consistent with any sample and shall comply with any applicable manufacturers' specifications.
- 1.10 Where the Deliverables include Software and/or IT Hardware, the Suppliers shall test those Deliverables in accordance with the process set out at Schedule 14 of these Call-Off Terms and Conditions.
- 1.11 The Suppliers shall ensure that all relevant consents, authorisations, licences and accreditations required to supply the Deliverables are in place:
- 1.11.1 where the Deliverables include Goods, prior to the Goods Commencement Date;
- 1.11.2 where the Deliverables include Services, prior to the Actual Services Commencement Date;
- and shall ensure that all such consents, authorisations, licences and accreditations are maintained throughout the Term.
- 1.12 If there are any incidents that in any way relate to or involve the use of the Deliverables by the Authority, the Suppliers shall cooperate fully with the Authority in relation to the Authority's application of the Policies on reporting and responding to all incidents, including serious incidents requiring investigation, and shall respond promptly to any reasonable and proportionate queries, questions and/or requests for information that the Authority may have in this context in relation to the Deliverables. For the purposes of this Clause an incident is an event having an impact on the delivery or performance of the Deliverables in accordance with the requirements of this Contract and/or any circumstance where the Deliverables and/or performance of the Deliverables causes and/or contributes towards loss or damage to any person.
- 1.13 If there are any quality, performance and/or safety related reports, notices, alerts or other communications issued by the Suppliers or any Regulatory or Supervisory Body in relation to the Deliverables, the Suppliers shall promptly provide the Authority with a copy of any such reports, notices, alerts or other communications.

- 1.14 Upon receipt of any such reports, notices, alerts or other communications pursuant to Clause 1.13 of this Schedule 2 of these Call-Off Terms and Conditions, the Authority shall be entitled to request further information from the Suppliers and/or a meeting with the Suppliers, and the Suppliers shall cooperate fully with any such request.
- 1.15 The Suppliers shall be relieved from their obligations under this Contract to the extent that they are prevented from complying with any such obligations due to any acts, omissions or defaults of the Authority and/or any Excusing Event (if applicable). A default of the Authority includes any failure to comply with any obligation of the Authority under this Contract. To qualify for such relief, the Suppliers must notify the Authority in writing of the occurrence of such act, omission, or default of the Authority together with the potential impact on the Suppliers' obligations. Such notification must be made promptly (and in any event within five (5) Business Days) following the date on which the Suppliers knew or ought to have known of the occurrence complained of.

2 Supply of the Goods and passing of risk and ownership in the Goods

- 2.1 Where the Goods include any Equipment, the Equipment shall be of at least the specified quality and shall be new at the point it is provided, installed and/or commissioned at the relevant Authority premises.
- 2.2 The Suppliers shall supply all Consumables required for the operation of the Equipment during the Term in accordance with the relevant provisions of the Specification, the Call-Off ITT and the Order Form.
- 2.3 The Suppliers shall deliver the Goods in accordance with any delivery timescales, delivery dates and delivery instructions (to include, without limitation, as to delivery location and delivery times) set out in the Specification, the Call-Off ITT and the Order Form or as otherwise agreed with the Authority in writing.
- 2.4 Delivery shall be completed when the Goods have been unloaded at the location specified by the Authority and such delivery has been received by a duly authorised agent, employee or location representative of the Authority. The Authority shall procure that such duly authorised agent, employee or location representative of the Authority is at the delivery location at the agreed delivery date and times in order to accept such delivery. Any arrangement by which the Goods are collected by the Authority in return for a discount on the Contract Price shall be agreed by the Parties in writing (where due to an emergency such arrangements cannot be committed to writing prior to collection, the Parties shall confirm such arrangements in writing as soon as possible following collection). Where the Authority collects the Goods, collection is deemed delivery for the purposes of the Contract.
- 2.5 The Suppliers shall ensure that a delivery note shall accompany each delivery of the Goods. Such delivery note shall contain the information specified in the Specification, the Call-Off ITT and the Order Form or as otherwise agreed with the Authority in writing. Where such information requirements as to the content of delivery notes are not specified or separately

agreed, such delivery notes shall, as a minimum, contain the Authority's order number, the name and address of the Authority, a description and quantity of the Goods, and shall show separately any extra agreed charges for containers and/or any other item not included in the Contract Price or, where no charge is made, whether the containers are required to be returned.

- 2.6 Part deliveries and/or deliveries outside of the agreed delivery times/dates may be refused unless the Authority has previously agreed in writing to accept such deliveries. Where delivery of the Goods is refused by the Authority in accordance with this Clause 2.6 of this Schedule 2 of these Call-Off Terms and Conditions, the Suppliers shall be responsible for all risks, costs and expenses associated with the re-delivery of the Goods in accordance with the agreed delivery times/dates. Where the Authority accepts delivery more than five (5) days before the agreed delivery date, the Authority shall be entitled to charge the Suppliers for the costs of insurance and storage of the Goods until the agreed date for delivery.
- 2.7 Unless otherwise set out in the Specification, the Call-Off ITT and the Order Form or agreed with the Authority in writing, the Suppliers shall be responsible for carriage, insurance, transport, all relevant licences, all related costs, and all other costs associated with the delivery of the Goods to the delivery location and unloading, installation and commissioning (as applicable) of the Goods at that location. Without limitation to the foregoing provision of this Clause 2.7 of this Schedule 2 of these Call-Off Terms and Conditions, unless otherwise stated in the Specification, the Call-Off ITT and the Order Form or agreed with the Authority in writing, the Suppliers shall be responsible for obtaining all export and import licences for the Goods and shall be responsible for any delays to the delivery time due to such licences not being available when required. In the case of any Goods supplied from outside the United Kingdom, the Suppliers shall ensure that accurate information is provided to the Authority as to the country of origin of the Goods and shall be liable to the Authority for any extra duties or taxes for which the Authority may be accountable should the country of origin prove to be different from that set out in the Specification, the Call-Off ITT and the Order Form.
- 2.8 All third party carriers engaged to deliver the Goods shall at no time be an agent of the Authority and accordingly the Suppliers shall be liable to the Authority for the acts and omissions of all third party carriers engaged to deliver the Goods to the Authority.
- 2.9 Risk in the Goods shall pass to the Authority when the Goods are delivered as specified in this Contract or, in the case of Goods which require installation by the Suppliers, when that installation process is complete.
- 2.10 Subject to Clause 2.7 of Schedule 9 of these Call-Off Terms and Conditions, ownership of the Goods shall pass to the Authority on the earlier of:
- 2.10.1 full payment for such Goods; or
 - 2.10.2 where the Goods are Consumables or are non-recoverable (e.g. used in clinical procedures), at the point such Goods are taken into use. For the avoidance of doubt, where ownership passes in accordance with this Clause 2.10.2 of this Schedule 2 of these Call-Off Terms and Conditions, then the full Contract Price

for such Goods shall be recoverable by the Suppliers from the Authority as a debt if there is non-payment of a valid undisputed invoice issued by the Suppliers to the Authority in relation to such Goods.

2.11 All:

2.11.1 tools and materials of the Suppliers required in the performance of the Suppliers' obligations under this Contract; and

2.11.2 all Supplier Equipment:

shall be and remain at the sole risk of the Suppliers, whether or not they are situated at a delivery location.

3 Inspection, rejection, return and recall of the Goods

3.1 As relevant and proportionate to the Goods in question and subject to reasonable written notice, the Suppliers shall permit any person authorised by the Authority, to inspect work being undertaken in relation to the Goods and/or the storage facilities used in the storage of the Goods at all reasonable times at the Suppliers' premises or at the premises of any subcontractor or agent of the Suppliers in order to confirm that the Goods are being manufactured and/or stored in accordance with Good Industry Practice and in compliance with the requirements of this Contract and/or that stock holding and quality assurance processes are in accordance with the requirements of this Contract.

3.2 Without prejudice to the provisions of Clause 3.7 of this Schedule 2 of these Call-Off Terms and Conditions and subject to Clause 3.8 of this Schedule 2 of these Call-Off Terms and Conditions, the Authority shall visually inspect the Goods within a reasonable time following delivery (or such other period as may be set out in the Key Provisions or the Order Form Specification, if any) and may by written notice reject any Goods found to be damaged or otherwise not in accordance with the requirements of this Contract ("Rejected Goods"). The whole of any delivery may be rejected if a reasonable sample of the Goods taken indiscriminately from that delivery is found not to conform in all material respects to the requirements of the Contract.

3.3 Without prejudice to the provisions of Clause 3.6 of this Schedule 2 of these Call-Off Terms and Conditions, upon the rejection of any Goods in accordance with Clauses 3.2 and/or 3.7 of this Schedule 2 of these Call-Off Terms and Conditions, the Suppliers shall at the Authority's written request:

3.3.1 collect the Rejected Goods at the Suppliers' risk and expense within ten (10) Business Days of issue of written notice from the Authority rejecting the Goods; and

3.3.2 without extra charge, promptly (and in any event within twenty (20) Business Days or such other time agreed by the Parties in writing acting reasonably) supply replacements for the Rejected Goods to the Authority subject to the Authority not

cancelling its purchase obligations in accordance with Clause 3.6 of this Schedule 2.

- 3.4 If the Suppliers request and the Authority accepts that the Rejected Goods should be disposed of by the Authority rather than returned to the Suppliers, the Authority reserves the right to charge the Suppliers for the costs associated with the disposal of the Rejected Goods and the Suppliers shall promptly pay any such costs.
- 3.5 Risk and title in respect of any Rejected Goods shall pass to the Suppliers on the earlier of: (a) collection by the Suppliers in accordance with Clause 3.3 of this Schedule 2 of these Call-Off Terms and Conditions; or (b) immediately following the expiry of ten (10) Business Days from the Authority issuing written notification rejecting the Goods. If Rejected Goods are not collected within ten (10) Business Days of the Authority issuing written notification rejecting the Goods, the Authority may return the Rejected Goods at the Suppliers' risk and expense and charge the Suppliers for the cost of storage from the expiry of ten (10) Business Days from the date of notification of rejection.
- 3.6 Where the Authority rejects any Goods in accordance with Clauses 3.2 and/or 3.7 of this Schedule 2 of these Call-Off Terms and Conditions and the Authority no longer requires replacement Goods, the Authority may by written notice cancel its purchase obligations in relation to such quantity of Rejected Goods. Should the Authority have paid for such Rejected Goods the Suppliers shall refund such payment to the Authority within thirty (30) days of the Authority cancelling such purchase obligations and informing the Suppliers that the Authority does not require replacements for such Rejected Goods.
- 3.7 Without prejudice to any other provisions of this Contract or any other warranties or guarantees applicable to the Goods supplied and subject to Clause 3.8 of this Schedule 2 of these Call-Off Terms and Conditions, if at any time following the date of the delivery of any Goods, all or any part of such Goods are found to be defective or otherwise not in accordance with the requirements of this Contract ("Defective Goods"), the Suppliers shall, at the Authority's discretion:
- 3.7.1 upon written request and without charge, promptly (and in any event within twenty (20) Business Days or such other time agreed by the Parties in writing acting reasonably) remedy the deficiency by repairing such Defective Goods; or
- 3.7.2 upon written notice of rejection from the Authority, treat such Defective Goods as Rejected Goods in accordance with Clauses 3.2 to 3.6 of this Schedule 2 of these Call-Off Terms and Conditions.
- 3.8 The Suppliers shall be relieved of their liabilities under Clauses 3.2 to 3.6 (inclusive) and/or Clause 3.7 of this Schedule 2 of these Call-Off Terms and Conditions to the extent only that the Goods are damaged, there are defects in the Goods and/or the Goods fail to comply with the requirements of this Contract due, in each case, to any acts or omissions or defaults of the Authority. A default of the Authority includes any failure to comply with any obligation of the Authority under this Contract. To qualify for such relief, the Suppliers must notify the Authority in writing of the occurrence of such act, omission, or default of the Authority together

with the potential impact on the Suppliers' liabilities. Such notification must be made promptly (and in any event within five (5) Business Days) following the date on which the Suppliers knew or ought to have known of the occurrence complained of

- 3.9 The Authority's rights and remedies under Clause 3.7 of this Schedule 2 of these Call-Off Terms and Conditions shall cease within a reasonable period of time from the date on which the Authority discovers or might reasonably be expected to discover that the Goods are Defective Goods or within such other period as may be set out in the Key Provisions or Order Form or Specification, if any. For the avoidance of doubt, Goods not used before their expiry date shall in no event be considered Defective Goods following the date of expiry provided that at the point such Goods were delivered to the Authority they met any shelf life requirements set out in the Specification, Call-Off ITT and Order Form.
- 3.10 Where the Suppliers are required by Law, Guidance, and/or Good Industry Practice to order a product recall ("**Requirement to Recall**") in respect of the Goods, the Suppliers shall:
- 3.10.1 promptly (taking into consideration the potential impact of the continued use of the Goods on patients, service users and the Authority as well as compliance by the Suppliers with any regulatory requirements) notify the Authority in writing of the recall together with the circumstances giving rise to the recall;
 - 3.10.2 from the date of the Requirement to Recall treat the Goods the subject of such recall as Defective Goods in accordance with Clause 3.7 of this Schedule 2;
 - 3.10.3 consult with the Authority as to the most efficient method of executing the recall of the Goods and use its reasonable endeavours to minimise the impact on the Authority of the recall; and
 - 3.10.4 indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the Authority as a result of such Requirement to Recall.

4 Installation, Commissioning and Maintenance Services

- 4.1 Where the Deliverables include Goods, the Suppliers shall provide:
- 4.1.1 the Installation and Commissioning Services in accordance with the terms set out in Schedule 9 of these Call-Off Terms and Conditions; and
 - 4.1.2 the Maintenance Services in accordance with the terms set out in Schedule 10 of these Call-Off Terms and Conditions.

5 Operation of the Services

- 5.1 The Services shall if applicable be provided at such Authority premises and at such locations within those premises, as may be set out in the Order Form or as otherwise agreed by the Parties in writing ("**Premises and Locations**").

- 5.2 Subject to the Suppliers and the Supplier Personnel complying with all relevant Policies applicable to such Premises and Locations, the Authority shall grant reasonable access to the Suppliers and the Supplier Personnel to such Premises and Locations to enable the Suppliers to provide the Services.
- 5.3 Subject to Clause 5.5 of this Schedule 2 of these Call-Off Terms and Conditions, any access granted to the Suppliers and the Supplier Personnel under Clause 5.2 of this Schedule 2 of these Call-Off Terms and Conditions shall be non-exclusive and revocable. Such access shall not be deemed to create any greater rights or interest than so granted in the Premises and Locations. For the avoidance of doubt no relationship of landlord and tenant between the Authority and the Suppliers shall be so created. The Suppliers warrant that they shall carry out all such reasonable further acts necessary to give effect to this Clause 5.3 of this Schedule 2 of these Call-Off Terms and Conditions.
- 5.4 For the avoidance of doubt, where the Authority revokes the right granted to the Suppliers (or any Supplier, if the Suppliers comprise more than one organisation) and/or any Supplier Personnel to access the Premises and Locations pursuant to Clause 5.2 of this Schedule 2 of these Call-Off Terms and Conditions (in whole or in part), the Suppliers (or the relevant Supplier(s), if the Suppliers comprise more than one organisation) shall be relieved of their obligations to provide and perform the Deliverables:
- 5.4.1 where there is a Force Majeure Event, in accordance with Clause 33.1 of this Schedule 2 of these Call-Off Terms and Conditions below, subject to complying with Clause 33 of this Schedule 2 of these Call-Off Terms and Conditions below; and
- 5.4.2 otherwise, in accordance with Clause 5.17 of this Schedule 2 of these Call-Off Terms and Conditions below, subject to complying with the terms of Clause 5.17 of this Schedule 2 of these Call-Off Terms and Conditions below.
- Where the Authority revokes the right of the Suppliers (or any Supplier, if the Suppliers comprise more than one organisation) and/or any Supplier Personnel to access the Premises and Locations pursuant to this Clause 5.4 of this Schedule 2 of these Call-Off Terms and Conditions following, as a result of, or in connection to, a breach of any provision of this Contract by the Suppliers (which for the avoidance of doubt includes a breach by any Supplier Personnel) then the Suppliers shall not be entitled to claim the relief set out at Clause 5.17 of this Schedule 2 of these Call-Off Terms and Conditions below.
- 5.5 Where, in order to provide the Services, the Suppliers require any greater rights to use or occupy any specific Premises and Locations over and above such reasonable access rights granted in accordance with Clause 5.2 and Clause 5.3 of this Schedule 2 of these Call-Off Terms and Conditions, such further rights shall be limited to any rights granted to the Suppliers by the Authority in accordance with any licence and/or lease entered into by the Suppliers as referred to in any Order Form.
- 5.6 Where it is provided for by a specific mechanism set out in the Specification and/or Call-Off ITT and/or the Order Form, the Authority may increase, reduce or otherwise vary the

Premises and Locations in accordance with such mechanism subject to the provisions of any licence or lease entered into by the Parties as referred to at Clause 5.5 of this Schedule 2 of these Call-Off Terms and Conditions. Where there is no such specific mechanism set out in the Specification and/or Call-Off ITT and/or the Order Form, any variations to the Premises and Locations where the Services are to be provided shall be agreed by the Parties in accordance with Clause 31 of this Schedule 2 of these Call-Off Terms and Conditions. If agreement cannot be reached the matter shall be referred for resolution in accordance with the dispute resolution process set out in Clause 32.3 of this Schedule 2 of these Call-Off Terms and Conditions.

5.7 The Suppliers shall:

5.7.1 ensure that any Supplier System and Assets used in the performance of the Services are free of all encumbrances except as agreed in writing with the Authority; and

5.7.2 co-operate with the Other Suppliers (if any) and provide reasonable information (including any Documentation, but excluding any source code or build information), advice and assistance in connection with the Services to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Contract for any reason, to enable the timely transition of the Services (or any of them) to the Authority and/or to any Successor, provided that in the event that Confidential Information is to be disclosed by the Suppliers, the Suppliers and the Other Suppliers or Successor shall enter into a confidentiality agreement on the same terms of confidentiality and non-use as set out at Schedule 5 of these Call-Off Terms and Conditions.

5.8 If the Services, or any part of them, are regulated by any Regulatory or Supervisory Body, the Suppliers shall ensure that at the Actual Services Commencement Date they have in place all relevant registrations and shall maintain such registrations during the Term. The Suppliers shall notify the Authority forthwith in writing of any changes to such registrations or any other matter relating to their registrations that may affect the delivery or the quality of Services.

5.9 The Suppliers shall notify the Authority forthwith in writing:

5.9.1 of any pending inspection of the Services, or any part of them, by a Regulatory or Supervisory Body immediately upon the Suppliers becoming aware of such inspection; and

5.9.2 of any failure of the Services, or any part of them, to meet the quality standards required by a Regulatory or Supervisory Body, promptly and in any event within two (2) Business Days of the Suppliers becoming aware of any such failure. This shall include without limitation any informal feedback received during or following an inspection raising concerns of any nature regarding the provision of the Services.

- 5.10 Following any inspection of the Services, or any part of them, by a Regulatory or Supervisory Body, the Suppliers shall provide the Authority with a copy of any report or other communication published or provided by the relevant Regulatory or Supervisory Body in relation to the provision of the Services.
- 5.11 Upon receipt of notice pursuant to Clause 5.9 of this Schedule 2 of these Call-Off Terms and Conditions or any report or communication pursuant to Clause 5.10 of this Schedule 2 of these Call-Off Terms and Conditions, the Authority shall be entitled to request further information from the Suppliers and/or a meeting with the Suppliers, and the Suppliers shall cooperate fully with any such request.
- 5.12 Where applicable to the performance and scope of this Contract, the Suppliers shall implement and comply with the Policies on reporting and responding to all incidents and accidents, including serious incidents requiring investigation, shall complete the Authority's incident and accident forms in accordance with the Policies and provide reasonable support and information as requested by the Authority to help the Authority deal with any incident or accident relevant to any part of the Deliverables. The Suppliers shall ensure that their Contract Managers inform the Authority's Contract Manager in writing forthwith upon (a) becoming aware that any serious incidents requiring investigation and/or notifiable accidents have occurred; or (b) the Suppliers' Contract Managers having reasonable cause to believe any serious incidents and/or notifiable accidents requiring investigation have occurred. The Suppliers shall ensure that their Contract Managers inform the Authority's Contract Manager in writing within forty-eight (48) hours of all other incidents and/or accidents that have or may have an impact on the Services.
- 5.13 The Suppliers shall, as reasonably required by the Authority, cooperate with any other service providers to the Authority and/or any other third parties as may be relevant in the provision of the Services, provided that the Suppliers shall be under no obligation to disclose any Confidential Information under this Clause 5.13 of this Schedule 2 of these Call-Off Terms and Conditions.
- 5.14 To the extent relevant to the Services, the Suppliers shall have in place and operate a complaints procedure which complies with the requirements of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.
- 5.15 Each Party shall inform the other Parties of all complaints from or on behalf of patients or other service users arising out of or in connection with the provision of the Services within twenty four (24) hours of receipt of each complaint and shall keep the other Parties updated on the manner of resolution of any such complaints.
- 5.16 In the event of a complaint by the Authority to the Suppliers in relation to the supply or non-supply of the Goods and/or the performance or non-performance of the Services then, without prejudice to any rights and/or remedies that the Authority may have under this Contract or otherwise, the Suppliers shall use their reasonable endeavours to resolve such complaint within fifteen (15) Business Days and in so doing shall deal with the complaint fully, expeditiously and fairly

5.17 The Suppliers shall be relieved from their obligations under this Contract to the extent that they are prevented from complying with any such obligations due to any acts, omissions or defaults of the Authority and/or any Excusing Event (if applicable). A default of the Authority includes any failure to comply with any obligation of the Authority under this Contract. To qualify for such relief, the Suppliers must notify the Authority in writing of the occurrence of such act, omission, or default of the Authority together with the potential impact on the Suppliers' obligations. Such notification must be made promptly (and in any event within five (5) Business Days) following the date on which the Suppliers knew or ought to have known of the occurrence complained of.

6 Ad Hoc Services

For the purposes of this Clause 6 the following words shall have the following meanings unless the context requires otherwise:

“Acceptance”	means an acceptance issued by the Suppliers in accordance with Clause 6.5.1 of this Schedule 2 of these Call-Off Terms and Conditions.
“Ad Hoc Estimate”	means an estimate issued by the Suppliers in accordance with Clause 6.2 of this Schedule 2 of these Call-Off Terms and Conditions;
“Ad Hoc Request”	means a request issued by the Authority in accordance with Clause 6.2 of this Schedule 2 of these Call-Off Terms and Conditions;
“Ad Hoc Services”	means elements of the Deliverables requested by the Authority that have been noted in the Specification and/or the Order Form as available to the Authority on a ‘day rate basis’ chargeable at the rates provided for within the Order Form;
“Instruction”	means an instruction issued by the Authority to the Suppliers in accordance with Clause 6.4.1 of this Schedule 2 of these Call-Off Terms and Conditions;
“Offer”	means an offer issued by the Authority to the Suppliers in accordance with Clause 6.4.2 of this Schedule 2 of these Call-Off Terms and Conditions;
“Refusal”	means a refusal issued by the Authority to the Suppliers in accordance with Clause 6.4.3 of this Schedule 2 of these Call-Off Terms and Conditions; and

“Supplier Refusal”	means a refusal issued by the Suppliers in accordance with Clause 6.5.2 of this Schedule 2 of these Call-Off Terms and Conditions.
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- 6.1 The Suppliers shall not deliver any Ad Hoc Services (and the Authority shall not have any liability to the Suppliers, including without limitation any liability to make any payment(s) to the Suppliers, in respect of any Ad Hoc Services delivered) otherwise than in accordance with the provisions of this Clause 6 of this Schedule 2 of these Call-Off Terms and Conditions.
- 6.2 The Authority may issue a written notice to the Suppliers at any point on or after the Effective Date requesting that the Suppliers deliver any of the Ad Hoc Services to the Authority (the **“Ad Hoc Request”**). The Suppliers shall, as soon as reasonably practicable and in any event within five (5) Business Days of receipt of each Ad Hoc Request, respond in writing to each Ad Hoc Request (the **“Ad Hoc Estimate”**).
- 6.3 Each Ad Hoc Estimate shall describe each Ad Hoc Service requested by the Authority individually and specify the total sum that that the Suppliers would charge the Authority for the provision of each such Ad Hoc Service (such sum shall be calculated only in accordance with the Order Form).
- 6.4 The Authority shall consider each Ad Hoc Estimate and either:
- 6.4.1 issue a written instruction to the Suppliers to deliver the Ad Hoc Services described within that Ad Hoc Estimate, in which case the Suppliers shall deliver those Ad Hoc Services in accordance with the terms of the Ad Hoc Estimate, the terms of this Contract and the relevant provisions of the Specification (the **“Instruction”**); or
 - 6.4.2 if the Authority is not content with the sum that the Suppliers propose to charge to the Authority for the provision of the relevant Ad Hoc Services, specify in writing the maximum sum that the Authority wishes to pay to the Suppliers for the provision of those Ad Hoc Services (the **“Offer”**); or
 - 6.4.3 confirm in writing that the Authority does not accept the relevant Ad Hoc Estimate without proposing a sum at which the Authority would accept the Suppliers’ performance of the relevant Ad Hoc Services (the **“Refusal”**), in which case the Suppliers shall not perform the relevant Ad Hoc Services and the Authority shall not have any liability to the Suppliers, including without limitation any liability to make any payment to the Suppliers, in relation to the relevant Ad Hoc Estimate or the Ad Hoc Services referred to within that Ad Hoc Estimate.
- 6.5 The Suppliers shall respond in writing to each Offer within ten (10) Business Days of receipt of that Offer confirming that they are either:
- 6.5.1 prepared to provide the relevant Ad Hoc Services for the sum specified in the Offer (the **“Acceptance”**), in which case the Suppliers shall deliver those Ad Hoc

Services in accordance with the terms of the Estimate as modified by the Offer, the terms of this Contract and the relevant provisions of the Specification; or

6.5.2 not prepared to provide the relevant Ad Hoc Services for the sum specified in the Offer (the “**Supplier Refusal**”) in which case the Suppliers shall not perform the relevant Ad Hoc Services and the Authority shall not have any liability to the Suppliers, including without limitation any liability to make any payment to the Suppliers, in relation to the relevant Ad Hoc Estimate or Offer or the Ad Hoc Services referred to within that Ad Hoc Estimate or Offer.

6.6 In the event that the Authority does not issue an Instruction, Offer or Refusal to the Suppliers within ten (10) Business Days of receipt of each Relevant Ad Hoc Estimate from the Suppliers, the Authority shall be deemed to have provided the Suppliers with a Refusal and the provisions of Clause 6.4.3 of this Schedule 2 of these Call-Off Terms and Conditions shall apply.

6.7 In the event that the Suppliers do not issue an Acceptance or Supplier Refusal to the Authority within ten (10) Business Days of receipt of each relevant Offer from the Authority, the Suppliers shall be deemed to have provided the Authority with a Supplier Refusal and the provisions of Clause 6.5.2 of this Schedule 2 of these Call-Off Terms and Conditions shall apply.

6.8 The Suppliers shall not commence the delivery of any of the Ad Hoc Services prior to the Suppliers’ receipt of an Instruction or their communication of an Acceptance to the Authority (as the case may be). The Authority shall not have any liability, including without limitation any liability to make any payment to the Suppliers, in relation to any Ad Hoc Services that the Suppliers deliver or commence delivery of without prior receipt of an Instruction or the Suppliers’ communication of an Acceptance to the Authority.

7 Equipment and Maintenance

7.1 Unless otherwise set out in the Specification and/or Call-Off ITT or otherwise agreed by the Parties in writing, any equipment or other items provided by the Authority for use by the Suppliers:

7.1.1 shall be provided at the Authority’s sole discretion;

7.1.2 shall be inspected by the Suppliers in order that the Suppliers can confirm to their reasonable satisfaction that such equipment and/or item is fit for its intended use and shall not be used by the Suppliers until they have satisfied themselves of this;

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

7.1.4 shall be used by the Suppliers at the Suppliers’ own risk and the Suppliers shall upon written request by the Authority reimburse the Authority for any loss of or damage to such equipment or other items caused by the Suppliers (fair wear and tear excepted).

- 7.2 The Suppliers warrant and represent to the Authority in respect of the Supplier Equipment that all such equipment shall, at all times throughout the Term:
- 7.2.1 conform to all standards referred to in the Call-Off ITT and/or the Specification; and
 - 7.2.2 comply with all applicable Law and regulations;
- and, where any Supplier Equipment will be delivered to the Authority, the Suppliers warrant and represent, in addition, that all such equipment shall, at all times throughout the Term:
- 7.2.3 conform to all samples, drawings, descriptions and specifications provided by the Authority to the Suppliers;
 - 7.2.4 be suitable for the purposes and/or treatments as referred to in the Specification and the Order Form and be free from all defects in materials, workmanship and installation; and
 - 7.2.5 subject to Clause 7.4 of this Schedule 2 of these Call-Off Terms and Conditions, be provided free and clear of all liens and encumbrances.
- 7.3 For the avoidance of doubt and unless otherwise specified in the Specification and/or Call-Off ITT or otherwise agreed by the Parties in writing at no time shall title to any of the Supplier Equipment referred to in Clause 7.2 of this Schedule 2 of these Call-Off Terms and Conditions pass to the Authority under this Contract.
- 7.4 Clause 7.2.5 of this Schedule 2 of these Call-Off Terms and Conditions above shall not restrict the ability of the Suppliers to utilise for the performance of the Contract Supplier Equipment leased from or financed by a third party.
- 7.5 Where the Services include the maintenance of the IT Environment, the following provisions shall apply:
- 7.5.1 The Suppliers shall create and maintain a rolling schedule of planned maintenance to the IT Environment (the "Maintenance Schedule") which shall be agreed with the Authority. Once the Maintenance Schedule has been agreed with the Authority's Contract Manager, the Suppliers shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule. The Suppliers and the Authority may agree changes to the Maintenance Schedule, from time to time, in accordance with the Change Control Process.
 - 7.5.2 The Suppliers shall give as much notice as is reasonably practicable to the Authority's Contract Manager prior to carrying out any Emergency Maintenance.
 - 7.5.3 The Suppliers shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where they reasonably suspect that the IT Environment or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the IT Environment and the Services.

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

7.6.1 any injury or allegation of injury to any person, including injury resulting in death; and/or

7.6.2 any loss of or damage to property;

that arises or results from the Authority's failure to operate any Supplier Equipment in accordance with the Suppliers' instructions notified to the Authority in writing, save to the extent such loss, damages, costs, expenses, claims or proceedings arise or result from the Suppliers' negligence, act or omission.

7.7 In relation to all claims against the Suppliers, which are the subject of the indemnity given by the Authority under Clause 7.6 of this Schedule 2 of these Call-Off Terms and Conditions, the Suppliers shall use their reasonable endeavours, upon a written request from the Authority, to transfer the conduct of such claims to the Authority unless restricted from doing so. Such restrictions may include, without limitation, any restrictions:

7.7.1 relating to any legal, regulatory, governance, information governance, or confidentiality obligations on the Suppliers; and/or

7.7.2 relating to the Suppliers' membership of any indemnity and/or risk pooling arrangements.

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

7.8 Except to the extent otherwise provided for in these Call-Off Terms and Conditions, or otherwise agreed with the Suppliers, the Authority shall:

7.8.1 ensure that its staff engaged in the use of the Supplier Equipment are suitably trained and are aware of the Suppliers' instructions concerning the use of the Supplier Equipment; and

7.8.2 arrange for routine maintenance of the Supplier Equipment in its control by suitably trained individuals in accordance with the requirements notified by the Suppliers to the Authority in writing from time to time;

7.8.3 use its reasonable endeavours to:

(a) permit the Suppliers access to the performance data of the Supplier Equipment; and

(b) to allow the Suppliers remote access to the Supplier Equipment to facilitate the diagnosis and repair of the Supplier Equipment;

provided that such use or access to the Supplier Equipment and/or performance data shall be in accordance with the relevant Policies of the Authority.

8 Staff and Supplier Personnel

8.1 The Suppliers shall:

- 8.1.1 provide in advance of any admission to the Premises and Locations a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;
- 8.1.2 ensure that all Supplier Personnel:
 - (a) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (b) are vetted in accordance with Good Industry Practice;
 - (c) comply with all reasonable requirements of the Authority concerning conduct at the Premises and Locations; and
 - (d) remain entitled to enter, remain and work in the UK where required for the performance of this Contract
- 8.1.3 ensure that the professional registrations of all Supplier Personnel are current and up to date;
- 8.1.4 ensure that all Disclosure and Barring Scheme (“**DBS**”) checks required pursuant to Clauses 8.15 and 8.16 of this Schedule 2 of these Call-Off Terms and Conditions have been carried out in respect of all Supplier Personnel and all relevant pre-employment or equivalent checks have been carried out and kept up to date;
- 8.1.5 subject to Schedule 12 of these Call-Off Terms and Conditions, retain overall control of the Staff at all times so that the Staff shall not be deemed to be employees, agents or contractors of the Authority;
- 8.1.6 be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of any member of the Supplier Personnel which results in a breach of this Contract shall be a breach by the Suppliers;
- 8.1.7 use reasonable endeavours to minimise the number of changes in Supplier Personnel;
- 8.1.8 replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever and such Supplier Personnel are necessary for the delivery of the Suppliers’ obligations under this Contract;

- 8.1.9 bear the programme familiarisation and other costs associated with the replacement of any Supplier Personnel; and
 - 8.1.10 procure that the Supplier Personnel shall vacate the Premises and Locations immediately upon the termination or expiry of this Contract.
- 8.2 If the Authority reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Contract, it may:
- 8.2.1 refuse admission to the relevant person(s) to the Premises and Locations; and/or
 - 8.2.2 subject to Clause 8.21 of Schedule 2 of these Call-Off Terms and Conditions direct the Suppliers to end the involvement in the provision of the Services of the relevant person(s);
- and the Authority shall advise the Suppliers of its reasons for taking such steps in writing.
- 8.3 The Suppliers shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. The Order Form lists the Key Roles and names of the persons who the Suppliers shall appoint to fill those Key Roles at the Effective Date.
- 8.4 The Authority may identify any further roles as being Key Roles and, following agreement to the same by the Suppliers, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel. The Authority and Suppliers shall agree the duration of each such additional Key Role.
- 8.5 The Suppliers shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:
- 8.5.1 requested to do so by the Authority;
 - 8.5.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
 - 8.5.3 the person's employment or contractual arrangement with the Suppliers or a Sub-contractor is terminated for material breach of contract by the employee; or
 - 8.5.4 the Suppliers obtain the Authority's prior written consent (such consent not to be unreasonably withheld or unreasonably delayed or unreasonably made subject to conditions).
- 8.6 The Suppliers shall:
- 8.6.1 notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of 2 weeks or less, in which case the Suppliers shall ensure appropriate temporary cover for that Key Role);
 - 8.6.2 use all reasonable endeavours to ensure that any Key Role is not vacant for any longer than 10 Business Days;
 - 8.6.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death,

unexpected ill health, resignation requiring less than sixty (60) Business Days' notice, or a material breach of the Key Personnel's employment contract, this will mean at least sixty (60) Business Days' notice wherever possible;

8.6.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of this Contract; and

8.6.5 ensure that any replacement for a Key Role:

(a) has a level of qualifications and experience appropriate to the relevant Key Role; and

(b) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

8.7 The Parties agree that:

8.7.1 the Suppliers shall both during and after the Term indemnify the Authority against all Employee Liabilities that may arise as a result of any claims brought against the Authority by any person where and to the extent such claim arises from any act or omission of the Suppliers or any Supplier Personnel; and

8.7.2 the Authority shall both during and after the Term indemnify the Suppliers against all Employee Liabilities that may arise as a result of any claims brought against the Suppliers by any person where and to the extent such claim arises from any act or omission of the Authority or any of the Authority's employees, agents, consultants and contractors.

8.8 Where the Suppliers or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Suppliers shall:

8.8.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and

8.8.2 indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim levied against the Authority by HMRC or by any statutory or regulatory authority arising from or made in connection with the provision of the Services by the Suppliers or any Supplier Personnel.

8.9 The Parties agree that:

8.9.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 12 of these Call-Off Terms and Conditions shall apply as follows:

- (a) where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A of Schedule 12 of these Call-Off Terms and Conditions shall apply;
- (b) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Schedule 12 of these Call-Off Terms and Conditions shall apply;
- (c) where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Supplier Employees, Parts A and B of Schedule 12 of these Call-Off Terms and Conditions shall apply; and
- (d) Part C of Schedule 12 of these Call-Off Terms and Conditions shall not apply;

8.9.2 where commencement of the provision of the Services or any part of the Services does not result in a Relevant Transfer, Part C of Schedule 12 of these Call-Off Terms and Conditions shall apply and Parts A and B of Schedule 12 of these Call-Off Terms and Conditions shall not apply; and

8.9.3 Part D of Schedule 12 of these Call-Off Terms and Conditions shall apply on the expiry or termination of the provision of the Services or any part of the Services.

8.10 Subject to the requirements of this Contract and any Law, the Suppliers shall be entirely responsible for the employment and conditions of service of their Staff. The Suppliers shall ensure that such conditions of employment and conditions of service are consistent with their obligations under this Contract.

8.11 The Suppliers will employ sufficient Staff to ensure that they comply with their obligations under this Contract. This will include, but not be limited to, the Suppliers providing a sufficient reserve of trained and competent Staff to supply or perform the Deliverables during Staff holidays or absence.

8.12 The Suppliers shall ensure that all Supplier Personnel are aware of, and at all times comply with, the Policies.

8.13 The Suppliers shall:

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

8.13.2 ensure that every member of the Supplier Personnel is properly and sufficiently trained and instructed;

8.13.3 ensure that every member of the Supplier Personnel is capable of performing their role to a good standard and in accordance with Good Industry Practice;

8.13.4 ensure all Supplier Personnel have the relevant qualifications necessary to demonstrate that they can carry out their duties;

- 8.13.5 maintain throughout the Term all appropriate licences and registrations with any relevant bodies (at the Suppliers' expense) in respect of the Supplier Personnel;
 - 8.13.6 ensure all Supplier Personnel comply with such registration, continuing professional development and training requirements or recommendations appropriate to their role including those from time to time issued by DHSC or any relevant Regulatory or Supervisory Body or any industry body in relation to such Staff; and
 - 8.13.7 comply with the Authority's reasonable staff vetting procedures as may be relevant to this Contract and which are notified to the Suppliers by the Authority in writing.
- 8.14 The Suppliers shall not deploy in the provision of the Services any person who would place the health and safety of the Authority's staff, patients, service users or visitors at risk.
- 8.15 The Suppliers shall ensure that all potential staff or persons performing any of the Services during the Term who may reasonably be expected in the course of performing any of the Services under this Contract to have access to or come into contact with children or other vulnerable persons and/or have access to or come into contact with persons receiving health care services:
- 8.15.1 are questioned concerning their Convictions; and
 - 8.15.2 obtain appropriate disclosures from the Disclosure and Barring Service (or other appropriate body) as required by Law and/or the Policies before the Suppliers engage the potential staff or persons in the provision of the Services.
- 8.16 The Suppliers shall take all necessary steps to ensure that such potential staff or persons obtain standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) and shall ensure all such disclosures are kept up to date. The obtaining of such disclosures shall be at the Suppliers' cost and expense.
- 8.17 The Suppliers shall ensure that no person is employed or otherwise engaged in the provision of the Services without the Authority's prior written consent if:
- 8.17.1 the person has disclosed any Convictions upon being questioned about their Convictions in accordance with Clause 8.15.1 of this Schedule 2 of these Call-Off Terms and Conditions;
 - 8.17.2 the person is found to have any Convictions following receipt of standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) in accordance with Clause 8.15.2 of this Schedule 2 of these Call-Off Terms and Conditions; or
 - 8.17.3 the person fails to obtain standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) upon request by the Suppliers in accordance with Clause 8.15.2 of this Schedule 2 of these Call-Off Terms and Conditions.

- 8.18 In addition to the requirements of Clause 8.15 to Clause 8.17 of this Schedule 2 of these Call-Off Terms and Conditions, where the Services are or include regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 the Suppliers:
- 8.18.1 warrant that they shall comply with all requirements placed on them by the Safeguarding Vulnerable Groups Act 2006;
 - 8.18.2 warrant that at all times they have and will have no reason to believe that any member of Supplier Personnel is barred in accordance with the Safeguarding Vulnerable Groups Act 2006; and
 - 8.18.3 shall ensure that no person is employed or otherwise engaged in the provision of the Services if that person is barred from carrying out, or whose previous conduct or records indicate that they would not be suitable to carry out, any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person.
- 8.19 The Suppliers shall ensure that the Authority is kept advised at all times of any member of the Supplier Personnel who, subsequent to their commencement of employment or engagement as a member of the Supplier Personnel receives a Conviction or whose previous Convictions become known to the Suppliers or whose conduct or records indicate that they are not suitable to carry out any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person. The Suppliers shall only be entitled to continue to employ or engage such member of Supplier Personnel in the delivery of the Contract with the Authority's written consent and with such safeguards being put in place as the Authority may reasonably request. Should the Authority withhold consent the Suppliers shall remove such member of Supplier Personnel from the delivery of the Contract forthwith.
- 8.20 The Suppliers shall immediately provide to the Authority any information that the Authority reasonably requests to enable the Authority to satisfy itself that the obligations set out in Clause 8.15 to Clause 8.19 (inclusive) of this Schedule 2 of these Call-Off Terms and Conditions have been met.
- 8.21 The Authority may at any time request that the Suppliers remove and replace any of the Supplier Personnel from the provision of the Services where the Authority reasonably believes that such member of the Supplier Personnel is unsuitable to undertake work in respect of this Contract, provided always that the Authority will act reasonably in making such a request. Prior to making any such request the Authority shall raise with the Suppliers the Authority's concerns regarding the member of Staff in question with the aim of seeking a mutually agreeable resolution. The Authority shall be under no obligation to have such prior discussion should the Authority have concerns regarding patient or service user safety.

9 Business continuity

- 9.1 Throughout the Term, the Suppliers will ensure that their Business Continuity Plan(s) provides for continuity in the provision of the Deliverables during a Business Continuity Event.

The Suppliers confirm and agree that such Business Continuity Plan(s) details and will continue to detail arrangements to ensure the continuity of the supply or the performance of the Deliverables during and following a Business Continuity Event that are reasonable and proportionate to:

9.1.1 the criticality of this Contract to the Authority; and

9.1.2 the size and scope of the Suppliers' business operations.

9.2 The Suppliers shall test their Business Continuity Plan(s) at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Contract to the Authority and the size and scope of the Suppliers' business operations. The Suppliers shall also test their Business Continuity Plan(s) in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Authority.

9.3 The Suppliers shall promptly provide to the Authority at the date of this Contract, and thereafter at the Authority's written request, copies of their Business Continuity Plan(s) and/or reasonable and proportionate documentary evidence that the Suppliers test their Business Continuity Plan(s) in accordance with the requirements of Clause 9.2 of this Schedule 2 of these Call-Off Terms and Conditions and/or reasonable and proportionate information regarding the outcome of such tests. The Suppliers shall provide to the Authority a copy of any updated or revised Business Continuity Plan(s) or reasonable and proportionate documentary evidence that they have updated or revised their Business Continuity Plan(s) (as applicable) within fourteen (14) Business Days of any material update or revision to such plan(s).

9.4 On receipt of a copy of the Suppliers' Business Continuity Plan(s) and/or any revision of such plan(s) and/or the result of any test of the Suppliers' Business Continuity Plan(s) and/ or any documentary evidence relating to the Suppliers' Business Continuity Plan(s) the Authority may review such plan, revision, test result and/or documentary evidence and where it reasonably considers that:

9.4.1 any such plan(s) or revision may not sufficiently provide for continuity in the provision of the Deliverables during a Business Continuity Event; and/or

9.4.2 the test result demonstrates that the Suppliers' Business Continuity Plan(s) will or may fail to provide for continuity in the provision of the Deliverables during a Business Continuity Event;

the Authority may require the Suppliers to take such measures, acting reasonably, as it considers appropriate (including the re-testing of the Business Continuity Plan(s) or revision of such plan(s)) to strengthen such plan(s) or such revision and this remedial activity and re-testing shall be completed by the Suppliers, at no additional cost to the Authority, by the date reasonably required by the Authority and notified to the Suppliers in writing.

- 9.5 Should a Business Continuity Event occur at any time, the Suppliers shall implement and comply with their Business Continuity Plan(s) and provide regular written reports to the Authority on such implementation.
- 9.6 During and following a Business Continuity Event, the Suppliers shall use reasonable endeavours to continue to supply or perform the Deliverables in accordance with this Contract.
- 9.7 For the avoidance of doubt, the carrying out of a test of the Business Continuity Plan(s) (including a test of the Business Continuity Plan(s)'s procedures) shall not relieve the Suppliers of any of their obligations under this Contract.

10 The Authority's obligations

- 10.1 Subject to the Suppliers supplying or performing the Deliverables in accordance with this Contract, the Authority will pay the Suppliers for the Deliverables in accordance with Clause 12 of this Schedule 2 of these Call-Off Terms and Conditions.
- 10.2 The Authority shall, as appropriate, provide copies of or give the Suppliers access to such of the Policies that are relevant to the supply or performance of the Deliverables.
- 10.3 The Authority shall comply with the Authority's Obligations.
- 10.4 The Authority shall provide the Suppliers with any reasonable and proportionate cooperation necessary to enable the Suppliers to comply with their obligations under this Contract. The Suppliers shall at all times provide reasonable advance written notification to the Authority of any such cooperation necessary in circumstances where such cooperation will require the Authority to plan for and/or allocate specific resources in order to provide such cooperation.

11 Contract management

- 11.1 Each Party shall appoint and retain a designated Contract Manager who shall be the primary point of contact for the other Party in relation to matters arising from this Contract. Where more than one Supplier is a Party to this Contract, each Supplier shall appoint a Contract Manager to represent that Supplier in respect of those Deliverables indicated in the Specification to be supplied or performed by that Supplier, and the Suppliers shall appoint one of the Contract Managers so appointed to be their Lead Contract Manager with authority to represent all of the organisations comprising the Suppliers. Should a Contract Manager or Lead Contract Manager be replaced, the organisation replacing the Contract Manager or Lead Contract Manager shall promptly inform the other Party in writing of the name and contact details for the new Contract Manager or Lead Contract Manager. Any Contract Manager appointed shall be of sufficient seniority and experience to be able to make decisions on the day to day operation of the Contract. The Suppliers confirm and agree that they will be expected to work closely and cooperate fully with the Authority's Contract Manager.

- 11.2 Each Party shall ensure that its representatives (to include, without limitation, its Contract Manager or Lead Contract Manager (where applicable in the case of more than one Supplier)) shall attend review meetings on a regular basis to review the performance of the Suppliers under this Contract and to discuss matters arising generally under this Contract. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day to day operation of the Contract. Review meetings shall take place at the frequency specified in the Specification and Call-Off ITT. Should the Specification and Call-Off ITT not state the frequency, then the first such meeting shall take place on a date to be agreed on or around the end of the first Month after the Effective Date. Subsequent meetings shall take place at Monthly intervals or as may otherwise be agreed in writing between the Parties.
- 11.3 No more than one (1) week prior to each review meeting but in any event not less than three (3) Business Days prior to each review meeting the Suppliers shall provide a written contract management report (“**Report**”) to the Authority regarding the supply or performance of the Deliverables and the operation of this Contract. Where the Parties have agreed to hold review meetings less frequently than Monthly pursuant to Clause 11.2 of this Schedule 2 of these Call-Off Terms and Conditions then a Report shall, without prejudice to the remainder of this Clause 11.3 of this Schedule 2 of these Call-Off Terms and Conditions, be produced by the Suppliers and submitted to the Authority at no less than Monthly intervals. Unless otherwise agreed by the Parties in writing, such Report shall contain, as a minimum:
- 11.3.1 details of the performance of the Suppliers when assessed in accordance with the KPIs since the last such Report;
 - 11.3.2 in the case of the first review meeting, a calculation of the number of Primary KPI Failure Points and the number of Secondary KPI Failure Points occurring in the period between the Effective Date and the date of the first review meeting, and in the case of any other review meeting a calculation of the number of Primary KPI Failure Points and Secondary KPI Failure Points occurring in the period between the preceding review meeting and the review meeting at which the Report will be considered;
 - 11.3.3 in the case of the first review meeting, a calculation of the number of KPI Failures relating to the KPIs occurring in the period between the Effective Date and the date of the first review meeting, and in the case of any other review meeting a calculation of the number of KPI Failures relating to the KPIs occurring in the period between the preceding review meeting and the review meeting at which the Report will be considered;
 - 11.3.4 in the case of the first review meeting, a calculation of the number of Service Credits accruing in the period between the Effective Date and the date of the first review meeting, and in the case of any other review meeting a calculation of the number of Service Credits accruing in the period between the preceding review meeting and the review meeting at which the Report will be considered;
 - 11.3.5 details of any complaints by the Authority regarding the supply or performance of the Deliverables and any complaints from or on behalf of patients or other service

- users, their nature and the way in which the Suppliers have responded to such complaints since the last Report;
- 11.3.6 the information specified in the Specification and Call-Off ITT;
 - 11.3.7 a status report in relation to the implementation of any current Remedial Proposals by either Party; and
 - 11.3.8 such other information as reasonably required by the Authority.
- 11.4 Unless otherwise specified in the Specification and Call-Off ITT, the Authority shall take minutes of each review meeting and shall circulate draft minutes to the Suppliers within a reasonable time following such review meeting. The Suppliers shall inform the Authority in writing of any suggested amendments to the minutes within five (5) Business Days of receipt of the draft minutes. If the Suppliers do not respond to the Authority within such five (5) Business Days the minutes will be deemed to be approved. Where there are any differences in interpretation of the minutes, the Parties will use their reasonable endeavours to reach agreement. If agreement cannot be reached the matter shall be referred for resolution in accordance with the dispute resolution process set out in Clause 6 of Schedule 1 and Clause 32.3 of this Schedule 2 of these Call-Off Terms and Conditions.
- 11.5 The Suppliers shall provide such management information as the Authority may reasonably request from time to time within ten (10) Business Days of the date of the request. The Suppliers shall supply the management information to the Authority in such form as may be specified by the Authority and the Suppliers shall also provide any such management information to DHSC whose role includes (but is not limited to): (a) the analysis of such management information (to include, without limitation, for the purposes of analysing public sector expenditure and planning future procurement activities); and/or (b) management of the DPS Framework Agreement with the Suppliers. The Suppliers confirm and agree that the Authority may itself provide DHSC with management information relating to the Deliverables purchased, any payments made under this Contract, and any other information relevant to the operation of this Contract.
- 11.6 Upon receipt of management information supplied by the Suppliers to the Authority and/or DHSC, or by the Authority to DHSC, the Parties hereby consent to DHSC and/or the Authority:
- 11.6.1 storing and analysing the management information and producing statistics; and/or
 - 11.6.2 subject to the provision of Clauses 11.7 below of this Schedule 2 of these Call-Off Terms and Conditions, sharing the management information or any statistics produced using the management information with any other Contracting Authority where necessary and/or expedient in relation to the operation of the DPS Framework Agreement and/or any Call-Off Contract; and/or
 - 11.6.3 publishing such management information as is required in order to meet the transparency requirements of the UK Government relating to the publishing of information relating to contracts with the public sector.

- 11.7 If DHSC and/or the Authority shares the management information or any other information provided under Clause 11.6.2 of this Schedule 2 of these Call-Off Terms and Conditions, the Authority and/or DHSC (as applicable) shall ensure that the relevant Contracting Authority when receiving the information shall, where such management information is subject to obligations of confidence under this Contract, be informed of the confidential nature of that information by the Authority and/or DHSC (as applicable) and shall be required by the Authority and/or DHSC (as applicable) not to disclose it to any body that is not a Contracting Authority (unless required to do so by Law).
- 11.8 The Authority may make such changes as are reasonably necessary to the type of management information which the Suppliers are required to supply pursuant to Clause 11.5 above of this Schedule 2 and shall give the Suppliers at least one (1) month's written notice of any changes.
- 11.9 The Parties agree that the Contracts (Right of Third Parties) Act 1999 shall apply to Clauses 11.5 to 11.6 (inclusive) of this Schedule 2 of these Call-Off Terms and Conditions to the extent necessary for DHSC to have the right to enforce on its own behalf against the Suppliers the obligations expressed as being owed to it pursuant to Clauses 11.5 to 11.6 (inclusive) of this Schedule 2 of these Call-Off Terms and Conditions.

12 Price and payment

- 12.1 The Contract Price due to each Supplier shall be calculated in accordance with the provisions of the Call-Off ITT, as confirmed in the Order Form.
- 12.2 Unless otherwise stated in the DPS Framework Agreement and/or the Order Form, the Contract Price for the Goods:
- 12.2.1 shall be payable by the Authority to the relevant Supplier as indicated in the Order Form;
 - 12.2.2 shall, subject to the provisions of this Contract, including but not limited to Clause 12.18 of this Schedule 2, remain fixed during the Term; and
 - 12.2.3 is the entire price payable by the Authority to each Supplier in respect of the of the Goods supplied by that Supplier and includes, without limitation:
 - (a) packaging, packing materials, addressing, labelling, loading, delivery to and unloading at the delivery location, all appropriate tax (excluding VAT) and duty, any installation costs and associated works, the costs of all associated documentation and information supplied or made accessible to the Authority in any media, and any training in relation to the use, storage, handling or operation of the Goods;
 - (b) any royalties, licence fees or similar expenses in respect of the making, use or exercise by the Supplier of any Intellectual Property

Rights for the purposes of performing this Contract, and any licence rights granted to the Authority in accordance with Clause 14 of this Schedule 2; and

- (c) costs and expenses in relation to supplies and materials used by the Supplier or any third party in the manufacture of the Goods, and any other costs incurred by the Supplier in association with the manufacture, supply or installation of the Goods.

12.3 Unless otherwise stated in the DPS Framework Agreement and/or the Order Form, the Contract Price for each portion of the Deliverables

12.3.1 shall be payable by the Authority to the relevant Supplier as indicated in the Order Form from the date that portion of the Deliverables is first provided and/or performed;

12.3.2 shall, subject to the provisions of this Contract, including but not limited to Clause 12.18 of this Schedule 2, remain fixed during the Term; and

12.3.3 is the entire price payable by the Authority to each Supplier in respect of the Services provided by each Supplier and includes, without limitation, any royalties, licence fees, use of Equipment provided by each Supplier as part of the Services, supplies used by each Supplier, all Consumables, all costs associated with the maintenance of Equipment provided by each Supplier as part of the Services and each Supplier's travel costs, accommodation expenses and the cost of Supplier Personnel.

12.4 Unless stated otherwise in the DPS Framework Agreement and/or the Order Form and/or the Call-Off ITT and subject to Clause 12.5 of this Schedule 2 of these Call-Off Terms and Conditions:

12.4.1 where the Specification and/or the Order Form and/or the Call-Off ITT confirms that the payment profile for this Contract is in whole or in part monthly in arrears, each relevant Supplier shall invoice the Authority, within fourteen (14) days of the end of each calendar month, one twelfth of the relevant portion of the Contract Price (and where the Contract Price is for a period less than a full year the annualised Contract Price) in respect of the Deliverables supplied or performed by that Supplier in compliance with this Contract in the preceding calendar month; and/or

12.4.2 where the Specification and/or the Order Form and/or the Call-Off ITT confirms that the payment profile for this Contract is in whole or in part payment per unit of activity delivered, then each relevant Supplier shall invoice the Authority within fourteen (14) days of the end of each Month, for that portion of the Contract Price that is calculated on the basis of the relevant unit price(s) multiplied by the number of relevant units of activity delivered in the preceding Month under this Contract; and/or

- 12.4.3 where the Specification and/or the Order Form and/or the Call-Off ITT confirms that the payment profile for this Contract is in whole or in part subject to the relevant Supplier Achieving certain Milestones the relevant Supplier(s) responsible for achieving the relevant Milestone shall invoice the Authority within fourteen (14) days of the Authority issuing a Milestone Achievement Certificate in respect of that Milestone for the Milestone Payment attributable to the Achievement of that Milestone using the pricing mechanism set out in the Order Form; and/or
- 12.4.4 where the Specification and/or the Order Form and/or the Call-Off ITT confirms that the payment profile for this Contract is in whole or in part subject to a fixed Contract Price or budget, each relevant Supplier shall invoice the Authority in accordance with the provisions of the Specification and/or the Order Form and/or the Call-Off ITT relating to that fixed Contract Price or budget and the Suppliers shall not, at any time, invoice the Authority for any sum in excess of that fixed Contract Price or budget in respect of the relevant Deliverables; and/or
- 12.4.5 subject to Clause 12.4.6 of this Schedule 2 of these Call-Off Terms and Conditions, where and to the extent that Clauses 12.4.1 to 12.4.4 (inclusive) of this Schedule 2 of these Call-Off Terms and Conditions do not apply, each relevant Supplier shall invoice the Authority for:
- (a) Services performed by that Supplier at any time following completion of the performance of the Services; and
 - (b) Goods supplied by that Supplier at any time following completion of the supply of those Goods;
- in compliance with this Contract; and/or
- 12.4.6 where the Specification and/or the Order Form and/or the Call-Off ITT confirms that the payment profile for this Contract is in whole or in part subject to the relevant Supplier Achieving certain Outcomes, the relevant Supplier(s) responsible for achieving the relevant Outcome shall invoice the Authority within fourteen (14) days of the Authority issuing an Outcome Achievement Certificate in respect of that Outcome for the Outcome Payment attributable to the Achievement of that Outcome using the pricing mechanism set out in the Order Form; and/or
- 12.4.7 where the Order Form stipulates an alternative payment calculation and/or mechanism to those set out at Clauses 12.4.1 to 12.4.6 (inclusive) of this Schedule 2 of these Call-Off Terms and Conditions then such alternative payment calculation and/or mechanism shall be applied under this Contract. For the avoidance of doubt such alternative calculation and/or mechanism may include (but is not limited to) a Painshare Arrangement and/or Gainshare Arrangement whereby the Parties share the risk and/or reward arising out of the performance of the Deliverables.

- 12.5 Each invoice shall at all times be accompanied by Supporting Documentation. Any assessment by the Authority as to what constitutes Supporting Documentation shall be conclusive and the Suppliers undertake to provide to the Authority any other documentation reasonably required by the Authority from time to time to substantiate an invoice. Each invoice shall be addressed to such individual as the Authority may notify to the Suppliers from time to time.
- 12.6 If the Authority confirms in the Call-Off ITT that a Gainshare Arrangement and/or Painshare Arrangement shall apply to this Contract, the Supplier shall implement the relevant Gainshare Arrangement and/or Painshare Arrangement as applicable when issuing any invoice(s) pursuant to Clauses 12.4 and 12.5 of this Schedule 2 of these Call-Off Terms and Conditions.
- 12.7 Subject to the Service Credit Cap, all relevant Suppliers in respect of whose portion of the Services any Service Credits have accrued shall automatically credit the Authority with the applicable number of Service Credits. Service Credits shall either be shown as a deduction from the amount due from the Authority to the relevant Suppliers in the next invoice then due to be issued under this Contract, or, at the Authority's election, the relevant Suppliers shall issue a credit note against a previous invoice or invoices and the amount for the Service Credits shall be repayable by the relevant Suppliers to the Authority as a debt within twenty (20) Business Days of the issue of the credit note. The Parties agree that any such Service Credits have been calculated as, and are, without prejudice to Clause 12.8 of this Schedule 2 of these Call-Off Terms and Conditions a genuine pre-estimate of the loss likely to be suffered by the Authority.
- 12.8 The deduction or repayment of Service Credits pursuant to Clause 12.7 shall be without prejudice to any other right or remedy of the Authority arising under these Call-Off Terms and Conditions in respect of the same circumstances. A Supplier's obligation at Clause 12.7 of this Schedule 2 of these Call-Off Terms and Conditions to deduct or repay Service Credits shall be without prejudice to the provisions of Clause 9.5 of Schedule 1 of these Call-Off Terms and Conditions. For the avoidance of doubt the Suppliers' obligation at Clause 12.7 of this Schedule 2 of these Call-Off Terms and Conditions is an obligation owed jointly and severally by all the Suppliers.
- 12.9 The Contract Price is exclusive of VAT, which, if properly chargeable, the Authority shall pay at the prevailing rate subject to receipt from the Suppliers of a valid and accurate VAT invoice. Such VAT invoices shall show the VAT calculations as a separate line item.
- 12.10 Where the Contract Price is or may become subject to any pricing requirements of any voluntary and/or statutory pricing regulation schemes, the Parties shall comply with such requirements as required by Law from time to time and specifically as required by the statutory pricing regulation scheme (and any future regulation) or to the extent applicable to the Suppliers from time to time as industry members of a voluntary scheme, including any reductions in price by reason of the application of such schemes.

- 12.11 The Authority shall verify and pay each valid and undisputed invoice received in accordance with Clauses 12.4 and 12.5 of this Schedule 2 of these Call-Off Terms and Conditions within thirty (30) days of receipt of such invoice at the latest. However, the Authority shall use its reasonable endeavours to pay such undisputed invoices sooner in accordance with any applicable government prompt payment targets. If there is undue delay in verifying the invoice in accordance with this Clause 12.11 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purposes of this Clause 12.11 after a reasonable time of not less than 30 days has passed.
- 12.12 Where the Authority raises a query with respect to an invoice the Parties shall liaise with each other and agree a resolution to such query within thirty (30) days of the query being raised. If the Parties are unable to agree a resolution within thirty (30) days the query shall be referred to dispute resolution in accordance with Clause 32 of this Schedule 2 of these Call off Terms and Conditions. For the avoidance of doubt, the Authority shall not be in breach of any of any of its payment obligations under this Contract in relation to any queried or disputed invoice sums unless the process referred to in this Clause 12.12 of this Schedule 2 has been followed and it has been determined that the queried or disputed invoice amount is properly due to the Supplier(s) and the Authority has then failed to pay such sum within a reasonable period of not less than 30 days following such determination. Where the Authority raises a query in respect of an invoice under this Clause 12.12 and the invoice covers sums that are not queried or disputed, the Authority shall pay such sums within the timescales set out in Clause 12.11 of this Schedule 2 of these Call-Off Terms and Conditions, above.
- 12.13 Without prejudice to Clause 12.7 of this Schedule 2 of these Call-Off Terms and Conditions and subject to the Service Credit Cap, the Suppliers shall pay to the Authority any Service Credits that may become due in accordance with the provisions of the Specification and Call-Off ITT and/or the Order Form and/or as otherwise arising under this Contract.
- 12.14 The Authority may at any time (with prior notice to the Suppliers) set off any liability of the Suppliers to the Authority arising out of or in connection with this Contract against any liability of the Authority to the Suppliers under this Contract. Any exercise by the Authority of its rights under this Clause 12.14 of this Schedule 2 of these Call-Off Terms and Conditions shall not limit or affect any other rights or remedies available to the Authority under this Contract or otherwise.
- 12.15 All amounts due under this Contract from the Suppliers to the Authority shall be paid by the Suppliers to the Authority in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by Law).
- 12.16 The Authority reserves the right to set off:
- 12.16.1 any monies due to the Suppliers from the Authority as against any monies due to the Authority from the Suppliers under this Contract; and
 - 12.16.2 any monies due to the Authority from the Suppliers as against any monies due to the Suppliers from the Authority under this Contract.

- 12.17 Without prejudice to its rights under Clause 12.12, 12.14 and/or 12.16 of this Schedule 2 of these Call Off Terms and Conditions, the Authority shall, where a purchase order number is required by the Authority or any organisation carrying out invoice processing functions on behalf of the Authority in order to process an invoice raised by the Suppliers for the Contract Price (or the relevant portion of the Contract Price), use its reasonable endeavours to issue a purchase order number(s) to the Suppliers against which invoices can be raised by the Suppliers.
- 12.18 Where permitted by the Order Form the Suppliers may adjust the rates, prices and unit costs as set out in the Order Form with effect from 1 April in each year during the Term by up to the percentage increase (if applicable) in the CPIH during the previous 12 Month period. The Suppliers shall give the Authority not less than one Month's prior notice in writing of any proposed changes. If the Authority objects to a proposed adjustment, it may refer the matter to an Expert, who shall determine the appropriate adjustment.
- 12.19 Pending determination of any proposed adjustment to the rates, prices and unit costs as set out in the Order Form then those rates, prices and unit costs in force shall continue to apply. Once the Expert determines the appropriate adjustment, the adjusted rates, prices and unit costs shall be deemed to have applied with effect from the relevant 1 April. Within one Month of the appropriate adjustment being determined, the Authority shall pay the Suppliers any outstanding sums due in respect of Deliverables provided since the relevant 1 April together with any applicable VAT, or the Suppliers shall refund the Authority for any excess amounts paid for Deliverables provided since the relevant 1 April and shall repay any VAT due to be repaid, as appropriate.

13 Warranties

- 13.1 The Suppliers warrant, represent and undertake that without prejudice to any warranty implied by an applicable Law:
- 13.1.1 they shall comply with the DPS Framework Agreement;
 - 13.1.2 the Goods shall be suitable for the purposes and/or treatments as referred to in the Specification and the Order Form, be of satisfactory quality and shall comply with the standards and requirements set out in this Contract;
 - 13.1.3 unless otherwise confirmed by the Authority in writing (to include, without limitation, as part of the Specification, Call-Off ITT and/or Order Form), they will ensure that the Goods and any products purchased by the Suppliers partially or wholly for the purpose of providing the Services comply with requirements five (5) to eight (8), as set out in Annex 1 of the Cabinet Office Procurement Policy Note – Implementing Article 6 of the Energy Efficiency Directive (Action Note 07/14 3rd June 2014), to the extent such requirements apply to the relevant Goods and products;

- 13.1.4 they shall ensure that prior to actual delivery to the Authority the Goods are manufactured, stored and/or distributed using reasonable skill and care and in accordance with Good Industry Practice;
- 13.1.5 without prejudice to the generality of the warranty at Clause 13.1.4 of this Schedule 2 of these Call-Off Terms and Conditions, they shall ensure that the Goods are manufactured, stored and/or distributed in accordance with good manufacturing practice and/or good distribution practice, as may be defined under any Law and/or Guidance relevant to the Goods, and in accordance with any specific instructions of the manufacturer of the Goods;
- 13.1.6 they shall ensure that all facilities used in the manufacture, storage and distribution of the Goods are kept in a state and condition necessary to enable the Suppliers to comply with their obligations in accordance with this Contract;
- 13.1.7 they have, or the manufacturer of the Goods has, manufacturing and warehousing capacity sufficient to comply with their obligations under this Contract;
- 13.1.8 they will ensure sufficient stock levels to comply with their obligations under this Contract;
- 13.1.9 they shall ensure that the transport and delivery of the Goods mean that they are delivered in good and useable condition;
- 13.1.10 where the Goods are required to be stored at a certain temperature, they shall provide, or shall procure the provision of, complete and accurate temperature records for each delivery of the Goods during the period of transport and/or storage of the Goods from the point of manufacture to the point of delivery to the Authority;
- 13.1.11 where there is any instruction information, including without limitation patient information leaflets, that accompany the Goods, they shall provide a sufficient number of copies to the Authority and provide updated copies should the instruction information change at any time during the Term;
- 13.1.12 all Goods delivered to the Authority shall comply with any shelf life requirements set out in the Specification, Call-Off ITT and/or the Order Form;
- 13.1.13 they shall not make any significant changes to the Goods without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed;
- 13.1.14 any equipment used in the manufacture, delivery, or installation of the Goods shall comply with all relevant Law and Guidance, be fit for the purpose for which it is used and maintained fully in accordance with the manufacturer's specification;
- 13.1.15 they have all rights, consents, authorisations, licences and accreditations required to supply or perform the Deliverables and shall maintain such consents, authorisations, licences and accreditations throughout the Term;

- 13.1.16 they have, and shall ensure the Supplier Personnel shall have, and shall maintain throughout the Term, all appropriate licences and registrations with the relevant bodies to fulfil their obligations under this Contract;
- 13.1.17 they have and shall maintain a properly documented system of quality processes covering all aspects of their obligations under this Contract and/or under Law and/or Guidance and shall at all times comply with such quality processes;
- 13.1.18 they shall not make any significant changes to their system of quality processes in relation to the Deliverables without notifying the Authority in writing at least twenty one (21) days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);
- 13.1.19 where any act of the Suppliers requires the notification to and/or approval by any Regulatory or Supervisory Body or other competent body in accordance with any Law and Guidance, the Suppliers shall comply fully with such notification and/or approval requirements;
- 13.1.20 receipt of the Deliverables by or on behalf of the Authority and use of the Deliverables or of any other item or information supplied or made available to the Authority as part of the Services will not infringe any third party rights, to include without limitation any Intellectual Property Rights;
- 13.1.21 they will comply with all Law and Guidance in so far as it is relevant to the supply or performance of the Deliverables;
- 13.1.22 they will provide the Services using reasonable skill and care and in accordance with Good Industry Practice and shall fulfil all requirements of this Contract using appropriately skilled, trained and experienced Supplier Personnel;
- 13.1.23 unless otherwise set out in the Specification and Call-Off ITT and/or as otherwise agreed in writing by the Parties, they have and/or shall procure all resources, equipment, consumables and other items and facilities required to provide the Services;
- 13.1.24 without limitation to the generality of Clause 13.1.21 of this Schedule 2 of these Call-Off Terms and Conditions, they shall comply with all health and safety processes, requirements safeguards, controls, and training obligations in accordance with their own operational procedures, Law, Guidance, Policies, Good Industry Practice, the requirements of the Specification and Call-Off ITT and any notices or instructions given to the Suppliers by the Authority and/or any competent body, as relevant to the supply or performance of the Deliverables and the Suppliers' access to the Premises and Locations in accordance with this Contract;
- 13.1.25 without prejudice to any specific notification requirements set out in this Contract, they will promptly notify the Authority of any health and safety hazard which has arisen, or the Suppliers are aware may arise, in connection with the supply or the performance of the Deliverables and take such steps as are reasonably

- necessary to ensure the health and safety of persons likely to be affected by such hazards;
- 13.1.26 any Supplier Equipment shall comply with all relevant Law and Guidance, be fit for the purpose for which it is used and maintained fully in accordance with the manufacturer's specification and shall remain the Suppliers' risk and responsibility at all times;
- 13.1.27 they shall maintain, repair and/or replace all Supplier Equipment throughout the Term in accordance with the provisions of this Contract;
- 13.1.28 they shall use Good Industry Practice to ensure that any information and communications technology systems and/or related IT Hardware and/or Software they use are free from corrupt data, viruses, worms and any other computer programs or code which might cause harm or disruption to the Authority System;
- 13.1.29 without prejudice to any other requirement of this Contract, they will promptly respond to all reasonable requests for information regarding the Contract and the supply or performance of the Deliverables at the frequency and in the format that the Authority may reasonably require;
- 13.1.30 they shall comply with all relevant Law and Guidance and shall use Good Industry Practice to ensure that there is no slavery or human trafficking in their supply chains;
- 13.1.31 they shall notify the Authority immediately they become aware of any actual or suspected incidents of slavery or human trafficking in their supply chains;
- 13.1.32 they shall at all times conduct their business in a manner that is consistent with any anti-slavery Policy of the Authority and shall provide to the Authority any reports or other information that the Authority may request as evidence of the Suppliers' compliance with this Clause 13.1.32 and/or as may be requested or otherwise required by the Authority in accordance with its anti-slavery Policy. The Authority may, at its absolute discretion, accept a modern slavery transparency statement published by the Suppliers in accordance with the Modern Slavery Act 2015, including but not limited to section 54 of that Act, and any and all other relevant anti-slavery legislation in force from time to time, as evidence of compliance with this Clause 13.1.32 of this Schedule 2 of these Call-Off Terms and Conditions;
- 13.1.33 all written statements and representations in any written submissions made by the Suppliers as part of the procurement process relating to the award of this Contract including without limitation their responses to any documents issued by the Authority as part of the procurement (to include, without limitation, as referred to in the Specification and Call-Off ITT and/or Order Form and all accompanying materials) remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract or to the extent that the Suppliers have otherwise disclosed to the Authority in writing prior to the date of this Contract;

- 13.1.34 they have the right and authority to enter into this Contract and that they have the capability and capacity to fulfil their obligations under this Contract;
 - 13.1.35 this Contract is executed by their duly authorised representatives;
 - 13.1.36 they are fully empowered by the terms of their constitutional documents to enter into and to carry out their obligations under this Contract and the documents referred to in this Contract;
 - 13.1.37 all necessary actions to authorise the execution of and performance of their obligations under this Contract have been taken before such execution;
 - 13.1.38 there are no pending or threatened actions or proceedings known to the Suppliers before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Suppliers. For the purposes of this Clause 13.1.38 of this Schedule 2 of these Call-Off Terms and Conditions “known” means either where at any point during the Term such pending or threatened actions or proceedings are known of by the Suppliers (or any one Supplier) or where at any point during the Term such pending or threatened actions or proceedings ought to be known of by the Suppliers (or any one Supplier);
 - 13.1.39 there are no material agreements existing to which the Suppliers are a party which prevent the Suppliers from entering into or complying with this Contract;
 - 13.1.40 they have and will continue to have the capacity, funding and cash flow to meet all their obligations under this Contract and will promptly notify the Authority if during the Term this ceases to be the case; and
 - 13.1.41 they have satisfied themselves as to the nature and extent of the risks assumed by them under the Contract and have gathered all information necessary to perform their obligations under the Contract and all other obligations assumed by them.
- 13.2 The Authority warrants without prejudice to any warranty implied by any applicable Law:
- 13.2.1 that it has the right and authority to enter into this Contract and that it has the capability and capacity to fulfil its obligations under this Contract;
 - 13.2.2 that this Contract is executed by its duly authorised representatives;
 - 13.2.3 that it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Contract and the documents referred to in this Contract;
 - 13.2.4 that all necessary actions to authorise the execution of and performance of its obligations under this Contract have been taken before such execution;
 - 13.2.5 such other warranties as may be expressly provided for in the Extra Key Provisions as to be given by the Authority.

- 13.3 Where the sale, manufacture, assembly, importation, storage, distribution, supply, delivery, or installation of the Goods under this Contract relates to medical devices and/or medicinal products (both as defined under any relevant Law and Guidance), the Suppliers warrant and undertake that they will comply with any such Law and Guidance relating to such activities in relation to such medical devices and/or medicinal products. In particular, but without limitation, the Suppliers warrant that:
- 13.3.1 at the point such Goods are supplied to the Authority, all such Goods which are medical devices shall have valid CE marking as required by Law and Guidance and that all relevant marking, authorisation, registration, approval and documentation requirements as required under Law and Guidance relating to the sale, manufacture, assembly, importation, storage, distribution, supply, delivery, or installation of such Goods shall have been complied with. Without limitation to the foregoing provisions of this Clause 13.3 of this of these Call-Off Terms and Conditions, the Suppliers shall, upon written request from the Authority, make available to the Authority evidence of the grant of such valid CE marking, and evidence of any other authorisations, registrations, approvals or documentation required;
 - 13.3.2 at the point such Goods are supplied to the Authority, all such Goods which are medicinal products shall have a valid marketing authorisation as required by Law and Guidance in order to supply the Goods to the Authority and that all relevant authorisation, labelling, registration, approval and documentation requirements as required under Law and Guidance relating to the sale, manufacture, assembly, importation, storage, distribution, supply or delivery of such Goods shall have been complied with. Without limitation to the foregoing provisions of this Clause 13.3 of this Schedule 2 of these Call-Off Terms and Conditions, the Supplier shall, upon written request from the Authority, make available to the Authority evidence of the grant of any required valid marketing authorisation, and evidence of any other authorisations, labelling, registrations, approvals or documentation required; and
 - 13.3.3 throughout the Term it shall maintain, and no later than any due date when it would otherwise expire, obtain a renewal of, any authorisation, registration or approval (including without limitation CE marking and/or marketing authorisation) required in relation to the Goods in accordance with Law and Guidance until such time as the Goods expire or the Authority notifies the Suppliers in writing that it has used or disposed of all units of the Goods supplied under this Contract.
- 13.4 If the Suppliers are in breach of Clause 13.3 of this Schedule 2 of these Call-Off Terms and Conditions, then, without prejudice to any other right or remedy of the Authority, the Authority shall be entitled to:
- 13.4.1 reject and/or return the Goods; or
 - 13.4.2 where the relevant Goods are Equipment or Consumables, cease use of the Goods and require the provision of replacement Goods that comply with Clause 13.3 of this Schedule 2 of these Call-Off Terms and Conditions

and the Suppliers shall, subject to Clause 19.2 of this Schedule 2 of these Call-Off Terms and Conditions, indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the Authority as a result of such breach.

- 13.5 The Supplier agrees to use reasonable endeavours to assign to the Authority upon request the benefit of any warranty, guarantee or similar right which it has against any third party manufacturer or supplier of the Goods in full or part.
- 13.6 The Suppliers undertake that all information, data and other records and documents required by the Authority as set out in the Specification and Call-Off ITT shall be submitted to the Authority in the format and in accordance with any timescales set out in the Specification and Call-Off ITT.
- 13.7 The Suppliers warrant and undertake to the Authority that they shall comply with any eProcurement Guidance as it may apply to the Suppliers and shall carry out all reasonable acts required of the Suppliers to enable the Authority to comply with such eProcurement Guidance.
- 13.8 The Suppliers warrant that they have notified and, if at any point during the Term an Occasion of Tax Non-Compliance occurs, shall notify the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which they are involved that is in connection with any Occasion of Tax Non-Compliance.
- 13.9 Where the Services include the supply of Software as a service or the Deliverables include Software, the Suppliers give the Authority the additional warranties set out in Schedule 8 of these Call-Off Terms and Conditions.
- 13.10 The Suppliers further warrant and undertake to the Authority that they will inform the Authority in writing promptly (and in any event within five (5) Business Days) upon becoming aware that any of the warranties set out in this Contract have been breached, are untrue or are misleading.
- 13.11 The representations and warranties set out in this Contract shall be deemed to be repeated by the Suppliers on the Effective Date (if later than the Order Form Date) by reference to the facts then existing.
- 13.12 Any warranties provided under this Contract are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.
- 13.13 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Suppliers.
- 13.14 The warranties, representations and undertakings contained in the DPS Framework Agreement are deemed to be repeated by the Suppliers on the date of the Order Form and made to the Authority and the Suppliers acknowledge and agree that the Authority has

entered into this Contract in reliance upon such warranties, representations and undertakings.

14 Intellectual Property

General

- 14.1 Except as expressly set out in this Contract, neither Party shall acquire any right, title or interest in the Intellectual Property Rights of the other Party.
- 14.2 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

Foreground IPR

- 14.3 Subject to Clause 14.6 of this Schedule 2 of these Call-Off Terms and Conditions, the Authority shall own the Foreground IPR and the Suppliers hereby assign with full title guarantee all Foreground IPR to the Authority to the fullest extent permitted by law.
- 14.4 To give effect to Clause 14.3 of this Schedule 2 of these Call-Off Terms and Conditions, the Suppliers shall procure that any Sub-contractor engaged in the development of any Foreground IPR shall assign to the Suppliers with full title guarantee all Foreground IPR developed by that Sub-contractor.
- 14.5 The Suppliers warrant that they have obtained from each individual engaged by the Suppliers in the provision of the Deliverables:
- 14.5.1 a written and valid assignment of all existing and future Foreground IPR; and
- 14.5.2 a written irrevocable waiver of such individual's statutory moral rights in the Foreground IPR, to the fullest extent permissible by law, and
- the Suppliers shall procure that any sub-contractor of the Suppliers shall obtain an equivalent assignment and waiver as provided for in Clauses 14.5.1 and 14.5.2 of this Schedule 2 of these Call-Off Terms and Conditions from each individual engaged by the subcontractor in the provision of the Deliverables.
- 14.6 In the event that the Order Form specifically provides that the Suppliers shall own the Foreground IPR in any part of the Deliverables ("**Supplier Owned Foreground IPR**");
- 14.6.1 Clauses 14.3, 14.4, 14.7, 14.8 (to the extent it relates to Foreground IPR) and 15.5 of this Schedule 2 of these Call-Off Terms and Conditions shall not apply to the Supplier Owned Foreground IPR; and
- 14.6.2 (notwithstanding any other terms and conditions purported to apply, including for the avoidance of doubt any Standard Licence Terms) the Suppliers grant to the Authority an irrevocable, perpetual, fully paid up and royalty-free, sub-licensable, worldwide, non-exclusive licence to use the Supplier Owned Foreground IPR for

any purpose in exercising their functions and/or business, or for any purpose set out in the Contract.

- 14.7 Except pursuant to Clause 14.6 of this Schedule 2 of these Call-Off Terms and Conditions, in the event that the ownership of any Foreground IPR does not pass under the prospective assignment in Clause 14.3 of this Schedule 2 of these Call-Off Terms and Conditions, the Suppliers shall:
- 14.7.1 hold such Foreground IPR on trust for the benefit of the Authority;
 - 14.7.2 (at its own cost) perform such tasks, sign such documents and provide such assistance as may be required to perfect the Authority's ownership of the Foreground IPR;
 - 14.7.3 procure that any Sub-contractor it engages in provision of the Deliverables shall:
 - (a) hold such Foreground IPR on trust for the benefit of the Authority;
 - (b) (at the Sub-contractor's own cost) perform such tasks, sign such documents and provide such assistance as may be required to perfect the Authority's ownership of the Foreground IPR.
- 14.8 The Authority hereby grants to the Suppliers a royalty-free and fully paid up, non-exclusive licence to use the Foreground IPR (excluding any Supplier Owned Foreground IPR) and Authority Background IPR solely to the extent required for the Suppliers' provision of the Deliverables. Such licence:
- 14.8.1 shall be sub-licensable on the Authority's written approval, which shall be deemed given in respect of any subcontractor specified in the Supplier Matrix;
 - 14.8.2 shall be revocable for breach of this Contract; and
 - 14.8.3 shall terminate automatically on the termination or expiry of this Contract.

Suppliers' Obligations

- 14.9 The Suppliers hereby grant to the Authority an irrevocable, perpetual, fully paid up and royalty-free, sub-licensable, worldwide, non-exclusive licence to use for any purpose, modify, adapt or enhance any Supplier Background IPR to the extent required for the Authority's (and/or its sub-licensees') use of the Foreground IPR.
- 14.10 The Suppliers hereby grant to the Authority for the life of the use by the Authority of any Output supplied to the Authority in any format as part of the Deliverables, an irrevocable, perpetual, fully paid up and royalty-free, sub-licensable, worldwide, non-exclusive licence to use, modify, adapt or enhance the Intellectual Property Rights owned or controlled by the Suppliers in any such Output or required for the purposes of receiving and using such Output in accordance with this Contract.
- 14.11 Where a patent owned by the Suppliers is necessarily infringed by the use of the Foreground IPR by the Authority, or any of its sub-licensees, the Suppliers hereby grant to the Authority

and its sub-licensees a non-exclusive, irrevocable, royalty-free, worldwide licence to such patent to enable the use of the otherwise infringing Foreground IPR, methods, materials or software solely for the purpose for which they were delivered under this Contract.

14.12 The Suppliers warrant and undertake to the Authority that:

14.12.1 the Suppliers own, or are entitled to use and licence to the Authority as set out in this Clause 14 of this Schedule 2 of these Call-Off Terms and Conditions, and will continue to own, or be entitled to use and licence to the Authority as set out in this Clause 14 of this Schedule 2 of these Call-Off Terms and Conditions, all rights, including without limitation, all Intellectual Property Rights, that are:

- (a) used in the development and provision of the Deliverables;
- (b) necessary to give effect to the Deliverables;
- (c) necessary for the Authority's use of any Output supplied to Authority;
- (d) used in the supply of any Goods;
- (e) necessary for the Authority's use of any Goods;
- (f) necessary for the Authority's use of any Intellectual Property Rights owned or to be owned by it pursuant to this Clause 14 of this Schedule 2 of these Call-Off Terms and Conditions;

14.12.2 the Suppliers have not given and will not give permission to any third party to use any of the Foreground IPR (except for any Supplier Owned Foreground IPR);

14.12.3 the Suppliers are unaware of any use by any third party of any of the Foreground IPR;

14.12.4 the use of:

- (a) the Foreground IPR for any purpose; or
- (b) the Supplier Background IPR as permitted under these Call-Off Terms and Conditions;

by the Authority will not infringe the rights of any third party, except where such infringement is solely attributable to the Foreground IPR or Supplier Background IPR being used in combination with any item not supplied or recommended by the Suppliers pursuant to these Call-Off Terms and Conditions, or for a purpose not reasonably to be inferred from the Specification or the provisions of these Call-Off Terms and Conditions.

14.13 The Suppliers shall at all times, during and after the Term, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority and each other

Indemnified Person indemnified, against all losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPR Claim.

Authority's Obligations

- 14.14 In the event that the Order Form specifically provides that the Authority shall provide warranties in respect of the Authority Background IPR, then where specified the Authority warrants and undertakes to the Suppliers that:
- 14.14.1 the Authority owns, or is entitled to use and licence to the Suppliers the Authority Background IPR as set out in this Clause 14 of this Schedule 2 of these Call-Off Terms and Conditions, and will continue to own, or be entitled to use and licence to the Suppliers the Authority Background IPR as set out in this Clause 14 of this Schedule 2 of these Call-Off Terms and Conditions; and
 - 14.14.2 the use of the Authority Background IPR as permitted under these Call-Off Terms and Conditions by the Supplier will not infringe the rights of any third party.
- 14.15 In the event that the Order Form specifically provides that the Authority shall indemnify the Suppliers in relation to the Suppliers' use of the Authority Background IPR, then the Authority shall indemnify and keep indemnified the Suppliers against any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) in respect of the Suppliers' use of any Authority Background IPR, save to the extent that it is caused by any use by or on behalf of the Suppliers of any Authority Background IPR in combination with any Intellectual Property Rights that are not the Authority Background IPR, or for a purpose not reasonably to be inferred from these Call-Off Terms and Conditions. For the avoidance of doubt, the indemnity granted under this Clause 14.15 of this Schedule 2 of these Call-Off Terms and Conditions shall be subject to the limitation of liability set out in Clause 19 of this Schedule 2 of these Call-Off Terms and Conditions.

Additional Provisions

- 14.16 At their own expense, the Suppliers shall, and shall procure that any necessary third party (including, without limitation, any Sub-contractor) shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Clause 14 of this Schedule 2 of these Call-Off Terms and Conditions.
- 14.17 The Suppliers acknowledge that, except as provided by law, no further remuneration or compensation, other than that provided for in this Contract, is or may become due to the Suppliers in respect of the Authority's use of the Intellectual Property Rights, and/or the performance of the Suppliers' obligations, under this Clause 14 of this Schedule 2 of these Call-Off Terms and Conditions.
- 14.18 The licences granted by the Suppliers in Clause 14 of this Schedule 2 of these Call-Off Terms and Conditions shall not be affected by any changes in the legal status of the Authority and any successor body to the Authority shall be entitled to the benefit of such licences.

14.19 The Authority may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Clause 14 of this Schedule 2 of these Call-Off Terms and Conditions to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority, provided that such body shall comply with these Call-Off Terms and Conditions as if it were the Authority.

15 Information Technology

General

- 15.1 In the event that the Suppliers are to develop, provide or make available any Licensed Software to the Authority under this Contract, this Clause 15 of this Schedule 2 of these Call-Off Terms and Conditions shall apply in addition to the provisions of Clause 14 of this Schedule 2 of these Call-Off Terms and Conditions.
- 15.2 Except as expressly set out in this Contract the Suppliers shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including:
- 15.2.1 the Authority Software;
 - 15.2.2 the Authority Data; and
 - 15.2.3 the Authority Background IPR.
- 15.3 Except as expressly set out in this Contract Specially Written Software shall be the property of the Authority.
- 15.4 The Suppliers warrant and undertake to the Authority that:
- 15.4.1 the Suppliers own, or are entitled to use and licence to the Authority as set out in this Clause 15 of this Schedule 2 of these Call-Off Terms and Conditions, and will continue to own, or be entitled to use and licence to the Authority as set out in this Clause 15 of this Schedule 2 of these Call-Off Terms and Conditions, all rights (including without limitation all Intellectual Property Rights):
 - (a) in and to the Licensed Software and/or any other materials made available by the Suppliers (and/or any Sub-contractor) to the Authority;
 - (b) necessary for the performance of the Suppliers' obligations under this Agreement;
 - (c) necessary for the receipt of the Deliverables by the Authority;
 - (d) necessary for the Authority's use of the Licensed Software, or any material or Output supplied to the Authority;

- (e) necessary for the Authority's use of any Intellectual Property Rights owned or to be owned by it pursuant to this Clause 15 of this Schedule 2 of these Call-Off Terms and Conditions; and
- 15.4.2 the use of the Licensed Software by the Authority or its sub-licensees for the purpose it was provided will not infringe the rights (including without limitation, any Intellectual Property Rights) of any third party.
- 15.5 The Foreground IPR assigned to the Authority pursuant to Clause 14.3 of this Schedule 2 of these Call-Off Terms and Conditions shall include without limitation, the Intellectual Property Rights in the:
 - 15.5.1 Documentation related to any Specially Written Software, Source Code and the Object Code of any Specially Written Software; and
 - 15.5.2 Software Supporting Materials.
- 15.6 The Suppliers shall:
 - 15.6.1 deliver to the Authority the Specially Written Software in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials by the deadline set out in the Specification, or on such date as may be reasonably requested by the Authority;
 - 15.6.2 without prejudice to Clause 15.16 of this Schedule 2 provide full details to the Authority of any Supplier Background IPRs or Third Party IPRs which are embedded in or which are an integral part of the Specially Written Software;
 - 15.6.3 provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Authority; and
 - 15.6.4 acknowledge and agree that the ownership of the media referred to in Clause 15.6.3 of this Schedule 2 of these Call-Off Terms and Conditions shall vest in the Authority upon their receipt by the Authority.

Supplier Non-COTS Software

- 15.7 In the event that the Order Form specifically provides that the Standard Licence Terms shall apply to the Suppliers' provision of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPR, these Standard Licence Terms shall prevail over these Call-Off Terms and Conditions in respect of the use by the Authority of such Supplier Non-COTS Software and Supplier Non-COTS Background IPR, save and to the extent that the Extra Key Provisions specifically provide otherwise.
- 15.8 Notwithstanding Clause 15.7 of this Schedule 2 of these Call-Off Terms and Conditions, the licences granted to the Authority by the Suppliers in Clause 14.6.2 of this Schedule 2 of these Call-Off Terms and Conditions, Clause 14.9 of this Schedule 2 of these Call-Off Terms and Conditions, Clause 14.10 of this Schedule 2 of these Call-Off Terms and Conditions and Clause 14.11 of this Schedule 2 of these Call-Off Terms and Conditions shall include, without

limitation, the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display):

15.8.1 the Supplier Non-COTS Software; and

15.8.2 the Supplier Non-COTS Background IPR;

except in the event that the Extra Key Provisions specifically provide that the Standard Licence Terms shall prevail over these Call-Off Terms and Conditions.

- 15.9 Notwithstanding Clause 15.7 of this Schedule 2 of these Call-Off Terms and Conditions, the Authority may sub-licence the rights granted to it under Clause 15.8 of this Schedule 2 of these Call-Off Terms and Conditions to any third party provided that the sub-licence is on terms no broader than those granted to the Authority. For the avoidance of doubt, an equivalent provision to this Clause 15.9 of this Schedule 2 of these Call-Off Terms and Conditions shall be included in such sub-licence, such that the sub- licensee can sub-licence the rights granted to it but only on terms no broader than those granted to it by the Authority.

Supplier COTS Software

- 15.10 The Suppliers shall make available to the Authority, on the relevant date specified in the Specification, or if no such date is specified, on, or promptly after, the Effective Date:

15.10.1 the Supplier COTS Software; and

15.10.2 the Supplier COTS Background IPR;

on such Standard Licence Terms to the extent that these relate to the scope of the use of the Supplier COTS Software and/or Supplier COTS Background IPR, save and to the extent that the Extra Key Provisions specifically provide otherwise.

- 15.11 Notwithstanding the licence terms and conditions referred to in Clause 15.10 of this Schedule 2 of these Call-Off Terms and Conditions, the Authority shall be entitled to sub-licence, assign or novate its licences to the Supplier COTS Software and Supplier COTS Background IPR to any third party on equivalent terms to those referred to in Clause 15.10 of this Schedule 2 of these Call-Off Terms and Conditions.

Termination of Licences to Supplier Non-COTS Software

- 15.12 At any time during the Term or following termination or expiry of this Contract, the Suppliers may terminate any licence granted pursuant to this Contract in respect of the Supplier Non-COTS Software or any licence granted pursuant to this Contract in respect of the Supplier Non-COTS Background IPR by giving 30 days' notice in writing (or such other period as agreed by the Parties) if the Authority or any person to whom the Authority grants a sub-licence pursuant to Clause 15.9 of this Schedule 2 of these Call-Off Terms and Conditions commits any material breach of the terms applicable to the Supplier Non-COTS Software (as determined by Clause 15.7 of this Schedule 2 of these Call-Off Terms and Conditions in respect of such Supplier Non-COTS Software), or Clause 15.14 (as the case may be) which,

if the breach is capable of remedy, is not remedied within 30 Business Days after the Suppliers give the Authority written notice specifying the breach and requiring its remedy.

15.13 In the event the licence of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPR is terminated pursuant to Clause 15.12 of this Schedule 2 of these Call-Off Terms and Conditions, the Authority shall:

15.13.1 immediately cease all use of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPR (as the case may be);

15.13.2 at the discretion of the Suppliers, return or destroy documents and other tangible materials to the extent that they contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPR; and

15.13.3 ensure, so far as reasonably practicable, that any Supplier Non-COTS Software and/or Supplier Non-COTS Background IPR that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Authority) from any computer, word processor, voicemail system or any other device containing such Supplier Non-COTS Software and/or Supplier Non-COTS Background IPR.

Assignment, Novation and Transfer

15.14 The Authority may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Clause 15.7 of this Schedule 2 of these Call-Off Terms and Conditions to any body which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority.

15.15 The licences granted by the Suppliers in Clause 15 of this Schedule 2 of these Call-Off Terms and Conditions shall not be affected by any changes in the legal status of the Authority and any successor body to the Authority shall be entitled to the benefit of such licences.

Third Party Rights

15.16 The Suppliers shall not use in the provision of the Deliverables (including in any Specially Written Software) any Third Party Non-COTS Software or Third Party Non-COTS IPR unless in each case they have:

15.16.1 first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPR or Third Party Non-COTS Software (as the case may be) has granted a direct licence on a royalty-free basis to the Authority and on terms no less favourable to the Authority than those set out in Clause 15.8 of this Schedule 2 of these Call-Off Terms and Conditions and including the Authority's rights set out in Clause 15.14 of this Schedule 2 of these Call-Off Terms and Conditions; or

15.16.2 complied with the provisions of Clause 15.17 of this Schedule 2 of these Call-Off Terms and Conditions.

15.17 If the Suppliers cannot obtain for the Authority a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPR in accordance with the licence terms set

out in Clause 15.16 of this Schedule 2 of these Call-Off Terms and Conditions, the Suppliers shall:

- 15.17.1 notify the Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Suppliers could seek to use; and
- 15.17.2 use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPR only if the Authority has first approved in writing the terms of the licence from the relevant third party.

15.18 The Suppliers shall:

- 15.18.1 notify the Authority in writing of all Third Party COTS Software and Third Party COTS IPR that it uses and the terms on which it uses them; and
- 15.18.2 unless instructed otherwise in writing by the Authority in any case within 30 Business Days of notification pursuant to Clause 15.18.1 of this Schedule 2 of these Call-Off Terms and Conditions, use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPR grants a direct licence to the Authority on terms no less favourable than those on which such software is usually made commercially available by the relevant third party.

15.19 Should the Suppliers become aware at any time, including after termination, that the Specially Written Software and/or any Output contains any Intellectual Property Rights for which the Authority does not have a suitable licence or right to use, then the Suppliers must notify the Authority within 10 Business Days of what those rights are and which parts of the Specially Written Software and the Output they are found in.

Use of Authority Background IPR

15.20 The Authority hereby grants to the Suppliers a royalty-free, non-exclusive, non-transferable licence during the Term to use the Authority Software, the Authority Background IPR, the Specially Written Software, the Foreground IPR and the Authority Data solely to the extent necessary for providing the Deliverables in accordance with this Contract, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:

- 15.20.1 any relevant Sub-contractor has entered into a confidentiality undertaking with the Suppliers on the same terms of confidentiality and non-use as set out in Schedule 5 of these Call-Off Terms and Conditions; and
- 15.20.2 the Suppliers shall not, without the Authority's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.

15.21 In the event of the termination or expiry of this Contract, the licence granted pursuant to Clause 15.20 of this Schedule 2 of these Call-Off Terms and Conditions and any sub-licence granted by the Suppliers in accordance with Clause 15.20 of this Schedule 2 of these Call-

Off Terms and Conditions shall terminate automatically on the date of such termination or expiry and the Suppliers shall:

- 15.21.1 immediately cease all use of the Authority Software, the Authority Background IPR and the Authority Data (as the case may be);
- 15.21.2 at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Software, the Authority Background IPR and the Authority Data; and
- 15.21.3 ensure, so far as reasonably practicable, that any Authority Software, Authority Background IPR and Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Suppliers computer, word processor, voicemail system or any other Suppliers device containing such Authority Software, Authority Background IPR and/or Authority Data.

IPR Claims

15.22 If an IPR Claim is made, or the Suppliers anticipate that an IPR Claim might be made, the Suppliers may, at the Suppliers' own expense and sole option, either:

- 15.22.1 procure for the Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPR Claim; or
- 15.22.2 replace or modify the relevant item with non-infringing substitutes provided that:
 - (a) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (b) the replaced or modified item does not have an adverse effect on any other services or the IT Environment;
 - (c) there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and
 - (d) the terms and conditions of this Contract shall apply to the replaced or modified Deliverables.

15.23 If the Suppliers elect to procure the right to continue to use the item in accordance with Clause 15.22.1 of this Schedule 2 of these Call-Off Terms and Conditions or to modify or replace an item pursuant to Clause 15.22.2 of this Schedule 2 of these Call-Off Terms and Conditions, but this has not avoided or resolved the IPR Claim, then:

- 15.23.1 the Authority may terminate this Contract (if subsisting) with immediate effect by written notice to the Suppliers; and
- 15.23.2 without prejudice to the indemnity set out in Clause 14.13 of this Schedule 2 of these Call-Off Terms and Conditions, the Suppliers shall be liable for all reasonable and unavoidable costs of the substitute items and/or services

including the additional costs of procuring, implementing and maintaining the substitute items and/or services.

Additional Exceptions to Standard Licence Terms

15.24 Clauses 15.14 to 15.23 (inclusive) of this Schedule 2 of these Call-Off Terms and Conditions shall apply notwithstanding that the Standard Licence Terms apply to the Suppliers' provision of the Supplier Non-COTS Software and/or Supplier Non-COTS Background IPR (or any part thereof), except in the event that the Extra Key Provisions specifically provide that the Standard Licence Terms shall prevail over the relevant provisions of these Call-Off Terms and Conditions.

16 SaaS (Software as a Service)

16.1 If the Order Form specifically provides that the Suppliers are providing SaaS Services on Standard Licence Terms as part of the Deliverables pursuant to this Contract:

16.1.1 the Suppliers shall make available to the Authority, on the relevant date specified in the Specification, or if no such date is specified, on such date as may be agreed in writing:

(a) the SaaS Applications; and

(b) the SaaS Documentation;

on the Standard Licence Terms, which shall prevail over these Call-Off Terms and Conditions in respect of the use by the Authority of such SaaS Applications and SaaS Documentation, save and to the extent that the Extra Key Provisions specifically provide otherwise.

17 Open Source

17.1 Where the Order Form indicates that any Deliverable, Specially Written Software or Foreground IPR are to be made available as Open Source:

17.1.1 any such Deliverable, Specially Written Software and relevant Foreground IPR shall be created in a format, or able to be converted into a format, which is suitable for publication by the Authority as Open Source;

17.1.2 where the Deliverable, Specially Written Software and relevant Foreground IPR are written in a format that requires conversion before publication as Open Source, the Suppliers shall also provide the converted format to the Authority;

17.1.3 the Suppliers agree that the Authority may at its sole discretion publish as Open Source Software all or part of the Specially Written Software and any relevant Foreground IPR; and

17.1.4 the Suppliers hereby warrant that the Specially Written Software and any relevant Foreground IPR:

- (a) are suitable for release as Open Source and that any release will not allow a third party to use the Open Source software to in any way compromise the operation, running or security of the Specially Written Software, the Foreground IPR or the Authority System;
- (b) shall not cause any harm or damage to any party using anything published as Open Source and that the Specially Written Software and the Foreground IPR do not contain any Malicious Software;
- (c) do not contain any material which would bring the Authority into disrepute upon publication as Open Source;
- (d) do not contain any IPR owned or claimed to be owned by any third party which is found, or alleged to be found, in the Specially Written Software and the Foreground IPR ("**Non-Party IPRs**"); and
- (e) will be supplied in a format suitable for publication as Open Source ("**the Open Source Publication Material**").

17.2 The Suppliers shall ensure that the Open Source Publication Material provided to the Authority does not include any Supplier Software or Supplier Background IPRs save that which the Supplier is willing to allow to be included in any Open Source publication can remain in the Open Source Publication Material supplied to the Authority. In such a case, the Suppliers hereby acknowledge that any such Supplier Software or Supplier Background IPRs will become Open Source and will be licensed and treated as such following publication by the Authority and any third party that uses the Open Source Publication Materials on the terms of the Open Source licence used by the Authority when publishing as Open Source.

17.3 The Suppliers hereby indemnify the Authority against all claims in which the Authority is, or is threatened to be, a party for any alleged infringement of any Non-Party IPRs arising from publication of the Specially Written Software and the Foreground IPR as Open Source, save to the extent that such claims are solely caused by any use by or on behalf of the Authority of the Specially Written Software or the Foreground IPR in combination with any item not supplied or recommended by the Suppliers pursuant to these Call-Off Terms and Conditions, or for a purpose not reasonably to be inferred from the Specification or the provisions of these Call-Off Terms and Conditions..

17.4 Where the Authority agrees that any Deliverable, Specially Written Software and/or Foreground IPR indicated in the Order Form to be made available as Open Source shall in fact be excluded from Open Source publication, the Suppliers shall as soon as reasonably practicable provide written details of the impact that such exclusion will have on the Authority's ability to publish other Open Source software under this Clause 17.

18 Indemnity

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

18.1.1 any injury or allegation of injury to any person, including injury resulting in death; and/or

18.1.2 any loss of or damage to property; and/or

18.1.3 any breach or alleged breach of Clause 13.1.20 of this Schedule 2 of these Call-Off Terms and Conditions and/or any breach or alleged breach of Clause 6.1.6 of Schedule 10 of these Call-Off Terms and Conditions; and/or

18.1.4 any failure by the Suppliers to commence the delivery of the Services by the Services Commencement Date; and/or any failure by the Suppliers to commence the supply of the Goods by the Supply of Goods Commencement Date; and/or

18.1.5 any failure by the Suppliers to commence the provision of the Deliverables by the Deliverables Commencement Date;

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

18.2 For the purposes of Clause 18.1 of this Schedule 2 of these Call-off Terms and Conditions for the avoidance of doubt:

18.2.1 the terms "property" shall include both personal and/or real property;

18.2.2 personal property shall include both tangible and intangible property; and

18.2.3 loss or damage to intangible property shall include any financial loss, any liability, any cost, and/or any expense.

18.3 Liability under:

18.3.1 Clauses 8.7.1, 8.8.2, 14.13, 17.3, 18.1.1, 18.1.3 and 36.4.2 of this Schedule 2 of these Call-off Terms and Conditions;

18.3.2 Clauses 2.30 and 6.4 of Schedule 5 of these Call-off Terms and Conditions;

18.3.3 Clause 6.3 of Schedule 10 of these Call-off Terms and Conditions; and

18.3.4 Clause 3.1 of Part A of Schedule 12 of these Call-off Terms and Conditions, Clause 3.1 of Part B of Schedule 12 of these Call-off Terms and Conditions, Clause 2.3 of Part C of Schedule 12 of these Call-off Terms and Conditions,

Clauses 1.6, 2.3 and 2.8 of Part D of Schedule 12 of these Call-off Terms and Conditions;

shall be unlimited and for the avoidance of doubt, Clauses 19.2 and 19.4 of this Schedule 2 of these Call-off Terms and Conditions shall not apply.

18.4 Liability under:

18.4.1 Clauses 3.10.4, 7.6, 13.4, 8.7.2, 14.14, 14.15, 18.1.2, 18.1.4 and 18.1.5 of this Schedule 2 of these Call-off Terms and Conditions

18.4.2 Clauses 2.1 and 2.6 of Part A of Schedule 12 of these Call-off Terms and Conditions, Clauses 2.1 and 2.6 of Part B of Schedule 12 of these Call-off Terms and Conditions, Clause 2.1 of Part C of Schedule 12 of these Call-off Terms and Conditions, Clause 2.13 of Part D of Schedule 12 of these Call-off Terms and Conditions;

18.4.3 any other indemnity granted in these Call-off Terms and Conditions;

shall be subject to the limitation of liability set out in Clause 19 of this Schedule 2 of these Call-off Terms and Conditions.

18.5 In relation to all third party claims against the Authority, which are the subject of any indemnity given by the Suppliers under this Contract, the Authority shall:

18.5.1 notify the Suppliers of any such claims as soon as reasonably practicable; and

18.5.2 use its reasonable endeavours, upon a written request from the Suppliers, to transfer the conduct of such claims to the Suppliers unless restricted from doing so. Such restrictions may include, without limitation, any restrictions:

(a) relating to any legal, regulatory, governance, information governance, or confidentiality obligations on the Authority; and/or

(b) relating to the Authority's membership of any indemnity and/or risk pooling arrangements.

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

18.6 Where the Authority is restricted from transferring any claim to the Suppliers in accordance with Clause 18.5 of this Schedule 2 of these Call-Off Terms and Conditions above, the Authority shall in relation to any such claim:

18.6.1 notify the Suppliers about the claim in writing;

18.6.2 consult with the Suppliers about its conduct;

- 18.6.3 where the Authority chooses to defend the claim, following consultation with the Suppliers, defend such claim diligently and, where appropriate, using competent counsel; and
- 18.6.4 where the Authority is considering settling the claim, consult with the Suppliers about whether to settle it and the terms of any such settlement.

19 Limitation of liability

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

- 19.1.1 for death or personal injury resulting from its negligence;
- 19.1.2 for fraud or fraudulent misrepresentation; or
- 19.1.3 in any other circumstances where liability may not be limited or excluded under any applicable Law.

19.2 Without prejudice to Clauses 18.3 and 19.1 and subject to Clause 19.3 of this Schedule 2 of these Call-off Terms and Conditions, the total liability of each Party to the other under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to the greater of: (a) five million GBP (£5,000,000); or (b) one hundred and twenty five percent (125%) of the total Contract Price paid or payable by the Authority to the relevant Supplier for the Deliverables.

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

- 19.3.1 is less than or equal to five hundred thousand pounds (£500,000), then the figure of five million pounds (£5,000,000) at Clause 19.2 of this Schedule 2 of these Call-off Terms and Conditions shall be replaced with five hundred thousand pounds (£500,000);
- 19.3.2 is less than or equal to one million pounds (£1,000,000) but greater than five hundred thousand pounds (£500,000), then the figure of five million pounds (£5,000,000) at Clause 19.2 of this Schedule 2 of these Call-off Terms and Conditions shall be replaced with one million pounds (£1,000,000);
- 19.3.3 is less than or equal to three million pounds (£3,000,000) but greater than one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 19.2 of this Schedule 2 of these Call-off Terms and Conditions shall be replaced with three million pounds (£3,000,000);
- 19.3.4 is less than or equal to ten million pounds (£10,000,000) but greater than three million pounds (£3,000,000) then the figure of five million pounds (£5,000,000) at Clause 19.2 of this Schedule 2 of these Call-off Terms and Conditions shall be replaced with ten million pounds (£10,000,000);
- 19.3.5 exceeds or will exceed ten million pounds (£10,000,000), but is less than fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 19.2 of this Schedule 2 of these Call-off Terms and Conditions shall be

replaced with ten million pounds (£10,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 19.2 of this Schedule 2 of these Call-off Terms and Conditions shall be replaced with one hundred and fifteen percent (115%); and

19.3.6 is equal to, exceeds or will exceed fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 19.2 of this Schedule 2 of these Call-off Terms and Conditions shall be replaced with fifty million pounds (£50,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 19.2 of this Schedule 2 of these Call-off Terms and Conditions shall be replaced with one hundred and five percent (105%).

19.4 Subject to Clause 19.5, there shall be no right to claim losses, damages and/or other costs and expenses under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged. For the avoidance of doubt, without limitation, the Parties agree that for the purposes of this Contract the following costs, expenses and/or loss of income shall be direct recoverable losses (to include recovery under any relevant indemnity) provided such costs, expenses and/or loss of income are properly evidenced by the claiming Party:

19.4.1 extra costs incurred purchasing replacement or alternative goods and/or services;

19.4.2 costs associated with advising, screening, testing, treating, retreating or otherwise providing healthcare to patients;

19.4.3 the costs of extra management time; and/or

19.4.4 loss of income due to an inability to provide health care services;

in each case to the extent to which such costs, expenses and/or loss of income arise or result from the other Party's breach of contract, negligent act or omission, breach of statutory duty, and/or other liability under or in connection with this Contract.

19.5 For the avoidance of doubt, there shall be no right to claim losses, damages and/or other costs and expenses under any indemnity in this Contract to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged save where the indemnity expressly provides otherwise.

19.6 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss, damages, costs and/or expenses (including without limitation legal costs and expenses) for which one Party is entitled to bring a claim against any other Party pursuant to this Contract, including but not limited to any loss, damages, costs and/or expenses (including without limitation legal costs and expenses) for which one Party is entitled to bring a claim against any other Party pursuant to an indemnity under this Contract.

- 19.7 For the avoidance of doubt, no Party shall be entitled to recover damages or otherwise obtain payment, reimbursement or restitution under this Contract more than once in respect of the same loss.
- 19.8 Clause 19 of this Schedule 2 of these Call-off Terms and Conditions shall survive the expiry of or earlier termination of this Contract for any reason.
- 19.9 For the purposes of this Clause 19 of this Schedule 2 of these Call-off Terms and Conditions the Contract Price applied shall be adjusted as indicated (if at all) in the Order Form.

20 Insurance

- 20.1 Subject to Clause 20.2 of this Schedule 2 of these Call-Off Terms and Conditions unless otherwise confirmed in writing by the Authority, as a minimum level of protection each of the Suppliers shall put in place and maintain in force at its own cost with a reputable commercial insurer, indemnity and/or insurance arrangements in respect of employer's liability, public liability, product liability and professional indemnity in accordance with Good Industry Practice with the minimum cover per claim of the greater of: (a) five million pounds (£5,000,000) or (b) any sum as required by Law, unless otherwise agreed with the Authority in writing. These requirements shall not apply to the extent that a Supplier is a member and maintains membership of each of the risk pooling statutory schemes run by NHS Resolution set out at Clause 20.3 below of this Schedule 2 of these Call-Off Terms and Conditions.
- 20.2 Where the Order Form or any Extra Key Provision sets out an insurance level of greater than five million pounds (£5,000,000) for any insurance required to be put in place and maintained pursuant to Clause 20.1 of this Schedule 2 of these Call-Off Terms and Conditions then that greater figure shall, for the insurance specified, replace the figure of five million pounds (£5,000,000) for the purpose of interpreting and applying Clause 20.1 of this Schedule 2 of these Call-Off Terms and Conditions.
- 20.3 Provided that a Supplier maintains all indemnity and/or insurance arrangements required by Law, a Supplier may, if it is an NHS Body as defined in Clause 11.1 of Schedule 1 of these Call-off Terms and Conditions or if it is an NHS Foundation Trust, maintain membership of each of the following risk pooling statutory schemes administered by NHS Resolution in order to meet the requirements of Clauses 20.1 and 20.2 of this Schedule 2 of these Call-off Terms and Conditions:
- 20.3.1 the Property Expenses Scheme;
 - 20.3.2 the Liabilities to Third Parties Scheme; and
 - 20.3.3 where there is a risk of clinical negligence under this Contract, the Clinical Negligence Scheme for Trusts.
- 20.4 Maintaining indemnity cover and/or policies of insurance and/or membership of the risk pooling statutory schemes administered by NHS Resolution shall not relieve the Suppliers of any liabilities under this Contract. It shall be the responsibility of the Suppliers to determine

if the amount of indemnity cover and/or insurance and/or membership of the risk pooling statutory schemes will be adequate to enable them to satisfy their potential liabilities under this Contract. Accordingly, the Suppliers shall be liable to make good any deficiency if the proceeds of any indemnity cover and/or policies of insurance and/or membership of the risk pooling statutory schemes administered by NHS Resolution are insufficient to cover the settlement of any liability and/or claim.

- 20.5 The Suppliers warrant that they shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within their power) permit or allow others to take or fail to take any action, as a result of which their indemnity cover and/or any policies of insurance and/or membership of the risk pooling statutory schemes administered by NHS Resolution (if applicable) may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances or schemes repayable in whole or in part.
- 20.6 Any excesses or deductibles under the indemnity cover, policies of insurance and/or risk pooling statutory schemes referred to in this Clause 20 of this Schedule 2 of these Terms and Conditions shall be the sole and exclusive responsibility of the Suppliers.
- 20.7 The Suppliers shall within ten (10) Business Days of written demand from the Authority provide documentary evidence to the Authority that the insurance and/or indemnity arrangements and/or membership of the risk pooling statutory schemes administered by NHS Resolution taken out by the Suppliers pursuant to this Clause 20 of this Schedule 2 of these Terms and Conditions are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
- 20.8 Save as otherwise required in the Extra Key Provisions, upon the expiry or earlier termination of this Contract, the Suppliers shall ensure that any ongoing liability they have or may have arising out of this Contract shall continue to be the subject of appropriate insurance and/or indemnity arrangements and/or membership of the risk pooling statutory schemes administered by NHS Resolution, in accordance with this Contract, for the period of six (6) years from termination or expiry of this Contract.
- 20.9 The Suppliers shall ensure that any ongoing liability that the Suppliers have or may have arising out of this Contract shall continue to be the subject of appropriate insurance and/or indemnity arrangements and/or membership of the risk pooling statutory schemes administered by NHS Resolution, in accordance with this Contract, for the period of up to twenty-one (21) years from termination or expiry of this Contract where the Deliverables or any part of them could result in liability to any patient in respect of care and/or advice funded by an NHS Body or by an NHS Foundation Trust. Such requirement to maintain appropriate insurance and/or indemnity arrangements and/or membership of the risk pooling statutory schemes administered by NHS Resolution shall continue only for so long as any liability can reasonably be considered to exist. For the purposes of this Clause 20.9 of this Schedule 2 of these Call-Off Terms and Conditions NHS Body shall have the meaning set out at Clause 11.1 of Schedule 1 of these Call-Off Terms and Conditions.

20.10 Where the Deliverables do not include any:

- 20.10.1 Goods;
- 20.10.2 Consumables;
- 20.10.3 Equipment; and/or
- 20.10.4 any tangible item of any description delivered to or deployed to the Authority, or any Authority staff, or any location to which Authority staff have access;

then the requirement at Clause 20.1 and if applicable 20.2 of this Schedule 2 of these Call-Off Terms and Conditions above to put in place and maintain product liability insurance shall be waived.

21 Term

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

21.2 Subject to any contrary or specific provision(s) in the Order Form the Authority shall be entitled to elect to extend the Term on one or more occasions by giving the Suppliers written notice no less than six (6) Months prior to the date on which this Contract would otherwise have expired, provided that the total Term of the Contract (including the Initial Term and all Extension Periods) shall not exceed five (5) Years. Any extension of the Term may relate to:

- 21.2.1 all of the Goods forming part of the Contract or (at the Authority's election) to certain, specified Goods; and/or
- 21.2.2 to all of the Services forming part of the Contract or (at the Authority's election) to a specified portion of the Services.

21.3 Where the Order Form states that this Contract may be extended by the Authority;

- 21.3.1 beyond the Initial Term in any way that differs from the provisions of Clause 21.2 of this Schedule 2 of these Call-Off Terms and Conditions; and/or
- 21.3.2 in any way in addition to the provisions of Clause 21.2 of this Schedule 2 of these Call-Off Terms and Conditions;

then the Authority shall be entitled to elect to extend the Term for the period(s) set out in the Order Form on giving the Suppliers such notice as is required by the Order Form.

21.4 Unless otherwise provided for in the Order Form the Contract shall during the period of any extension permitted pursuant to this Clause 21 of this Schedule 2 of these Call-Off Terms and Conditions (including for the avoidance of doubt any period of extension referred to in Clause 21.3 above of this Schedule 2 of these Call-Off Terms and Conditions) continue to be governed by the terms of this Contract, including but not limited to the Contract Price to be applicable during the period of any such extension.

22 Termination for Default

22.1 In the case of a breach of any of the terms of this Contract by either Party that is capable of remedy (including, without limitation any KPI Failure and any failure to pay any sums due under this Contract), the non-breaching Party may, without prejudice to its other rights and remedies under this Contract, issue a notice of the breach to the other Party (“**Breach Notice**”) and allow the Party in breach the opportunity to remedy such breach in the first instance via the submission, agreement and implementation of a remedial proposal (“Remedial Proposal”) before the non-breaching Party exercises any right to terminate this Contract in accordance with Clause 22.2.2 of this Schedule 2 of these Call-off Terms and Conditions. Such Remedial Proposal must be agreed with the non-breaching Party (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Party in breach in accordance with the timescales referred to in the agreed Remedial Proposal. The date a Remedial Proposal is agreed by the non-breaching Party shall be the date of that Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Party in breach to:

- 22.1.1 put forward and agree a Remedial Proposal with the non-breaching Party in relation to the relevant default or breach within a period of ten (10) Business Days (or such other period as the non-breaching Party may agree in writing) from written notification of the relevant default or breach from the non-breaching Party;
- 22.1.2 comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be within thirty (30) days of the date of the Remedial Proposal unless otherwise agreed between the Parties); and/or
- 22.1.3 remedy the default or breach notwithstanding the implementation of such Remedial Proposal in accordance with the agreed timescales for implementation,

shall be deemed, for the purposes of Clause 22.2 of this Schedule 2 of these Call-off Terms and Conditions, a material breach of this Contract by the Party in breach that has not been remedied in accordance with a Remedial Proposal.

22.2 Either Party may terminate this Contract (or at the election of the Party exercising the right of termination, part of the Contract) forthwith by notice in writing to the other Party if the other Party commits a material breach of this Contract which is:

- 22.2.1 not capable of remedy; or
- 22.2.2 in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal.

22.3 The Parties agree that it shall be a material breach by the Suppliers of this Contract not capable of remedy to assign, subcontract, create a trust or purport to novate this Contract or any portion of this Contract save as permitted in Clause 39 of Schedule 2 of these Call-off Terms and Conditions.

- 22.4 If the Suppliers notify the Authority pursuant to Clause 22.2 of Schedule 2 of these Call-Off Terms and Conditions that the Suppliers intend to terminate this Contract in part and the Authority, acting reasonably, considers that the effect of such a partial termination would be to render the remaining portion of the Deliverables incapable of meeting a significant part of the Authority's requirements as set out in the Specification then the Authority shall be entitled to terminate the remaining part of this Contract by serving a notice on the Suppliers within one (1) Month of receiving the Suppliers' notice of termination. For the purposes of this Clause 22.4 of Schedule 2 of these Call-Off Terms and Conditions in assessing the significance of any part of the Authority's requirements as set out in the Specification regard shall be had not only to the proportion of that part to the Authority's requirement as set out in the Specification as a whole, but also to the importance of the relevant part to the Authority.
- 22.5 The Authority may terminate this Contract (or at its election part of the Contract) forthwith by notice in writing to the Suppliers if:
- 22.5.1 the Suppliers do not commence supply of the Goods and/or delivery of all of the Services and/or any other portion of the Deliverables by any applicable Long Stop Date;
 - 22.5.2 the Suppliers (or any one of the Suppliers if the Suppliers comprise more than one organisation), or any third party guaranteeing the obligations of any of the Suppliers under this Contract, ceases or threatens to cease carrying on its business; suspends making payments on any of its debts or announces an intention to do so; is, or is deemed for the purposes of any Law to be, unable to pay its debts as they fall due or insolvent; enters into or proposes any composition, assignment or arrangement with its creditors generally; takes any step or suffers any step to be taken in relation to its winding-up, dissolution, administration (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) otherwise than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation; has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed (in each case, whether out of court or otherwise) in respect of it or any of its assets; has any security over any of its assets enforced; or any analogous procedure or step is taken in any jurisdiction;
 - 22.5.3 the Suppliers (or any one of the Suppliers if the Suppliers comprise more than one organisation) undergo a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 without the prior written consent of the Authority and the Authority shall be entitled to withhold such consent if, in the reasonable opinion of the Authority, the proposed change of control will have a material impact on the performance of this Contract or the reputation of the Authority or would, if permitted to take effect, constitute a material variation to the provisions of this Contract for the purposes of the Public Contracts Regulations 2015 and any applicable provisions of Law;

- 22.5.4 the Suppliers (or any one of the Suppliers if the Suppliers comprise more than one organisation) purport to assign, subcontract, novate, create a trust in or otherwise transfer or dispose of this Contract in breach of Clause 39.1 of this Schedule 2 of these Call-off Terms and Conditions;
- 22.5.5 the number of Primary KPI Failure Points in the period indicated in Annex 1 of the Order Form equals or exceeds the number of Primary KPI Failure Points indicated in Annex 1 of the Order Form as giving rise to a right for the Authority to terminate this Contract (or at its election part of the Contract relating to a specified portion of the Services);
- 22.5.6 the number of Secondary KPI Failure Points in the period indicated in Annex 1 of the Order Form equals or exceeds the number of Secondary KPI Failure Points indicated in Annex 1 of the Order Form as giving rise to a right for the Authority to terminate this Contract (or at its election part of the Contract relating to a specified portion of the Services);
- 22.5.7 the number of KPI Failures relating to the KPIs exceeds the number of KPI Failures indicated in Annex 1 of the Order Form in any Month or exceeds the number of KPI Failures indicated in Annex 1 of the Order Form in any Quarter as giving rise to a right for the Authority to terminate this Contract (or at its election part of the Contract relating to a specified portion of the Services);
- 22.5.8 the number of Service Credits accrued by a Supplier in any Month or other applicable payment period exceeds the Service Credit Cap;
- 22.5.9 without prejudice to Clause 22.2 of this Schedule 2 of these Call-off Terms and Conditions but otherwise subject to Clause 22.6, in the event that:
- (a) the Suppliers (or any one of the Suppliers if the Suppliers comprise more than one organisation) breach any provision or provisions of Schedule 5 of these Call-Off Terms and Conditions that relate to Personal Data where the Personal Data in respect of which the breach occurs is Sensitive Personal Data, Special Categories of Personal Data, and/or Criminal Offence Data; and/or
 - (b) the Suppliers (or any one of the Suppliers if the Suppliers comprise more than one organisation) breach any provision or provisions of Schedule 5 of these Call-Off Terms and Conditions that relate to Confidential Information (where such Confidential Information relates to any patient or service user of NHS services and/or social services funded by a local authority) and/or any Authority Data;
- 22.5.10 the total number of Breach Notices served in any Quarter in respect of the same or substantially similar breaches by the Suppliers of a term of this Contract exceed four (4) such Breach Notices;

- 22.5.11 pursuant to and in accordance with any termination rights set out in any Key Provisions and/or Clauses 33.8; 36.2; 36.4 and 40.2 of this Schedule 2 of these Call-off Terms and Conditions, or as otherwise set out in this Contract;
- 22.5.12 the Authority has become aware that any of the Suppliers could have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract or could if re-evaluated be so be excluded;
- 22.5.13 NOT USED
- 22.5.14 there has been a failure by any of the Suppliers and/or one of its/their sub-contractors to comply in any material respect with any legal obligation in the fields of environmental, social or labour Law. Where the failure to comply with legal obligations in the fields of environmental, social or labour Law is a failure by one of the Suppliers' sub-contractors, the Authority may request the replacement of such sub-contractor and the Supplier(s) shall comply with such request as an alternative to the Authority terminating this Contract under this Clause 22.5.14;
- 22.5.15 subject to Clause 22.6, the Suppliers (or any one of the Suppliers if the Suppliers comprise more than one organisation) breach any provision or provisions of the Data Protection Legislation whether related to the DPS Framework Agreement, this Contract or otherwise;
- 22.5.16 subject to Clause 22.6, the Suppliers (or any one of the Suppliers if the Suppliers comprise more than one organisation) breach any provision or provisions of Schedule 5 of these Call-Off Terms and Conditions and the Authority is required to report such breach to the Information Commissioner and/or to the relevant Data Subjects;
- 22.5.17 subject to Clause 22.6, the Information Commissioner takes regulatory action against:
- (a) the Authority; and/or
 - (b) the Suppliers (or any one of the Suppliers if the Suppliers comprise more than one organisation);
- in respect of any act or omission of the Suppliers (or any one of the Suppliers if the Suppliers comprise more than one organisation) pursuant to this Contract; and/or
- 22.5.18 The Suppliers (or any one of the Suppliers if the Suppliers comprise more than one organisation) have their place on the DPS Framework Agreement terminated.

22.6 Any right of termination set out in Clause 22.5 above that is expressed to be subject to this Clause 22.6 shall only be exercised by the Authority where the Authority considers, acting reasonably, that the breach and/or regulatory action (as applicable) means that the Suppliers no longer can give that level of assurance that the Suppliers can guarantee the rights and freedoms of Data Subjects as is required by Data Protection Legislation.

- 22.7 Subject to Clause 22.8 of Schedule 2 of these Call-Off Terms and Conditions, the Suppliers may terminate this Contract (or part of the Contract) on no less than 6 months written notice if:
- 22.7.1 there is a change of Law, rule, regulation or professional standard, that would cause the relationship between the Parties set out in this Contract to violate such Law, rule, regulation or professional standard; or
 - 22.7.2 a professional conflict of interest has arisen for the Suppliers, whether arising due to any applicable auditor requirements of the Financial Reporting Council or otherwise, which cannot be managed as required by any applicable professional rule, regulation or standard.
- 22.8 Where the Suppliers wish to exercise their right at Clause 22.7 of Schedule 2 of these Call-Off Terms and Conditions the Suppliers must first before service of any notice under Clause 22.7 of Schedule 2 of these Call-Off Terms and Conditions consult with the Authority and establish to the satisfaction of the Authority (acting reasonably) that:
- 22.8.1 such violation of Law, rule, regulation or professional standard exists; or
 - 22.8.2 such professional conflict of interest exists; and
 - 22.8.3 such violation or conflict of interest (as applicable) can only be effectively mitigated by the termination of the Contract.

23 Authority Step-In

- 23.1 Without prejudice to the right to terminate set out at Clause 22 of this Schedule 2 of these Call-off Terms and Conditions above, where:
- 23.1.1 a circumstance permitting the Authority to terminate this Contract (or at its election part of the Contract) arises as set out at Clause 22.2 and/or 22.5 of this Schedule 2 of these Call-off Terms and Conditions (a "Step-In Trigger Event");
 - 23.1.2 the Suppliers commit a material breach of this Contract in relation to the supply or performance of any Priority Deliverable;
 - 23.1.3 where the Authority reasonably considers that the circumstances constitute an emergency (which may include but shall not be limited to instances of civil disorder and/or circumstances in which the safety or welfare of the public is at risk) whether or not the Suppliers are in breach of their obligations under this Contract;
 - 23.1.4 the Authority is advised by a Regulatory or Supervisory Body that the exercise of its step-in rights is necessary or desirable whether or not the Suppliers are in breach of their obligations under this Contract;
 - 23.1.5 there is a serious and imminent risk to the health or safety of persons, property or the environment in connection with the Deliverables whether or not the Suppliers are in breach of their obligations under this Contract;

23.1.6 the Authority is required to take action in order to discharge a statutory duty whether or not the Suppliers are in breach of their obligations under this Contract; and/or

23.1.7 The Suppliers (or any of the Suppliers) are in breach of their obligations under Clause 39.8 of this Schedule 2. For the avoidance of doubt, a right of step-in shall arise under this clause irrespective of whether the relevant Supplier(s) shall have indicated an intention to remedy the breach of Clause 39.8. Where the Authority exercises a right of Step-in pursuant to this clause, the Authority shall end its Step-in as soon as reasonably practicable following receipt by the Authority of written confirmation that the Suppliers' breach of clause 39.8 of this Schedule 2 has been rectified (but without prejudice to any other right of step-in which the Authority may have in accordance with this Clause 23).

the Authority may in its absolute discretion take or procure such steps as it considers to be appropriate (acting reasonably) to ensure the supply or performance of the relevant Deliverables (the "**Affected Deliverables**") including any rectification to the standard required by the Specification, KPIs and/or as otherwise set out in this Contract. Such steps shall include but not be limited to the Authority substituting an alternative supplier to provide the Affected Deliverables.

23.2 On exercising its rights to step-in pursuant to Clause 23.1 of Schedule 2 of these Call-off Terms and Conditions the Authority shall serve a notice (a Step-In Notice) on the Suppliers. Each Step-In Notice shall set out the following:

23.2.1 the action the Authority wishes to take and in particular the Deliverables that it wishes to control (the "**Required Action**");

23.2.2 the Step-In Trigger Event that has occurred (if applicable);

23.2.3 the date on which the Authority wishes to commence the Required Action;

23.2.4 the time period which the Authority considers will be necessary for the Required Action;

23.2.5 whether the Authority will require access to the Supplier's premises and/or any other premises;

23.2.6 to the extent practicable, the impact that the Authority anticipates the Required Action will have on the Suppliers' obligations to provide the Deliverables during the period that the Required Action is being taken.

23.3 Following service of a Step-In Notice, the Authority:

23.3.1 may take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;

23.3.2 shall keep records of the Required Action taken and provide information about the Required Action to the Suppliers within 5 Business Days of the Suppliers' reasonable request;

- 23.3.3 shall co-operate wherever reasonable with the Suppliers in order to enable the Suppliers to continue to provide the Deliverables in relation to which the Authority is not assuming control; and
- 23.3.4 shall act reasonably in mitigating the cost that the Suppliers will incur as a result of the exercise of the Authority's rights under this Clause 23.
- 23.4 Before ceasing to exercise its step in rights under this Clause 23 of this Schedule 2 of these Call-off Terms and Conditions in respect of any Deliverables included within the scope of the relevant Step-In Notice the Authority shall deliver a written notice to the Suppliers (a "Step-Out Notice"), specifying:
- 23.4.1 the Required Action it has actually taken; and
- 23.4.2 the date on which the Authority plans to end the Required Action (the "**Step-Out Date**") subject to the Suppliers having demonstrated to the reasonable satisfaction of the Authority that, in respect of each of the Deliverables included within the scope of the relevant Step-In Notice that the Suppliers can and will perform the Suppliers' obligations in respect of the relevant Deliverables to the required standards.
- 23.5 The Suppliers shall, following receipt of a Step-Out Notice and not less than 20 Business Days prior to the Step-Out Date, develop for the Authority's approval a draft plan (a "Step-Out Plan") relating to the resumption by the Suppliers of the relevant portion of the Deliverables, including any action the Suppliers propose to take to ensure that the affected Deliverables satisfy the Authority's requirements as set out in the Specification.
- 23.6 The Authority shall inform the Suppliers in writing by the Step-Out Date whether the Authority approves the Step-Out Plan or not. If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Suppliers of its reasons for not approving it and inform the Suppliers of an amended Step-Out Date. The Suppliers shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval by the Step-Out Date (as amended if applicable). The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily. Any dispute in relation to the approval of a Step-Out Plan shall be determined by recourse to an Expert pursuant to Clause 32.
- 23.7 The steps that the Authority may take pursuant to Clause 23.1 of this Schedule 2 of these Call-off Terms and Conditions above shall include the partial or total suspension of the right and obligation of the Suppliers to provide one or more of the Affected Deliverables. Without prejudice to Clause 23.8 of this Schedule 2 of these Call-off Terms and Conditions but subject to Clause 23.10 of this Schedule 2 of these Call-off Terms and Conditions to the extent that any cost and/or expenses that the Authority incurs in exercising its rights under Clause 23.1 of this Schedule 2 of these Call-off Terms and Conditions (such costs to be deemed to include an administrative allowance equal to 1% of the value of the Affected Deliverables, such amount being a genuine pre-estimate of the internal administrative costs of procuring an alternative supplier of such Affected Deliverables) exceed such sums as would otherwise

have been payable to the Suppliers under this Contract in respect of the Affected Deliverables, then the amount of such excess shall be treated as a Service Credit to the same value and shall be credited to the Authority pursuant to Clause 12.7 of this Schedule 2 of these Call-off Terms and Conditions save that the amount of such Service Credit shall not count towards any assessment of whether the Service Credit Cap has been reached or exceeded.

- 23.8 Where any of the Deliverables are supplied, provided or procured by the Authority pursuant to its rights under Clause 23.1 of this Schedule 2 of these Call-off Terms and Conditions above then the Suppliers shall be entitled to no payment in relation to the relevant Deliverables during and in respect of the period of, and to the extent of, the exercise by the Authority of its rights under Clause 23.1 of this Schedule 2 of these Call-off Terms and Conditions above.
- 23.9 The exercise of any right pursuant to Clauses 23.1 to 23.8 (inclusive) of this Schedule 2 of these Call-off Terms and Conditions above shall be without prejudice to any other right of the Authority arising under these Call-off Terms and Conditions in respect of the same circumstances.
- 23.10 The Authority may not treat the amount of any excess calculated pursuant to Clause 23.7 of this Schedule 2 of these Call-off Terms and Conditions as a Service Credit where:
- 23.10.1 the step in rights under this Clause 23 of this Schedule 2 of these Call-off Terms and Conditions have arisen either pursuant to Clause 23.1.3, and/or Clause 23.1.4, and/or Clause 23.1.5, and/or 23.1.6 of this Schedule 2 of these Call-off Terms and Conditions; and
 - 23.10.2 there has been no breach by the Suppliers of the Suppliers' obligations under this Contract.

24 DHSC Third Party Rights to Step-In

- 24.1 Where:
- 24.1.1 the Authority has the right to terminate this Contract pursuant to Clause 22.5.9 and/or any of Clauses 22.5.15 to 22.5.17 (inclusive) of this Schedule 2 of these Call-Off Terms and Conditions;
 - 24.1.2 the Suppliers commit a material breach of this Contract in relation to the supply or performance of any Priority Deliverable;
 - 24.1.3 a Step-In Trigger Event occurs;
 - 24.1.4 the Authority and/or DHSC reasonably considers that the circumstances constitute an emergency (which may include but shall not be limited to instances of civil disorder and/or circumstances in which the safety or welfare of the public is at risk) despite the Suppliers not being in breach of their obligations under this Contract;

- 24.1.5 the Authority and/or DHSC is advised by a Regulatory or Supervisory Body that the exercise of its step-in rights is necessary or desirable;
- 24.1.6 there is a serious and imminent risk to the health or safety of persons, property or the environment in connection with the Deliverables; and/or
- 24.1.7 the Authority and/or DHSC is required to take action in order to discharge a statutory duty;
- 24.1.8 where a right of step-in for the Authority arises in accordance with clause 23.1.7 of this Schedule 2 (and until that right of step-in has ended in the manner provided for in Clause 23.1.7 of this Schedule 2 of these Call-Off Terms and Conditions, but without prejudice to any other right of step-in which DHSC may have in accordance with this clause 24 of this Schedule 2).

then the Parties agree that the Contracts (Right of Third Parties) Act 1999 shall apply to the extent necessary for DHSC to have the right to exercise and enforce on its own behalf the rights of the Authority contained within Clause 23 of this Schedule 2 of these Call-off Terms and Conditions save as set out at Clause 24.7 of this Schedule 2 of these Call-off Terms and Conditions. For the avoidance of doubt the provisions of Clause 23 of this Schedule 2 of these Call-off Terms and Conditions shall, where DHSC exercises its third party rights pursuant to this Clause 24 of this Schedule 2 of these Call-off Terms and Conditions, be read as if every reference to the Authority is a reference to DHSC. DHSC shall exercise such rights on its own behalf and not as agent for the Authority and the provisions of Clause 23 of this Schedule 2 of these Call-off Terms and Conditions shall save as set out at Clause 24.7 of this Schedule 2 of these Call-off Terms and Conditions give the same rights to DHSC as are set out as exercisable by the Authority in Clause 23 of this Schedule 2 of these Call-off Terms and Conditions.

- 24.2 DHSC may appoint another statutory body as its agent to exercise the step-in rights in this Clause 24 on its behalf.
- 24.3 Where in respect of any Step-In Trigger Event the Authority has exercised its rights to terminate this Contract then DHSC's step-in rights as set out in this Clause 24 of this Schedule 2 of these Call-Off Terms and Conditions shall not be exercisable in respect of such Step-In Trigger Event.
- 24.4 Where in respect of any Step-In Trigger Event the Authority has exercised its rights to terminate part of this Contract then DHSC's step-in rights as set out in this Clause 24 of this Schedule 2 of these Call-Off Terms and Conditions may only be exercised in respect of all or part of that portion of the Contract that has not been terminated in respect of such Step-In Trigger Event.
- 24.5 Where a Step-In Notice served by DHSC is received by the Suppliers (or deemed received pursuant to Clause 38 of Schedule 2 of these Call-Off Terms and Conditions) on the same day as a notice to terminate served by the Authority is received (or deemed received pursuant to Clause 38 of Schedule 2 of these Call-Off Terms and Conditions), then to the extent that

such notices are incompatible the notice to terminate shall take precedence and prevail over the Step-In Notice.

- 24.6 Notwithstanding whether the Authority's right to terminate this Contract (or at its election part of the Contract) at Clause 22 of this Schedule 2 of these Call-Off Terms and Conditions is exercised or not when a Step-In Trigger Event occurs, on each occasion that a Step-In Trigger Event does occur the Parties shall each be responsible for promptly notifying DHSC of that fact and of the detail of the circumstances giving rise to such Step-In Trigger Event.
- 24.7 Where DHSC exercises its third-party rights pursuant to this Clause 24 of this Schedule 2 of these Call-off Terms and Conditions, Clause 23.7 of this Schedule 2 of these Call-off Terms and Conditions shall apply save that any excess calculated pursuant to that Clause shall be recoverable by DHSC as a debt from the Suppliers within twenty (20) Business Days of written demand by DHSC to the Suppliers.

25 Authority Unilateral Right of Termination

- 25.1 The Authority may elect to terminate this Contract (or at its election part of this Contract) where the Contract has been substantially amended from the form originally signed by the Parties where and to the extent that the Public Contracts Regulations 2015 would require a new procurement procedure to be undertaken by the Authority.

26 Consequences of expiry or earlier termination of this Contract

- 26.1 Subject to the provision set out at Clause 26.6 of this Schedule 2 of these Call-Off Terms and Conditions, upon expiry or earlier termination of this Contract, the Authority agrees to pay the Suppliers for:
- 26.1.1 the Goods which have been supplied by the Suppliers and not rejected by the Authority in accordance with this Contract prior to the expiry or earlier termination of this Contract; and
 - 26.1.2 the Services which have been completed by the Suppliers in accordance with this Contract prior to the expiry or earlier termination of this Contract.
- 26.2 Immediately following expiry or earlier termination of this Contract:
- 26.2.1 the Suppliers shall comply with their obligations under any agreed exit plan;
 - 26.2.2 the Suppliers shall at their risk and expense, remove, or facilitate the removal of, all Supplier Retained Equipment from the Premises and Locations in accordance with any timescales set out in any agreed exit plan or as otherwise reasonably required by the Authority, and shall make good at the Suppliers' expense any damage caused to the Premises and Locations by the removal of such Supplier Retained Equipment. Such decommissioning, removal and making good shall be undertaken in such a manner and at such times so as to minimise any disruption to the Authority, its staff, patients or service users; and

- 26.2.3 all data, including without limitation, financial commissioning data, service commissioning data, contract management data, Personal Data, documents and records (whether stored electronically or otherwise) relating in whole or in part to the Contract, including without limitation relating to patients or other service users, and all other items provided on loan or otherwise to the Suppliers by the Authority shall be delivered by the Suppliers to the Authority provided that the Suppliers shall be entitled to keep copies to the extent that (a) the content does not relate solely to this Contract; (b) the Suppliers are required by Law and/or Guidance to keep copies; (c) the Suppliers were in possession of such data, documents and records prior to the Effective Date; or d) such data, documents and records are back-up copies made in accordance with the Suppliers' Information Security Management Plan provided that the Suppliers shall at all times deal with such data, documents and records in accordance with the Information Security Management Plan and the Law, and the relevant provisions of these Call-Off Terms and Conditions shall continue to apply in respect of such data, documents and records whilst held by the Suppliers.
- 26.3 The Suppliers shall retain all data relating to this Contract that are not transferred pursuant to Clause 26.2 of this Schedule 2 of these Call-off Terms and Conditions for the period set out in Clause 34.1 of this Schedule 2 of these Call-off Terms and Conditions.
- 26.4 Without prejudice to Clauses 1.2 and 1.3 of Part D of Schedule 12 of these Call-off Terms and Conditions, the Suppliers shall cooperate fully with the Authority or, as the case may be, any Replacement Suppliers during any re-procurement and handover period prior to and following the expiry or earlier termination of all or part of this Contract. This cooperation shall extend to providing access to all information relevant to the operation of this Contract as reasonably required by the Authority to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements. To the extent that the Suppliers are required by this Clause 26.4 of this Schedule 2 of these Call-Off Terms and Conditions to provide access to Confidential Information and where requested of the Authority by the Suppliers, the Authority shall use its reasonable endeavours to ensure any Replacement Suppliers enter into a confidentiality agreement with the Suppliers on the same terms of confidentiality and non-use as set out in Schedule 5 of these Call-Off Terms and Conditions. The Suppliers shall only be obliged to provide Confidential Information where a confidentiality agreement has been entered into by the Replacement Suppliers and the Suppliers.
- 26.5 Immediately upon expiry or earlier termination of this Contract any licence or lease entered into in accordance with any Order Form shall automatically terminate where permitted under that licence or lease. To the extent such licence or lease is required under the provisions of the agreed exit plan then the Parties shall seek to agree the continuation or extension as required of such licence or lease. For the avoidance of doubt, where any licence or lease does not terminate on expiry or early termination of this Contract in accordance with this Clause 26.5 of this Schedule 2 of these Call Off Terms and Conditions then such licence or lease where permitted under that licence or lease shall automatically terminate at the point it

is no longer required under the exit plan, or on the completion of the Parties' tasks set out in the agreed exit plan.

- 26.6 If the Authority terminates the Contract in accordance with Clause 22.5.1 of this Schedule 2 of these Call-Off Terms and Conditions, the Authority shall be entitled to a refund of any sums paid under this Contract provided the Authority informs the Suppliers in writing of its intention to claim such refund no later than thirty (30) days from the effective date of such termination. Should the Authority seek a refund in respect of Goods already delivered, the Authority shall return such Goods to the Suppliers at the Suppliers' written request and at the Suppliers' cost and expense.
- 26.7 The expiry or earlier termination of all or part of this Contract for whatever reason shall not affect any rights or obligations of either Party which accrued prior to such expiry or earlier termination.
- 26.8 The expiry or earlier termination of all or part of this Contract shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.
- 26.9 Without prejudice to Clause 26.6 and Clause 26.8 of this Schedule 2 of these Call-off Terms and Conditions, the Parties agree that the provisions of Clauses 12, 18, 26, 27, 42.8 of this Schedule 2 of these Call-off Terms and Conditions shall survive the expiry or termination of this Contract for any reason together with any other provisions of this Contract that are expressed to survive expiry or termination of this Contract or by implication need to so survive in order to have operational effect.
- 26.10 The expiry or earlier termination of the DPS Framework Agreement shall not affect this Contract. For the avoidance of doubt, any obligations set out in the DPS Framework Agreement that form part of this Contract shall continue to apply for the purposes of this Contract notwithstanding any termination of the DPS Framework Agreement.
- 26.11 Upon any partial termination of the Contract pursuant to Clause 22.2, 22.4, 22.5, 25.1 and/or 33.8 of this Schedule 2 of these Call-off Terms and Conditions and/or as otherwise permitted pursuant to this Contract, or any extension of the Term in respect of part only of this Contract pursuant to Clause 21.2 of this Schedule 2 of these Call-off Terms and Conditions, the Parties shall seek in good faith, and using all reasonable endeavours to determine that portion of the Contract Price related to the specified Deliverables. Such determination shall be based upon the content of the Order Form, and in the absence of agreement within one (1) Month of service of a notice of extension under Clause 21.2 of this Schedule 2 of these Call-off Terms and Conditions or 2 weeks of any applicable notice to terminate, the determination of the Contract Price related to the specified Deliverables may be referred by any Party for determination by an Expert pursuant to Clause 32.8 of this Schedule 2 of these Call-off Terms and Conditions.

26.12 The Contract Price agreed pursuant to Clause 26.11 of Schedule 2 of these Call-off Terms and Conditions above or determined pursuant to Clause 32.8 of this Schedule 2 of these Call-off Terms and Conditions shall:

26.12.1 where it relates to certain Deliverables in respect of which the Contract has been terminated pursuant to Clause 22.2, 22.4, 22.5, 25.1 and/or 33.8 of this Schedule 2 of these Call-off Terms and Conditions (or otherwise), cease to be payable by the Authority pursuant to this Contract; and

26.12.2 where it relates to certain Deliverables in respect of which the Term has been extended pursuant to Clause 21.2 of this Schedule 2 of these Call-off Terms and Conditions, be payable by the Authority (subject to the provisions of this Contract) for the remainder of the Term so extended.

26.13 Where the Suppliers exercise their right to terminate the Contract (of part of the Contract) pursuant to Clause 22.7 of Schedule 2 of these Call-Off Terms and Conditions the Suppliers shall indemnify the Authority and keep the Authority indemnified against any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise out of or in connection with the exercise of such right of termination by the Suppliers.

27 Staff information and the application of the Employment Regulations at the end of the Contract

27.1 The provisions contained in Part D of Schedule 12 of these Call-Off Terms and Conditions shall apply on the expiry or termination of this Contract.

27.2 The Parties agree that the Contracts (Right of Third Parties) Act 1999 shall apply to Part D of Schedule 12 of these Call-Off Terms and Conditions to the extent necessary for DHSC to have the right to enforce on its own behalf the obligations owed to, and indemnities given to, the Authority by the Suppliers or to the Successor by the Suppliers (as applicable).

28 Packaging, identification, end of use and coding requirements

28.1 The Suppliers shall comply with all obligations imposed on them by Law relevant to the Goods in relation to packaging, identification, and obligations following end of use by the Authority.

28.2 Unless otherwise specified in the Specification, the Call-Off ITT or the Order Form or otherwise agreed with the Authority in writing, the Goods shall be securely packed in trade packages of a type normally used by the Suppliers for commercial deliveries of the same or similar goods either in retail or in bulk quantities within the United Kingdom.

28.3 Unless otherwise (a) specified in the Specification, the Call-Off ITT or the Order Form; (b) agreed with the Authority in writing; or (c) required to comply with any regulatory requirements, the following details shall be shown on the outside of every package:

- 28.3.1 a description of the Goods which shall include, without limitation, the weight of the Goods where available and any order number allocated to the Goods by the Authority and/or the Suppliers;
 - 28.3.2 the quantity in the package where available;
 - 28.3.3 any special directions for storage;
 - 28.3.4 the expiry date of the contents where applicable;
 - 28.3.5 the batch number; and
 - 28.3.6 the name and address of the manufacturer of the Goods and the Suppliers.
- 28.4 All Goods that customarily bear any mark, tab, brand, label, serial numbers or other device indicating place of origin, inspection by any government or other body or standard of quality must be delivered with all the said marks, tabs, brands, labels, serial numbers or other devices intact. Without prejudice to the generality of the foregoing, the Suppliers shall label all Goods supplied to the Authority, and the packaging of such Goods, to highlight environmental and safety information as required by applicable Law.
- 28.5 Unless otherwise set out in the Specification, the Call-Off ITT or the Order Form or agreed with the Authority in writing, the Suppliers shall collect without charge any returnable containers (including pallets) within twenty-one (21) days of the date of the relevant delivery. Empty containers not so removed may be returned by the Authority at the Suppliers' expense or otherwise disposed of at the Authority's discretion. The Suppliers shall credit the Authority in full for any containers for which the Authority has been charged upon their collection or return.
- 28.6 Unless otherwise confirmed and/or agreed by the Authority in writing and subject to Clause 28.7 of this Schedule 2 of these Call-Off Terms and Conditions, the Suppliers shall ensure full compliance with any Guidance issued by DHSC in relation to the adoption of GS1 and PEPOL standards (to include, without limitation, any supplier compliance timeline and other policy requirements published by DHSC in relation to the adoption of GS1 and PEPOL standards for master data provision and exchange, barcode labelling, and purchase-to-pay transacting).
- 28.7 Once compliance with any published timelines has been achieved by the Suppliers pursuant to Clause 28.6 of this Schedule 2 of these Call-Off Terms and Conditions, the Suppliers shall, during the Term, maintain the required level of compliance relating to the Goods in accordance with any such requirements and Guidance referred to as part of this Contract.
- 28.8 Once product information relating to Goods is placed by the Suppliers into a GS1 certified data pool, the Suppliers shall, during the Term, keep such information updated with any changes to the product data relating to the Goods.

29 Sustainable development

- 29.1 The Suppliers shall comply with all applicable environmental and social and labour Law requirements in force from time to time in relation to the Deliverables. Where the provisions of any such Law are implemented by the use of voluntary agreements, the Suppliers shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Specification and Call-Off ITT. Without prejudice to the generality of the foregoing, the Suppliers shall:
- 29.1.1 comply with all Policies and/or procedures and requirements set out in the Specification and Call-Off ITT in relation to any stated environmental social and labour requirements, characteristics and impacts of the Deliverables and the Suppliers' supply chain;
 - 29.1.2 maintain relevant policy statements documenting the Suppliers' significant labour, social and environmental aspects as relevant to the Deliverables being supplied or performed and as proportionate to the nature and scale of the Suppliers' business operations; and
 - 29.1.3 maintain plans and procedures that support the commitments made as part of the Suppliers' significant labour, social and environmental policies, as referred to at Clause 29.1.2 of this Schedule 2 of these Call-Off Terms and Conditions.
- 29.2 The Suppliers shall meet reasonable requests by the Authority for information evidencing the Suppliers' compliance with the provisions of Clause 29 of this Schedule 2 of these Call-Off Terms and Conditions.

30 Electronic product and services information

- 30.1 Where requested by the Authority, the Suppliers shall provide the Authority the Product Information and the Services Information in such manner and upon such media as agreed between the Suppliers and the Authority from time to time for the sole use by the Authority.
- 30.2 The Suppliers warrant that the Product Information and the Services Information is complete and accurate as at the date upon which it is delivered to the Authority and that the Product Information and the Services Information shall not contain any data or statement which gives rise to any liability on the part of the Authority following publication of the same in accordance with this Clause 30 of this Schedule 2 of these Call-Off Terms and Conditions
- 30.3 If the Product Information and/or the Services Information ceases to be complete and accurate, the Suppliers shall promptly notify the Authority in writing of any modification or addition to or any inaccuracy or omission in the Product Information and/or the Services Information.
- 30.4 The Suppliers grant the Authority a perpetual, non-exclusive, royalty free licence to use the Product Information and the Services Information and any Intellectual Property Rights in the Product Information and the Services Information for the purpose of illustrating the range of

goods and services (including, without limitation, the Goods and Services) available pursuant to this Contract or the DPS Framework Agreement from time to time.

- 30.5 The Authority may reproduce for its sole use the Product Information and the Services Information provided by the Suppliers from time to time which may be made available on any NHS communications networks in electronic format and/or made available on the Authority's external website and/or made available on other digital media from time to time.
- 30.6 For the avoidance of doubt the Suppliers shall have no right to compel the Authority to exhibit the Product Information and/or the Services Information in any format or publication.
- 30.7 If requested in writing by the Authority, and to the extent not already agreed as part of the Specification and Call-Off ITT, the Suppliers and the Authority shall discuss and seek to agree in good faith arrangements to use any Electronic Trading System.
- 30.8 For the avoidance of doubt the provisions of this Clause 30 do not restrict or limit the ability of the Suppliers to themselves promote their ability to provide the Services under this Contract.

31 Change management

- 31.1 The Suppliers acknowledge to the Authority that the Authority's requirements for the Deliverables may change during the Term and the Suppliers shall not unreasonably withhold or delay their consent to any reasonable variation or addition to the Specification and/or Contract, as may be requested by the Authority from time to time.
- 31.2 Any change to the Deliverables or other variation to this Contract shall be dealt with in accordance with the Change Control Process set out in Schedule 13 of these Call-Off Terms and Conditions.
- 31.3 Where the Parties wish to vary the information set out in Annex 7 of the Order Form, they shall discuss and seek to agree any variation to such information at the next review meeting held in relation to the Contract pursuant to Clause 11 of Schedule 2 of the Call-Off Terms and Conditions. The Authority shall record the details of any variation to Annex 7 of the Order Form that it is agreed by the Parties in the draft minutes of the review meeting. Once the minutes of the review meeting have been agreed by the Parties or have been deemed to have been approved by the Suppliers in accordance with Clause 11.4 of Schedule 2 of these Call-Off Terms and Conditions, or determined by the dispute resolution process set out in Clause 6 of Schedule 1 and Clause 32.3 of Schedule 2 of these Call-Off Terms and Conditions, each Party shall arrange for the minutes of the review meeting to be signed by a duly authorised representative on its behalf. Once the minutes of the review meeting have been signed by each of the Parties, the variation to Annex 7 of the Order Form shall take effect.

32 Dispute resolution and Expert Determination

- 32.1 During any dispute, including a dispute as to the validity of this Contract, it is agreed that the Suppliers shall continue their performance of the provisions of the Contract or the relevant part thereof (unless the Authority requests in writing that the Suppliers do not do so).
- 32.2 Subject to Clause 40.2.3 of this Schedule 2 of these Call-Off Terms in the case of a dispute arising out of or in connection with this Contract the Suppliers and the Authority shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the dispute and shall follow the procedure set out in Clauses 32.3 to 32.7 (inclusive) of this Schedule 2 of these Call-Off Terms and Conditions before commencing court proceedings.
- 32.3 If any dispute arises out of or in connection with the Contract between the Suppliers and the Authority one Party may serve a notice on the other Party to commence formal resolution of the dispute. The Parties shall first seek to resolve the dispute by escalation in accordance with the management levels as set out in Clause 6 of Schedule 1. Respective representatives at each level, as set out in Clause 6 of Schedule 1, shall have five (5) Business Days at each level during which they will use their reasonable endeavours to resolve the dispute before escalating the matter to the next level until all levels have been exhausted. Level 1 will commence on the date of service of the dispute notice (as determined by Clause 38.2 of this Schedule 2 of these Call-Off Terms and Conditions). The final level of the escalation process shall be deemed exhausted on the expiry of five (5) Business Days following escalation to that level unless otherwise agreed by the Parties in writing.
- 32.4 If the procedure set out in Clause 32.3 of this Schedule 2 of these Call-Off Terms and Conditions above has been exhausted and fails to resolve such dispute, as part of the Dispute Resolution Procedure the Parties will attempt to settle it by mediation.
- 32.5 The Parties shall, acting reasonably, attempt to agree upon a mediator. In the event that the Parties fail to agree a mediator within five (5) Business Days following the exhaustion of all levels of the escalation procedure at Clause 32.3 of this Schedule 2 of these Call-off Terms and Conditions, the mediator shall be nominated and confirmed by the Centre for Effective Dispute Resolution, London.
- 32.6 A Party shall not nominate or confirm a mediator until the process set out in Clause 32.3 of this Schedule 2 of these Call-Off Terms and Conditions has been exhausted.
- 32.7 The mediation shall commence within twenty eight (28) days of the confirmation of the mediator in accordance with Clause 32.5 of this Schedule 2 of these Call-Off Terms and Conditions or at such other time as may be agreed by the Parties in writing. A Party shall not terminate such mediation process until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour or one Party has failed to participate in the mediation process. After this time, either Party may terminate the mediation process by notification to the other party (such notification may be verbal provided that it is followed up by written confirmation). The Authority and the Suppliers will cooperate

with any person appointed as mediator providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine or in the absence of such determination such costs will be shared equally between the Suppliers and the Authority.

- 32.8 Notwithstanding the other provisions of this Clause 32 of this Schedule 2 of these Call-Off Terms and Conditions, the Parties agree that where indicated in the Contract, or where otherwise agreed between the Parties in dispute, disputes and matters for determination by an expert shall be referred to a single independent expert acting as an expert (and not as an arbitrator) ("**Expert**") to be appointed jointly. Where the Contract indicates that a dispute or matter is to be determined by an expert, a Party may serve notice on the other Party or Parties in dispute requesting reference to an Expert and in the absence of agreement within fourteen (14) days on a joint appointment the Expert may be appointed on the application of a Party by the President for the time being of the Law Society (or such other person authorised by him to make appointments on his behalf).
- 32.9 If the Expert refuses to act, becomes incapable of acting or dies either Party may require the appointment of another Expert in accordance with Clause 32.8 of this Schedule 2.
- 32.10 Within seven (7) days of appointment in relation to a particular dispute, the Expert shall require the Parties to submit in writing their respective arguments. The Expert shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute and/or make a determination (as applicable).
- 32.11 In any event, the Expert shall provide to all Parties his written decision on the dispute and/or determination, within twenty-eight (28) days of appointment (or such other period as the Parties may agree after the reference, or forty-two (42) days from the date of reference if the Party which referred the dispute agrees).
- 32.12 The Expert shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the Arbitration Act 1996 and the Law relating to arbitration shall not apply to his determination or the procedure by which he reaches his determination.
- 32.13 The Expert shall act impartially and may take the initiative in ascertaining the facts and the law. The Expert shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Contract.
- 32.14 All information, data or documentation disclosed or delivered by a Party to the Expert in consequence of or in connection with his appointment shall be treated as confidential. The Expert shall not disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Expert's work.

- 32.15 The fees and expenses of the Expert are to be borne as the Expert may direct, or in default equally by the Parties. Each Party will bear their own costs with respect to the reference to an expert, including legal costs and the cost and expenses of witnesses.
- 32.16 The determination of the Expert, except in the case of manifest error, is to be final and binding on the Parties to this Contract.
- 32.17 Nothing in this Contract shall prevent:
- 32.17.1 the Authority taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the supply or performance of the Deliverables; or
 - 32.17.2 a Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party or that relates to the safety of patients and other service users or the security of Confidential Information, pending attempted resolution of the relevant dispute in accordance with the Dispute Resolution Procedure.
- 32.18 Clause 32 of this Schedule 2 of these Call-Off Terms and Conditions shall survive the expiry of or earlier termination of this Contract for any reason.

33 Force majeure

- 33.1 Subject to Clause 33.2 of this Schedule 2 of these Call-Off Terms and Conditions a Party shall not be liable to another Party for any failure to perform all or any of its obligations under this Contract nor liable to another Party for any loss or damage arising out of the failure to perform its obligations to the extent only that such performance is rendered impossible by a Force Majeure Event.
- 33.2 A Supplier and/or the Suppliers shall only be entitled to rely on a Force Majeure Event and the relief set out in this Clause 33 of this Schedule 2 of these Call-Off Terms and Conditions and will only not be considered to be in default or liable for breach of any obligations under this Contract if:
- 33.2.1 the relevant Supplier and/or the Suppliers have fulfilled their obligations pursuant to Clause 9 of this Schedule 2 of these Call-Off Terms and Conditions;
 - 33.2.2 the Force Majeure Event does not arise directly or indirectly as a result of any wilful or negligent act or default of the relevant Supplier and/or the Suppliers; and
 - 33.2.3 the relevant Supplier and/or the Suppliers have complied with the procedural requirements set out in this Clause 33 of this Schedule 2 of these Call-Off Terms and Conditions below.
- 33.3 Where a Party is (or claims to be) affected by a Force Majeure Event it shall use reasonable endeavours to mitigate the consequences of such a Force Majeure Event upon the performance of its obligations under this Contract, and to resume the performance of its obligations affected by the Force Majeure Event as soon as practicable.

- 33.4 Where the Force Majeure Event affects any Supplier's ability to perform part of its obligations under the Contract the relevant Supplier shall fulfil all such contractual obligations that are not so affected and shall not be relieved from its liability to do so.
- 33.5 If a Party is prevented or delayed in the performance of its obligations under this Contract by a Force Majeure Event, that Party shall as soon as reasonably practicable serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.
- 33.6 The Party affected by such circumstances shall have no liability for its failure to perform or for any delay in performance of its obligations affected by the Force Majeure Event only for so long as such circumstances continue and for such time after they cease as is necessary for that Party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations.
- 33.7 The Party claiming relief shall notify the other(s) in writing as soon as the consequences of the Force Majeure Event have ceased and of when performance of its affected obligations can be resumed.
- 33.8 If any Supplier and/or the Suppliers are prevented from the performance of their obligations as a result of a Force Majeure Event, the Authority may at any time if the Force Majeure Event subsists for thirty (30) days or more, terminate this Contract (or any part of it) on service of written notice on the Suppliers.
- 33.9 Following such termination in accordance with Clause 33.8 of this Schedule 2 of these Call-Off Terms and Conditions and subject to Clause 33.10 of this Schedule 2 of these Call-Off Terms and Conditions, each Party shall not have any liability to any other.
- 33.10 Any rights and liabilities of each Party which accrued prior to such termination in accordance with Clause 33.8 of this Schedule 2 of these Call-Off Terms and Conditions shall continue in full force and effect unless otherwise specified in this Contract.

34 Records retention and right of audit

- 34.1 Subject to any statutory requirement and Clause 34.2 of this Schedule 2 of these Call-Off Terms and Conditions, the Suppliers shall keep secure and maintain for the Term and six (6) years afterwards, or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to this Contract.
- 34.2 Where any record could be relevant to a claim for personal injury such record shall be kept secure and maintained by the Suppliers for the longer of:
- 34.2.1 Ten (10) years; or
- 34.2.2 the relevant period applicable to that record as set out in the Records Management Code of Practice for Health and Social Care 2016 produced by the Information Governance Alliance available at

<https://digital.nhs.uk/article/1202/Records-Management-Code-of-Practice-for-Health-and-Social-Care-2016> or any successor guidance issued from time to time.

- 34.3 The Authority shall have the right to audit the Suppliers' compliance with this Contract. The Suppliers shall permit or procure permission for the Authority or its authorised representative(s) (who for the avoidance of doubt shall enter into obligations of confidentiality and non-use the same as those in Schedule 5 of these Call Off Terms and Conditions in respect of the Suppliers' Confidential Information) during normal business hours no more than twice in any twelve (12) months (save where any additional audit is required by any regulator or by Law) having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and/or records reasonably required to audit the Suppliers' compliance with its obligations under this Contract provided that the Authority or its authorised representative(s) shall comply with the security and access policies usually and normally maintained by the Suppliers. The Suppliers shall provide all reasonable cooperation with such audit and accompany the Authority or its authorised representative(s) if requested.
- 34.4 Save and to the extent a Sub-contractor specified in the Supplier Matrix is specifically stated as being excluded from the provisions of this Clause 34.4 of this Schedule 2 of these Call-Off Terms and Conditions in the Extra Key Provisions, should the Suppliers subcontract any of their obligations under this Contract, the Authority shall have the right to audit and inspect such third party. The Suppliers shall procure permission for the Authority or its authorised representative(s) during normal business hours no more than once in any twelve (12) Months (save where any additional audit is required by any regulator or by Law), having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and/or records used in the performance of the Suppliers' obligations under this Contract that are subcontracted to such third party. The Suppliers shall provide all reasonable cooperation with such audit and inspection and accompany the Authority or its authorised representative(s) if requested.
- 34.5 Without limitation to the generality of Clause 34.3 of this Schedule 2 of these Call-Off Terms and Conditions the Suppliers shall grant to the Authority or its authorised representative, such access to those records as they may reasonably require in order to check the Suppliers' compliance with this Contract for the purposes of:
- 34.5.1 the examination and certification of the Authority's accounts; or
 - 34.5.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economic efficiency and effectiveness with which the Authority has used its resources.
- 34.6 The Comptroller and Auditor General may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Suppliers and may require the Suppliers to provide such oral and/or written explanations as they consider necessary. Clause 34 of this Schedule 2 of these Call-Off Terms and Conditions does not

constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Suppliers under sections 6(3)(d) and 6(5) of the National Audit Act 1983.

- 34.7 The Suppliers shall provide reasonable cooperation to the Authority, its representatives and any Regulatory or Supervisory Body in relation to any audit, review, investigation or enquiry carried out in relation to the subject matter of this Contract.
- 34.8 The Suppliers shall provide all reasonable information as may be reasonably requested by the Authority to evidence the Suppliers' compliance with the requirements of this Contract.
- 34.9 This Clause 34 of Schedule 2 of these Call-Off Terms and Conditions shall be subject to any confidentiality obligations of the Suppliers to any clients imposed by Law or an applicable regulator.

35 Quality Plans

- 35.1 Where indicated in the 'Quality Plans' section on the Order Form, the Suppliers shall develop, within 20 Business Days of the Effective Date, quality plans that ensure that all aspects of the Deliverables are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").
- 35.2 The Suppliers shall obtain the Authority's Contract Manager's written approval on behalf of the Authority of the Quality Plans before implementing them, which approval shall not be unreasonably withheld or delayed. The Suppliers acknowledge and accept that the Authority's approval shall not act as an endorsement of the Quality Plans and shall not relieve the Suppliers of their responsibility for ensuring that the Deliverables are provided to the standard required by this Contract.
- 35.3 Following the approval by the Authority of the Quality Plans:
 - 35.3.1 the Suppliers shall design and deliver all Deliverables in accordance with the Quality Plans; and
 - 35.3.2 any Changes to the Quality Plans shall be agreed in accordance with the Change Control Process.

36 Conflicts of interest and the prevention of fraud

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

- 36.2 The Authority reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Suppliers and the duties owed to the Authority under the provisions of this Contract. The actions of the Authority pursuant to this Clause 36.2 of this Schedule 2 of these Call-Off Terms and Conditions shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the Authority under this Contract or otherwise.
- 36.3 The Suppliers shall take all reasonable steps to prevent Fraud by Supplier Personnel and the Suppliers (including their owners, members and directors). The Suppliers shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 36.4 If the Suppliers or the Supplier Personnel commit Fraud (whether in relation to this Contract or otherwise), the Authority may:
- 36.4.1 terminate this Contract with immediate effect by giving the Suppliers notice in writing, and recover from the Suppliers:
- (a) the amount of any loss, liability cost and/or expense suffered by the Authority resulting from such termination;
 - (b) without limitation to the generality of Clause 36.4.1(a) of this Schedule 2 of these Call-Off Terms and Conditions above any cost and/or expense reasonably incurred by the Authority of making other arrangements for the supply of the Deliverables following such termination; and
 - (c) without limitation to the generality of Clause 36.4.1(a) of this Schedule 2 of these Call-Off Terms and Conditions above any other additional loss, liability cost and/or expense incurred by the Authority resulting from such termination in relation to this Contract throughout the remainder of the Term (which for the avoidance of doubt is the period of the Term not taking into account any early termination); and
- 36.4.2 recover in full from the Suppliers and the Suppliers shall on demand indemnify the Authority in full from and against any other loss sustained by the Authority in consequence of any breach of this Clause 34.8 of this Schedule 2 of these Call-Off Terms and Conditions.

37 Equality and human rights

- 37.1 The Suppliers shall:

- 37.1.1 ensure that (a) they do not, whether as employer or as a supplier or performer of the Deliverables, engage in any act or omission that would contravene the Equality Legislation, and (b) they comply with all of their obligations as an employer or as a supplier or performer of the Deliverables as set out in the Equality Legislation and take reasonable endeavours to ensure that the Supplier Personnel do not unlawfully discriminate within the meaning of the Equality Legislation;
- 37.1.2 in the management of their affairs and the development of their equality and diversity policies, cooperate with the Authority in light of the Authority's obligations to comply with its statutory equality duties whether under the Equality Act 2010 or otherwise. The Suppliers shall take such reasonable and proportionate steps as the Authority considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age; and
- 37.1.3 the Suppliers shall impose on all their subcontractors and suppliers, obligations substantially similar to those imposed on the Suppliers by this Clause 37 of this Schedule 2 of these Call-Off Terms and Conditions.

37.2 The Suppliers shall meet reasonable requests by the Authority for information evidencing the Suppliers' compliance with the provisions of this Clause 37 of this Schedule 2 of these Call-Off Terms and Conditions.

38 Notice

- 38.1 Subject to Clause 32.7 of Schedule 2 of these Call-off Terms and Conditions, any notice required to be given by a Party under this Contract shall be in writing identifying this Contract and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the Order Form or such other person as one Party may inform the other Party in writing from time to time or to a director of the relevant Party at the head office, main UK office or registered office of such Party.
- 38.2 A notice shall be treated as having been received:
 - 38.2.1 if delivered by hand within normal business hours when so delivered or, if delivered by hand outside normal business hours, at the next start of normal business hours; or
 - 38.2.2 if sent by first class recorded delivery mail on a normal Business Day, at 9.00 am on the second Business Day subsequent to the day of posting, or, if the notice was not posted on a Business Day, at 9.00 am on the third Business Day subsequent to the day of posting; or
 - 38.2.3 if sent by email, if sent within normal business hours when so sent or, if sent outside normal business hours, at the next start of normal business hours provided the sender has either received an electronic confirmation of delivery or has telephoned the recipient to inform the recipient that the email has been sent.

39 Assignment, novation and subcontracting

- 39.1 Subject to the remaining provisions of this Clause 39 of this Schedule 2 of these Call-Off Terms and Conditions the Suppliers shall not assign, subcontract, novate, create a trust in, or in any other way dispose of the whole or any part of this Contract without the prior consent in writing of the Authority such consent not to be unreasonably withheld or delayed. If the Suppliers subcontract any of their obligations under this Contract, every act or omission of the subcontractor shall for the purposes of this Contract be deemed to be the act or omission of the Suppliers and the Suppliers shall be liable to the Authority as if such act or omission had been committed or omitted by the Suppliers themselves.
- 39.2 Where a subcontractor has been identified in the Suppliers' response to the DPS Framework ITT or is set out in the Supplier Matrix then consent from the Authority to such subcontracting by the Authority Suppliers shall be deemed to have been given for the purposes of Clause 39.1 of this Schedule 2 of these Call-Off Terms and Conditions.
- 39.3 NOT USED
- 39.4 For the purposes of Clause 39.1 of this Schedule 2 of these Call-Off Terms and Conditions the Authority shall (without limiting the circumstances in which consent may be withheld or denied by the Authority) be reasonable in withholding or denying consent to any request to assign, subcontract, novate, create a trust in, or in any other way dispose of the whole or any part of this Contract in circumstances that include, but are not limited to where:
- 39.4.1 any proposed sub-contractor is intended to perform a material part of the Deliverables under any Call-Off Contract and such sub-contractor relationship was not set out in the Suppliers' response to the DPS Framework ITT. For the avoidance of doubt for the purpose of such an evaluation of materiality the subcontracting of the performance of a Service Category or a material portion of a Service Category to a sub-contractor shall be a material part of the Deliverables irrespective of the proportion of the Deliverables comprising that Service Category (or a material portion of that Service Category) to the total Deliverables under any Call-Off Contract; and/or
- 39.4.2 such assignment, subcontract, novation, trust and/or disposal would result in either the substitution of a Mandated Key Sub-Contractor or the assignment, subcontract, novation, trust and/or disposal of a material portion of the Deliverables to be performed by such Mandated Key Sub-Contractor.
- 39.5 Subject to Clause 39.6 below of this Schedule 2 where:
- 39.5.1 a Supplier (where the Suppliers comprise more than one Supplier); or
- 39.5.2 a sub-contractor identified in the Supplier Matrix as a sub-contractor of a material part of the Deliverables for which a Supplier is responsible;

is in default of its obligations to perform any obligation under this Contract such that a liability for the other Suppliers arises pursuant to Clause 9.5 of Schedule 1 of these Call-Off Terms and Conditions, any such other Supplier may apply to the Authority in writing for the Authority's consent for that Supplier to itself perform any such obligation or subcontract any such obligation, such consent not to be unreasonably withheld or delayed.

39.6 If the Authority consents to the performance or sub-contracting of any obligation by a Supplier pursuant to Clause 39.1 or Clause 39.5 above of this Schedule 2 of these Call-Off Terms and Conditions then:

39.6.1 such performance or subcontracting of such an obligation shall not extinguish the right of the Authority to seek recovery from any Supplier of any liability that has arisen or arises under this Contract in relation to such obligation; and

39.6.2 if a Supplier subcontracts any of their obligations under this Contract, every act or omission of the subcontractor shall for the purposes of this Contract be deemed to be the act or omission of the Supplier and the Supplier shall be liable to the Authority as if such act or omission had been committed or omitted by the Supplier itself.

39.7 Where the Authority considers that the grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015 apply to any sub-contractor(s), then:

39.7.1 if the Authority finds there are compulsory grounds for exclusion, any Supplier(s) shall ensure, or shall procure, that such sub-contractor is replaced or not appointed; or

39.7.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require any Supplier(s) to ensure, or to procure, that such sub-contractor is replaced or not appointed and any Supplier shall comply with such a requirement.

39.8 The Suppliers shall pay any undisputed sums which are due from them to a sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed. Where the Authority pays any Supplier's valid and undisputed invoice earlier than thirty (30) days from verification in accordance with any applicable government prompt payment targets, that Supplier shall use their reasonable endeavours to pay their relevant subcontractor within a comparable timeframe from verifying that an invoice is valid and undisputed.

39.9 Notwithstanding Clause 39.1 of this Schedule 2 of these Call-Off Terms and Conditions, the Suppliers may assign to a third party ("**Assignee**") the right to receive payment of any sums due and owing to the Suppliers under this Contract for which an invoice has been issued. Any assignment under this Clause 39.9 of this Schedule 2 of these Call-Off Terms and Conditions shall be subject to:

39.9.1 the deduction of any sums in respect of which the Authority exercises its right of recovery under Clause 12.14 of this Schedule 2 of these Call-Off Terms and Conditions;

- 39.9.2 all related rights of the Authority in relation to the recovery of sums due but unpaid;
- 39.9.3 the Authority receiving notification of the assignment and the date upon which the assignment becomes effective together with the Assignee's contact information and bank account details to which the Authority shall make payment;
- 39.9.4 the provisions of Clause 12 of this Schedule 2 of these Call-Off Terms and Conditions continuing to apply in all other respects after the assignment which shall not be amended without the prior written approval of the Authority; and
- 39.9.5 payment to the Assignee being full and complete satisfaction of the Authority's obligation to pay all relevant sums in accordance with this Contract.

39.10 Any authority given by the Authority for the Suppliers to subcontract any of their obligations under this Contract shall not impose any duty on the Authority to enquire as to the competency of any subcontractor. The Suppliers shall ensure that any subcontractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such subcontractor are fully in accordance with this Contract.

39.11 The Suppliers shall:

- 39.11.1 subject to clause 39.13, advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Deliverables above a minimum threshold of £100,000 that arise during the Term;
- 39.11.2 within 90 days of awarding a subcontract to a subcontractor, update the notice on Contracts Finder with details of the successful sub-contractor;
- 39.11.3 monitor the number, type and value of the sub-contractor opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
- 39.11.4 provide reports on the information outlined in clause 39.11.3 to the Authority in the format and frequency as is reasonably specified by the Authority; and
- 39.11.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

39.12 Each advert referred to at clause 39.11.1 above shall provide a full and detailed description of the subcontract opportunity with each of the mandatory fields being completed on Contracts Finder by the Suppliers.

39.13 For the avoidance of doubt, the obligation to advertise at clause 39.11.1, shall not apply where the circumstances outlined in clause 39.2 apply and shall only apply where a subcontract is awarded after the Effective Date.

39.14 Notwithstanding clause 39.11, the Authority may, by giving its prior written approval, agree that a subcontract opportunity is not required to be advertised on Contracts Finder.

39.15 Where the Suppliers (or a Supplier where the Suppliers comprise more than one Supplier) enter into a sub-contract in respect of any part of the performance of the Deliverables then

the Suppliers shall include provisions in each such subcontract (unless otherwise agreed in writing with the Authority) which:

- 39.15.1 require the Suppliers or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
- 39.15.2 provide that if the Suppliers or other party fails to consider and verify an invoice in accordance with Clause 39.15.1 of this Schedule 2 of these Call-off Terms and Conditions, the invoice shall be regarded as valid and undisputed for the purpose of Clause 39.15.3 of this Schedule 2 of these Call-off Terms and Conditions after a reasonable time has passed;
- 39.15.3 require the Suppliers or other party to pay any undisputed sums which are due from it to the sub-contractor(s) within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
- 39.15.4 permit the Suppliers to terminate, or procure the termination of, the relevant subcontract in the event the sub-contractor(s) fail(s) to comply in the performance of its/their subcontract in any material respect with any legal obligation in the fields of environmental, social or labour Law where the Suppliers are required to replace such sub-contractor(s) in accordance with Clause 22.5.14 of this Schedule 2 of these Call-off Terms and Conditions;
- 39.15.5 permit the Suppliers to terminate, or to procure the termination of, the relevant subcontract where the Supplier(s) is/are required to replace such sub-contractor(s) in accordance with Clause 38.6 of this Schedule 2 of these Call-off Terms and Conditions;
- 39.15.6 require the sub-contractor(s) to include a clause to the same effect as Clause 39.6 of this Schedule 2 of these Call-off Terms and Conditions in any subcontract which it/they award(s);
- 39.15.7 contain at least equivalent obligations as set out in this Contract in respect of confidentiality, information security, data protection, Intellectual Property Rights, compliance with Law and Guidance and record keeping;
- 39.15.8 contain a prohibition on the subcontractor subcontracting, assigning or novating any of its rights or obligations under such subcontract without the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed);
- 39.15.9 contain a right for the Authority to take an assignment or novation of the subcontract (or part of it) upon the early termination of this Contract;
- 39.15.10 contain a requirement for the subcontractor and all Supplier Personnel to abide by and promote awareness of the NHS Constitution in relation to their supply or performance of the sub-contracted Deliverables;
- 39.15.11 oblige the Suppliers to act at all times in good faith towards the subcontractor, oblige the Suppliers to act reasonably and fairly in the exercise of the Suppliers' rights and the performance of the Suppliers' obligations under the subcontract,

and oblige the Suppliers to use reasonable endeavours to ensure that the terms of the sub-contract are observed by the Suppliers at all times;

39.15.12 save and to the extent a Sub-contractor specified in the Supplier Matrix is specifically stated as being excluded from the provisions of this Clause 39.15.12 of this Schedule 2 of these Call-Off Terms and Conditions in the Extra Key Provisions, place the subcontractor under obligations to and require the subcontractor to provide warranties in favour of the Authority and DHSC that mirror the obligations placed on and the warranties provided by the Suppliers under Clause 8 of Schedule 1 of these Call-Off Terms and Conditions, Clause 27 of this Schedule 2 of these Call-Off Terms and Conditions and Schedule 12 of these Call-Off Terms and Conditions; and

39.15.13 save and to the extent a Sub-contractor specified in the Supplier Matrix is specifically stated as being excluded from the provisions of this Clause 39.15.13 of this Schedule 2 of these Call-Off Terms and Conditions in the Extra Key Provisions, name the Authority and DHSC (in each case using each organisation's full legal title) as a third party and expressly provide that each of the Authority and DHSC may enforce against the subcontractor the obligations placed upon and the warranties provided by the subcontractor by virtue of this Clause 38.10 of this Schedule 2 of these Call-Off Terms and Conditions on its own behalf as a third party right by virtue of the Contracts (Rights of Third Parties) Act 1999.

39.16 Where the Suppliers (or a Supplier where the Suppliers comprise more than one Supplier) enter into a subcontract in respect of any of their obligations under this Contract relating to the manufacture, supply, delivery or installation of, or training in relation to, the Deliverables, the relevant Supplier shall include provisions in each such subcontract, unless otherwise agreed with the Authority in writing, which:

39.16.1 contain at least equivalent obligations as set out in this Contract in relation to such manufacture, supply, delivery or installation of, or training in relation to, the Deliverables to the extent relevant to such subcontracting;

39.16.2 save and to the extent a Sub-contractor specified in the Supplier Matrix is specifically stated as being excluded from the provisions of this Clause 39.16.2 of this Schedule 2 of these Call-Off Terms and Conditions in the Extra Key Provisions, place the subcontractor under obligations to and require the subcontractor to provide warranties in favour of the Authority and DHSC that mirror the obligations placed on and the warranties provided by the Suppliers under Clause 8 of Schedule 1 of these Call-Off Terms and Conditions, Clause 27 of this Schedule 2 of these Call-Off Terms and Conditions and Schedule 12 of these Call-Off Terms and Conditions; and

39.16.3 save and to the extent a Sub-contractor specified in the Supplier Matrix is specifically stated as being excluded from the provisions of this Clause 39.16.3 of this Schedule 2 of these Call-Off Terms and Conditions in the Extra Key Provisions, name the Authority and DHSC (in each case using each

organisation's full legal title) as a third party and expressly provide that each of the Authority and DHSC may enforce against the subcontractor the obligations placed upon and the warranties provided by the subcontractor by virtue of Clause 39.16.2 of this Schedule 2 of these Call-Off Terms and Conditions on its own behalf as a third party right by virtue of the Contracts (Rights of Third Parties) Act 1999.

39.17 The Authority shall upon written request have the right to review any subcontract entered into by the Suppliers in respect of the supply or performance of the Deliverables and the Suppliers shall provide a certified copy of any subcontract within five (5) Business Days of the date of a written request from the Authority. For the avoidance of doubt, the Suppliers shall have the right to redact any confidential pricing information in relation to such copies of subcontracts.

39.18 The Authority may require the Suppliers to terminate any subcontract where it considers that:

39.18.1 on the basis of that subcontractor's performance of any part of this Contract that the subcontractor has or may materially prejudice the supply or performance of that portion of the Deliverables performed or to be performed by that subcontractor under the Contract; and/or

39.18.2 the subcontractor employs persons who are deployed in the supply or the performance of the Deliverables that do not meet the requirements of Clause 8 of this Schedule 2 of these Call-Off Terms and Conditions;

provided that such right shall not be exercised unreasonably, frivolously or vexatiously. Where the subcontract required to be terminated pursuant to this Clause 39.18 of this Schedule 2 of these Call-Off Terms and Conditions relates to services in addition to the performance of a portion of the Deliverables, the obligation to terminate shall relate to that portion of the subcontract which relates to the Deliverables only. However, where such portion is not severable from such subcontract, that shall not waive the Suppliers' obligation to comply with the requirement to terminate the subcontract.

Save where, in the reasonable opinion of the Authority, the health or welfare of any patient would be jeopardised, such right shall be exercised by the Authority on such reasonable notice as is necessary for the Suppliers acting with reasonable despatch to put in place arrangements with an alternative subcontractor to provide that portion of the Deliverables to be performed under the affected subcontract.

The exercise by the Authority of its right under this Clause 39.18 of this Schedule 2 of these Call-Off Terms and Conditions shall be without prejudice to any other right or remedy of the Authority arising under this Contract or otherwise.

39.19 In the event that the Authority exercises its right pursuant to Clause 39.18 of this Schedule 2 of these Call-Off Terms and Conditions, the Suppliers shall use all reasonable endeavours to maintain the supply or the performance of the Deliverables under this Contract.

- 39.20 In addition to any other management information requirements set out in these Call-Off Terms and Conditions, the Suppliers agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME management information reports to the Authority which shall include:
- 39.20.1 the total contract revenue received directly on a specific subcontract;
 - 39.20.2 the total value of sub-contracted revenues under the Contract (including revenues for non-SMEs/non-VCSEs); and
 - 39.20.3 the total value of sub-contracted revenues to SMEs and VCSEs.
- 39.21 Subject to Clause 39.24 of this Schedule 2 of these Call-Off Terms and Conditions, the Authority may at any time transfer, assign, novate, subcontract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract and the Suppliers warrant that they will carry out all such reasonable further acts required to effect such transfer, assignment, novation, subcontracting or disposal.
- 39.22 Where pursuant to Clause 39.20 of this Schedule 2 of these Call-Off Terms and Conditions the Authority elects to novate this Contract then the Authority shall ensure that the novation agreement executed by the Parties pursuant to Clause 39.20 of this Schedule 2 of these Call-Off Terms and Conditions secures that the entity assuming the position of the Authority shall not further transfer, assign, novate, subcontract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract without the prior written consent of the DHSC. To achieve a contractual right for DHSC to withhold or grant consent to such further transfer, assignment, novation, subcontract or disposal the Authority shall ensure that either:
- 39.22.1 DHSC is a party to the novation agreement; or
 - 39.22.2 The novation agreement contains all necessary rights under the Contracts (Right of Third Parties) Act 1999.
- 39.23 The Parties agree that the Contracts (Right of Third Parties) Act 1999 shall apply to Clause 39.22 of this Schedule 2 of these Call-Off Terms and Conditions to the extent necessary for DHSC to have the right to enforce on its own behalf against the Suppliers the obligation contained in Clause 39.22 of this Schedule 2 of these Call-Off Terms and Conditions. No variation may be made to this Clause 39.23 of this Schedule 2 of these Call-Off Terms and Conditions without the written consent of DHSC.
- 39.24 The Authority may not transfer, assign or novate this Contract or any part of this Contract pursuant to Clause 39.20 of this Schedule 2 of these Call-Off Terms and Conditions where such transfer, assignment or novation would prevent the Suppliers (or any Supplier where the Suppliers comprise more than one Supplier) from continuing to perform the Deliverables or any material part of the Deliverables as a consequence of any binding Law and/or any binding requirement of professional regulation. Where the Suppliers or any Supplier seeks to rely upon this exception they shall first:

- 39.24.1 take all reasonable measures to comply with any such Law and/or professional requirement so as to facilitate any such transfer, assignment or novation; and
- 39.24.2 shall promptly provide the Authority on request with all such information as the Authority shall reasonably require to verify the existence and effect of any such Law or regulatory requirement.

40 Prohibited Acts

40.1 The Suppliers warrant and represent that:

40.1.1 they have not committed any offence under the Bribery Act 2010 or done any of the following ("**Prohibited Acts**"):

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

40.1.2 they have in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.

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

40.2.1 the Authority shall be entitled:

- (a) to terminate this Contract and recover from the Suppliers the amount of any loss, liability, cost and/or expense (including without limitation legal costs and expenses) resulting from the termination;
- (b) to recover from the Suppliers the amount or value of any gift, consideration or commission concerned; and

- (c) to recover from the Suppliers any other loss, liability, cost and/or expense (including without limitation legal costs and expenses) sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;
- 40.2.2 any termination under Clause 40.2.1 of this Schedule 2 of these Call-Off Terms and Conditions shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Authority; and
- 40.2.3 notwithstanding Clause 32 of this Schedule 2 of these Call-Off Terms and Conditions, any dispute relating to:
 - (a) the interpretation of this Clause 40 of this Schedule 2 of these Call-Off Terms and Conditions; or
 - (b) the amount or value of any gift, consideration or commission, shall be determined by the Authority, acting reasonably, and the decision shall be final and conclusive.

41 Third Party Rights

- 41.1 Save as otherwise provided for in this Contract, a person who is not a Party to this Contract shall have no right to enforce any terms of it which confer a benefit on such person whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 41.2 The Parties may not make any amendment or modification to any Clause of this Contract that grants a right to any person by virtue of the Contracts (Rights of Third Parties) Act 1999 without the prior written consent of DHSC, such consent not to be unreasonably withheld or delayed.
- 41.3 For the avoidance of doubt the provisions of Clause 41.2 of Schedule 2 of these Call-Off Terms and Conditions are enforceable by DHSC by virtue of the Contracts (Rights of Third Parties) Act 1999.

42 General

- 42.1 Each of the Parties is independent of the other and nothing contained in this Contract shall be construed to imply that there is any relationship between the Parties of partnership or of principal/agent or of employer/employee nor are the Parties hereby engaging in a joint venture and accordingly neither of the Parties shall have any right or authority to act on behalf of the other nor to bind the other by agreement or otherwise, unless expressly permitted by the terms of this Contract.
- 42.2 Failure or delay by any Party to exercise an option or right conferred by this Contract shall not of itself constitute a waiver of such option or right.

- 42.3 The delay or failure by any Party to insist upon the strict performance of any provision, term or condition of this Contract or to exercise any right or remedy consequent upon such breach shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.
- 42.4 Any provision of this Contract which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Contract and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction. If a provision of this Contract that is fundamental to the accomplishment of the purpose of this Contract is held to any extent to be invalid, the Authority and the Suppliers shall negotiate in good faith immediately to remedy such invalidity.
- 42.5 Subject to Clause 42.6 of this Schedule 2 of these Call-Off Terms and Conditions each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this Contract and therefore irrevocably and unconditionally waives any rights it may have to claim damages against any other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in this Contract or unless such representation, undertaking or warranty was made fraudulently.
- 42.6 The waiver contained at Clause 42.5 of this Schedule 2 of these Call-Off Terms and Conditions above shall not apply if the representation, undertaking and/or warranty relied upon:
- 42.6.1 is set out in this Contract; and/or
- 42.6.2 is contained in the Suppliers' response to the Call-Off ITT.
- 42.7 Each Party shall bear its own expenses in relation to the preparation and execution of this Contract including all costs, legal fees and other expenses so incurred.
- 42.8 The rights and remedies provided in this Contract are cumulative and not exclusive of any rights or remedies provided by general Law, or by any other contract or document. In this Clause 42.8 of this Schedule 2 of these Call-Off Terms and Conditions, "rights" includes any power, privilege, remedy, or proprietary or security interest.
- 42.9 Without prejudice to Clause 42.6.2 of this Schedule 2 of these Call-Off Terms and Conditions this Contract, any variation in writing signed by an authorised representative of each Party and any document referred to (explicitly or by implication) in this Contract or any variation to this Contract, contain the entire understanding between the Suppliers and the Authority relating to the Deliverables to the exclusion of all previous agreements, confirmations and understandings and there are no promises, terms, conditions or obligations whether oral or written, express or implied other than those contained or referred to in this Contract. Nothing in this Contract seeks to exclude any Party's liability for Fraud. Any tender conditions and/or

disclaimers set out in the Authority's procurement documentation leading to the award of this Contract shall form part of this Contract.

- 42.10 This Contract, and any dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual disputes or claims), shall be governed by, and construed in accordance with, the laws of England.
- 42.11 Subject to Clause 32 of this Schedule 2 of these Call-Off Terms and Conditions, the Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter.
- 42.12 All written and oral communications and all written material referred to under this Contract must be produced or conducted in the English language.
- 42.13 This Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 42.14 No counterpart shall be effective until each of the Parties has executed and delivered at least one counterpart. Where more than one Supplier is a Party to this Contract, then delivery by the Authority for the purposes of Clause 42.13 of this Schedule 2 shall be delivery to the person identified as the Lead Contract Manager, and delivery by each of the Suppliers shall be delivery to the Authority. Delivery of an executed counterpart is not required by any of the Suppliers to any other of the Suppliers.
- 42.15 Each Party may execute this Contract:
- 42.15.1 under hand, by their authorised signatory signing the Contract in the appropriate place in the body of this Contract; or
 - 42.15.2 by the application of an electronic signature, by inserting a JPEG image of their authorised signatory's signature in the appropriate place in the body of this Contract.
- 42.16 Delivery of an executed counterpart of this Contract (but for the avoidance of doubt not just a signature page) for the purposes of Clause 42.13 of this Schedule 2 of these Call-Off Terms and Conditions shall be by any method permitted for notices under this Contract at Clause 38 of this Schedule 2 of these Call-Off Terms and Conditions. If delivery of an executed counterpart of this Contract is by email, the executed counterpart shall be transmitted in PDF, JPEG or in an alternative format if agreed by the Parties. Delivery shall occur at the time of receipt as determined by applying the provisions of Clause 38.2 of this Schedule 2 of these Call-Off Terms and Conditions.
- 42.17 If delivery by email is adopted then without prejudice to the validity of the Contract, each Party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter. Where more than one Supplier is a Party to this Contract, then the Authority shall provide the originals of counterparts executed by the Authority to the person identified as the Lead Contract Manager, and each of the Suppliers shall provide to the

Authority the originals of counterparts executed by such Supplier. Suppliers are not, for the avoidance of doubt, required to provide the originals of counterparts executed by such Supplier to any other of the Suppliers.

Schedule 3 of these Call-Off Terms and Conditions

Definitions and Interpretations

1 Definitions

- 1.1 In this Contract (which for the avoidance of doubt includes these Call-Off Terms and Conditions and the Order Form) the following words shall have the following meanings unless the context requires otherwise:

“Achieve”	the issue of a Milestone Achievement Certificate in respect of any Milestone;
“Actual Deliverables Commencement Date”	means the first date on which any portion of the Deliverables is first delivered;
“Actual Services Commencement Date”	means the date the Suppliers actually commence delivery of the Services;
“Actual Supply of Goods Date”	means the date the Suppliers actually commence supply of the Goods;
“Affected Deliverables”	has the meaning given under Clause 23.1 of Schedule 2 of these Call-Off Terms and Conditions;
“Affiliate”	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
“Applicable Liability Level”	means the amount expressed in pounds sterling derived by applying the rules set out in Clause 19 of Schedule 2 of these Call-Off Terms and Conditions to determine the total liability of any Party to the other under or in connection with this Contract as described in that Clause;
“Assignee”	has the meaning given under Clause 39.9 of Schedule 2 of these Call-Off Terms and Conditions;
“Authorised Users”	those employees, agents and independent contractors of the Authority who are authorised by the Authority to use the Deliverables and the Documentation;
“Authority”	means the authority or authorities named on the Order Form;

<p>“Authority Background IPR”</p>	<p>the Intellectual Property Rights owned or controlled by the Authority excluding the Foreground IPR, but including without limitation, Intellectual Property Rights:</p> <p>(a) owned by the Authority before the Effective Date;</p> <p>(b) licensed to the Authority by a third party, otherwise than pursuant to these Call-Off Terms and Conditions; and/or</p> <p>created by the Authority independently of these Call-Off Terms and Conditions;</p>
<p>“Authority Confirmation”</p>	<p>means the written confirmation provided (or deemed to be provided) by the Authority that the Goods appear to have been correctly supplied, installed and commissioned ready for use;</p>
<p>“Authority Data”</p>	<p>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media,; or (b) any Personal Data for which the Authority is the Data Controller</p> <p>and which are:</p> <p>(i) supplied to the Suppliers by or on behalf of the Authority; and/or</p> <p>(ii) which the Supplier is required to generate, process, store or transmit pursuant to this Contract;</p>
<p>“Authority IT Strategy”</p>	<p>means the Authority’s IT policy in force as at the Effective Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Change Control Process;</p>
<p>“Authority Software”</p>	<p>software which is owned by or licensed to the Authority (other than under or pursuant to these Call-Off Terms and Conditions) and which is or will be used by the Suppliers for the purposes of providing the Deliverables;</p>
<p>“Authority System”</p>	<p>means the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Suppliers in connection with these Call-Off Terms and Conditions which is owned by the Authority or licensed to it by a third party and which interfaces with the Supplier System or which is necessary for the Authority to receive the Deliverables;</p>
<p>“Authority’s Obligations”</p>	<p>means the Authority’s further obligations, if any, referred to in the Specification and/or Call-Off ITT and/or the Order Form;</p>
<p>“Baseline Security Requirements”</p>	<p>means the Authority’s baseline security requirements, the current copy of which is contained in Annex 1 of Schedule 6 of these Call-Off Terms and Conditions, as updated from time to time by the Authority and notified to the Suppliers</p>
<p>“Breach Notice”</p>	<p>has the meaning given under Clause 22.1 of Schedule 2 of these Call-Off Terms and Conditions;</p>

“Business Continuity Event”	means any event or issue that could impact on the operations of the Suppliers and their ability to supply or perform the Deliverables including but not limited to an influenza pandemic and any Force Majeure Event;
“Business Continuity Plan”	means the Suppliers’ business continuity plans which include their plans for continuity of the supply or performance of the Deliverables during a Business Continuity Event;
“Business Day”	means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales;
“Cabinet Office Statement”	the Cabinet Office Statement of Practice – Staff Transfers in the Public Sector 2000 (as revised 2013) as may be amended or replaced;
“Call-Off ITT”	the Call-Off ITT issued by the Authority to invite responses to the relevant mini-competition conducted under and in accordance with the DPS Framework Agreement;
“Call-Off Terms and Conditions”	means these Call-Off Terms and Conditions for the supply or performance of the Deliverables;
“Catalogue Agreement”	the mandatory Digital Care Services Catalogue Agreement that the Suppliers are required to enter into between the Suppliers and the Health and Social Care Information Centre (known as NHS Digital).
“Change Control Process”	means the change control process set out in Schedule 13 of these Call-Off Terms and Conditions;
“Codes of Practice”	shall have the meaning given to it in Clause 1.4 of Schedule 5 of these Call-Off Terms and Conditions;
“Confidential Information”	means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the Contract including any procurement process which is: <ul style="list-style-type: none"> a. Personal Data, Special Categories of Personal Data and/or Criminal Offence Data including without limitation which relates to any patient or other service user or his or her treatment or clinical or care history; b. designated as confidential by either party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored); and/or c. Policies and such other documents which the Suppliers may obtain or have access to through the Authority’s intranet;
“Consumables”	means any consumables required to be supplied to the Authority by the Suppliers under this Contract as part of the delivery and/or performance of the Deliverables to include, but not be limited to, any consumables referred to in the Specification and the Order Form);
“Contract”	means the Order Form, the provisions on page 2 and all Schedules of these Call-Off Terms and Conditions, the Specification and Call-Off ITT (but only in respect of the Authority’s Statement of Requirements (as defined in the DPS

	Framework Agreement)) and the applicable provisions of the DPS Framework Agreement (as set out in these Call-Off Terms and Conditions);
“Contracts Finder”	The Government’s publishing portal for public sector procurement opportunities;
“Contracting Authority”	means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2015 (SI 20015/102) (as amended), other than the Authority;
“Contract Manager”	means for the Authority and for the Suppliers the individuals specified in the Order Form or as otherwise agreed between the Parties in writing or such other person notified by a Party to the other Party from time to time in accordance with Clause 11.1 of Schedule 2 of these Call-Off Terms and Conditions;
“Contract Price”	means the price exclusive of VAT that is payable to the Suppliers by the Authority under the Contract for the full and proper performance by the Suppliers of their obligations under the Contract calculated in accordance with the provisions of the Call-Off ITT and as confirmed in the Order Form;
“Control”	means the possession by a person, directly or indirectly, of the power to direct or cause the direction of the management and policies of another person (whether through the ownership of voting shares, by contract or otherwise) and Controls and Controlled shall be interpreted accordingly;
“Controller”	has the meaning set out in the Data Protection Legislation;
“Convictions”	means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by Section 1(1) of the Rehabilitation of Offenders Act 1974 or any replacement or amendment to that Act);
“CPIH”	means the Consumer Prices Index including owner occupiers’ housing costs as published by the Office for National Statistics from time to time, or failing such publication, such other index as the Parties agree, or as may be determined by an Expert in accordance with the relevant provisions of the Disputes Resolution Procedure, most closely resembles such index;
“Criminal Offence Data”	means Personal Data relating to criminal convictions and offences or related security measures, as described in the Data Protection Legislation;
“Data Guidance”	any applicable guidance, guidelines, direction or determination, framework, code of practice, standard or requirement regarding information governance, confidentiality, privacy or compliance with the Data Protection Legislation (whether specifically mentioned in this Contract or not) to the extent published and publicly available or their existence or contents have been notified to the Suppliers by the Authority and/or any relevant Regulatory or Supervisory Body. This includes but is not limited to guidance issued by NHS Digital, the National Data Guardian for Health & Care, DHSC, NHS England, the Health Research Authority, Public Health England, the European Data Protection Board and the Information Commissioner;

“Data Loss Event”	means any event that results, or may result, in unauthorised Processing of Personal Data held by the Suppliers under this Contract or Personal Data that the Suppliers have responsibility for under this Contract, including without limitation actual or potential loss, destruction, corruption or inaccessibility of Personal Data, including any Personal Data Breach;
“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 (i) the UK GDPR and EU GDPR (if applicable), the LED and any applicable national Laws implementing them, as amended from time to time (ii) the DPA 2018 (iii) all applicable Law concerning privacy, confidentiality or the Processing of personal data including but not limited to the Human Rights Act 1998, the Health and Social Care (Safety and Quality) Act 2015, the common law duty of confidentiality and the Privacy and Electronic Communications (EC Directive) Regulations 2003;
“Data Protection Officer”	has the meaning set out in the Data Protection Legislation;
“Data Subject”	has the meaning set out in the Data Protection Legislation;
“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;
“Defective Goods”	has the meaning set out in Clause 3.7 of Schedule 2 of these Call-Off Terms and Conditions;
“Defects”	(a) any error, damage or defect in the manufacturing of a Deliverable; or (b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or (c) any failure of any Deliverable to provide the performance, features and functionality specified in the Specification, Call-Off ITT, Order Form or the Documentation (including any adverse effect on response times); or (d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the Specification, Call-Off ITT, Order Form or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria;
“Deliverables”	means any Services and/or Ad Hoc Services and/or Goods and/or any other requirement whatsoever (including without limitation any item, feature, material, outcome or output) delivered or to be delivered by the Suppliers in performance of this Contract. “Deliverable” shall be construed accordingly;
“Deliverables Commencement Date”	means the first date upon which any portion of the Deliverables is to be provided;

“DHSC”	The Department of Health and Social Care being the party responsible for the administration and management of the DPS Framework Agreement.
“Dispute Resolution Procedure”	means the process for resolving disputes as set out in Clause 32 of Schedule 2 of these Call-Off Terms and Conditions;
“Documentation”	<p>means descriptions of the Deliverables and KPIs, details of the Supplier System (including (i) vendors and versions for off-the-shelf components and (ii) source code and build information for proprietary components), relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:</p> <p>(a) is required to be supplied by the Suppliers to the Authority under this Agreement;</p> <p>(b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Authority to develop configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Deliverables;</p> <p>(c) is required by the Suppliers in order to provide the Services; and/or</p> <p>(d) has been or shall be generated for the purpose of providing the Services;</p>
“DPA 2018”	means the Data Protection Act 2018;
“DPS Framework Agreement”	means the DPS Framework Agreement referred to in the Order Form;
“DPS Framework ITT”	means the ITT against which the Suppliers’ bid to be selected to be a party to the DPS Framework Agreement.
“DPS Framework Manager”	means DHSC, acting as manager of the DPS Framework Agreement;
“Effective Date”	The Order Form date;
“Electronic Trading System(s)”	means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as the Authority may specify from time to time;
“Emergency Maintenance”	<p>ad hoc and unplanned maintenance provided by the Suppliers where:</p> <p>(a) the Authority reasonably suspects that the IT Environment or the Services, or any part of the IT Environment or the Services, has or may have developed a fault, and notifies the Suppliers of the same; or</p> <p>(b) the Suppliers reasonably suspect that the IT Environment or the Services, or any part the IT Environment or the Services, has or may have developed a fault;</p>

<p>“Employee Liabilities”</p>	<p>means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:</p> <p>(a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;</p> <p>(b) unfair, wrongful or constructive dismissal compensation;</p> <p>(c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;</p> <p>(d) compensation for less favourable treatment of part-time workers or fixed term employees;</p> <p>(e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;</p> <p>(f) employment claims whether in tort, contract or statute or otherwise;</p> <p>(g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, Regulatory or Supervisory Body and of implementing any requirements which may arise from such investigation;</p>
<p>“Employment Regulations”</p>	<p>means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) and/or any other regulations enacted for the purpose of implementing the Acquired Rights Directive (77/187/EEC, as amended by Directive 98/50 EC and consolidated in 2001/23/EC) into English law;</p>
<p>“Environmental Regulations”</p>	<p>shall have the meaning given to the term in Clause 1.4 of Schedule 5 of these Call-Off Terms and Conditions;</p>
<p>“Equality Legislation”</p>	<p>means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998;</p>
<p>“Equipment”</p>	<p>the equipment described in the Specification, if any;</p>
<p>“EU GDPR”</p>	<p>means the General Data Protection Regulation (Regulation (EU) 2016/679) as it has effect in EU law;</p>
<p>“European Data Protection Board”</p>	<p>has the meaning set out in the Data Protection Legislation;</p>

“Exit Management”	means services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Suppliers to the Authority and/or a Replacement Supplier;
“Excusing Event”	an event, action and/or circumstance entitling the Suppliers to relief from their obligations under this Contract in accordance with Clause 1.15 of Schedule 2 of these Call-Off Terms and Conditions and/or Clause 5.17 of Schedule 2 of these Call-Off Terms and Conditions and/or as set out in Annex 1 Part 6 of the Order Form.
“Expert”	means an expert appointed pursuant to Clause 32 of Schedule 2 of these Call-Off Terms and Conditions in order to determine disputes reserved for expert determination pursuant to this Contract;
“Extension Periods”	means any period in the Term for which the Contract has been extended beyond the Initial Term pursuant to Clause 21.2 of Schedule 2 of these Call-Off Terms and Conditions;
“Extra Provisions” Key	<p>means any extra key provisions set out in the Order Form. An extra key provision may be:</p> <ul style="list-style-type: none"> i) an additional contract term that sets out provisions relating to additional matter(s); and/or ii) an additional contract term that provides additional detail in relation to matters already addressed by the Contract; and/or iii) a variation to any existing contract term.
“FOIA”	shall have the meaning given to the term in Clause 1.4 of Schedule 5 of these Call-Off Terms and Conditions;
“Force Majeure Event”	<p>means any event beyond the reasonable control of the Party in question to include, without limitation:</p> <ul style="list-style-type: none"> a. war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict materially affecting either Party’s ability to perform its obligations under this Contract; b. acts of terrorism; c. flood, storm or other natural disasters; d. fire; e. unavailability of public utilities and/or access to transport networks to the extent no diligent Supplier could reasonably have planned for such unavailability as part of its business continuity planning; f. government requisition or impoundment to the extent such requisition or impoundment does not result from any failure by the Suppliers to comply with any relevant regulations, laws or procedures (including such laws or regulations relating to the payment of any duties or taxes) and subject to the Suppliers having used all reasonable legal means to resist such requisition or impoundment;

	<p>g. compliance with any local law or governmental order, rule, regulation or direction that could not have been reasonably foreseen;</p> <p>h. industrial action which affects the ability of the Suppliers to supply or perform the Deliverables, but which is not confined to the workforce of the Suppliers or the workforce of any subcontractor of the Suppliers; and</p> <p>i. a failure in the Suppliers' and/or Authority's supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties;</p>
“Foreground IPR”	<p>the Intellectual Property Rights that arise, are obtained, or are developed by the Suppliers (or by a third party on behalf of the Suppliers), in the course of the performance of the Suppliers' obligations under these Call-Off Terms and Conditions, including without limitation, the Intellectual Property Rights in:</p> <p>a. any Output;</p> <p>b. update or amendment to any Output; and/or</p> <p>c. the Specially Written Software;</p> <p>but excluding the Intellectual Property Rights in the Licensed Software.</p> <p>For the avoidance of doubt the Foreground IPR shall not include any Authority Background IPR or Supplier Background IPR;</p>
“Fraud”	<p>means any offence under any law in respect of fraud in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the government, parliament or any Contracting Authority;</p>
“Gainshare Arrangement”	<p>means any gainshare (including any profit or savings sharing) arrangement specified by the Authority in the Call-Off ITT;</p>
“General Anti-Abuse Rule”	<p>means:</p> <p>(a) the legislation in Part 5 of the Finance Act 2013; and</p> <p>(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;</p>
“Good Industry Practice”	<p>means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would when assessed be reasonably and ordinarily expected from a skilled and experienced supplier and/or service provider engaged in the manufacture and/or supply of goods and/or the provision of services similar to the Goods and Services under the same or similar circumstances as those applicable to this Contract, including in accordance with any codes of practice published by relevant trade associations from time to time;</p>
“Goods”	<p>means any and all goods including without limitation the Equipment and Consumables, if any, which form part or all of the Deliverables;</p>

“Goods Commencement Date”	means the date delivery of the Goods shall commence as specified in the Order Form. If no date is specified in the Order Form, the services commencement date shall be the Effective Date;
“Guidance”	means any guidance issued by the UK government from time to time and any applicable guidance, direction, determination, policies, advice and/or industry alerts which apply to the Deliverables, from time to time, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Suppliers by the Authority in writing and/or have been published and/or notified to the Suppliers by DHSC, NHS Improvement, NHS England, the Medicines and Healthcare Products Regulatory Agency, the European Medicine Agency, the Care Quality Commission and/or any other regulator or competent body;
“Halifax Abuse Principle”	means the principle explained in the CJEU Case C-255/02 Halifax and others;
“HM Government Cyber Essentials Plus Scheme”	means the government scheme described in the documents relating to this scheme published at https://www.cyberessentials.ncsc.gov.uk/ ;
“Implementation Plan”	means the implementation plan, if any, referred to in the Order Form;
“Indemnified Person”	the Authority and each and every person to whom the Authority (or any direct or indirect sub-licensee of the Authority) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPR in accordance with these Call-Off Terms and Conditions;
“Initial Term”	means the Term set out in the Order Form but not including any Extension Periods;
“Information”	all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);
“Information Commissioner”	means the independent authority established to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals, and any other relevant data protection or supervisory authority recognised pursuant to the Data Protection Legislation;
“Installation and Commissioning Services”	means the installation and commissioning services set out in this Contract (including the Specification);
“Intellectual Property Rights”; “Intellectual Property”; “IPR”	a. all patents and rights in inventions, copyright, rights related to or affording similar protection to copyright, design rights, registered designs, trade marks, know-how, database rights, confidential formulae, rights in internet domain names and website addresses and other rights in trade names, designs, know-how, trade secrets and any other intellectual property rights and the rights to apply for patents and trade marks and registered designs;

	<p>b. applications for registration, and the right to apply for registration for any of the rights listed at (a) that are capable of registration in any jurisdiction; and</p> <p>c. all other rights having similar or equivalent effect in any country or jurisdiction.</p>
“Interested Party”	means any organisation which has a legitimate interest in providing services of the same or similar nature to the Services in immediate or proximate succession to the Suppliers or any subcontractor and who had confirmed such interest in writing to the Authority;
“INTEROPen”	INTEROPen is an open collaboration of individuals, industry, standards organisations and health and care providers, who have agreed to work together to accelerate the development of open standards for interoperability in the health and social care sector. Further details including as to membership and becoming a member is set out at http://www.interopen.org ;
“IPR Claim”	any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPR, or any other claim in respect of any Relevant IPR, save to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPR, or the use of the Authority Software by or on behalf of the Suppliers, in combination with any item not supplied or recommended by the Suppliers pursuant to these Call-Off Terms and Conditions, or for a purpose not reasonably to be inferred from the Specification or the provisions of these Call-Off Terms and Conditions.
“IT Environment”	means the Authority System and the Supplier System;
“IT Hardware”	means any hardware provided by the Suppliers in the delivery of the Deliverables as outlined in the Specification;
“Key Personnel”	those persons appointed by the Suppliers to fulfil the Key Roles, being the persons listed in the Order Form against each Key Role as at the Effective Date or as amended from time to time in accordance with Clauses 8.5 and 8.6 of Schedule 2 to these Call-Off Terms and Conditions;
“Key Provisions”	means the key provisions set out in Schedule 1 of these Call-Off Terms and Conditions;
“Key Roles”	means a role described as such in the Order Form and any additional roles added from time to time in accordance with Clause 8.4 of Schedule 2 of these Call-Off Terms and Conditions;
“KPI”	means the key performance indicators as set out in the Call-Off ITT and set out in the Specification at Annex 1 of the Order Form, if any;
“KPI Failure”	means, subject to Clause 33 of Schedule 2 of these Call-Off Terms and Conditions, any failure to comply with the requirements and provisions of any KPI, which for the avoidance of doubt is any Primary KPI Failure and any Secondary KPI Failure. Any KPI Failure may be a Repeat KPI Failure.

“KPI Failure Points”	means any Primary KPI Failure Points and/or any Secondary KPI Failure Points (as applicable)
“Law”	<p>means any and all applicable legal requirements from time to time including, without limitation:</p> <ul style="list-style-type: none"> a. any applicable statute or proclamation or any delegated or subordinate legislation or regulation; b. any applicable European Union directive, regulation, decision or law; c. any enforceable community right within the meaning of section 2(1) European Communities Act 1972; d. any applicable judgment of a relevant court of law which is a binding precedent in England and Wales; e. requirements set by any regulatory body (including but not limited to any Regulatory or Supervisory Body); f. any applicable code of practice; and g. any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above), <p>in each case as applicable in England and Wales from time to time;</p>
“Lead Contract Manager”	means for the Suppliers the individual specified in the Order Form or such other person notified by the Suppliers to the Authority from time to time in accordance with Clause 11.1 of Schedule 2 of these Call-Off Terms and Conditions being one of the Contract Managers with authority to represent all of the organisations comprising the Suppliers.
“LED”	means Law Enforcement Directive (<i>Directive (EU) 2016/680</i>);
“Licensed Software”	all and any software licensed by or through the Suppliers, their Sub-contractors or any third party to the Authority for the purposes of or pursuant to this Contract, including, without limitation, any Supplier Software and/or any Third Party Software;
“Long Stop Date”	means the date, if any, specified in the Order Form;
“Maintenance Inventory”	means the maintenance inventory as referred to at Clause 4.1.1 of Schedule 10 of these Call-Off Terms and Conditions;
“Maintenance Schedule”	has the meaning set out in Clause 7.5.1 of Schedule 2 of these Call-Off Terms and Conditions;
“Maintenance Services”	means the maintenance services for the Goods set out in this Contract (including the Specification);
“Malicious Software”	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the software is introduced wilfully, negligently or without knowledge of its existence;

<p>“Mandated Key Subcontractor”</p>	<p>means</p> <ul style="list-style-type: none"> a) a sub-contractor to the Suppliers (which for the avoidance of doubt, includes any applicable sub-contractor to any Supplier where the Suppliers comprise more than one legal entity) that has been identified by the Suppliers in the response to the DPS Framework ITT as providing a material portion of the Deliverables in respect of any relevant Service Category under the DPS Framework Agreement; or b) a sub-contractor to the Suppliers (which for the avoidance of doubt, includes any applicable sub-contractor to any Supplier where the Suppliers comprise more than one legal entity) that has been identified by the Suppliers in the response to the Call-Off ITT as providing a material portion of the Deliverables in respect of this Contract;
<p>“Measurement Period”</p>	<p>a Month, save that:</p> <ul style="list-style-type: none"> (a) the first Measurement Period shall begin on the Actual Deliverables Commencement Date and shall expire at the end of the Month in which the Actual Deliverables Commencement Date falls; and (b) the final Measurement Period shall commence on the first day of the Month in which the Term expires or terminates and shall end on the expiry or termination of the Term;
<p>“Milestone”</p>	<p>means an event or task or outcome described in the Order Form which, if applicable, shall be completed by the relevant Milestone Date and “Milestones” shall be construed accordingly;</p>
<p>“Milestone Achievement Certificate”</p>	<p>means the certificate issued by the Authority upon it being satisfied that the Suppliers have Achieved a Milestone in accordance with the requirements of Specification and/or the Order Form and/or the Call-Off ITT;</p>
<p>“Milestone Date”</p>	<p>the target date set out against the relevant Milestone in the Order Form by which the Milestone must be Achieved;</p>
<p>“Milestone Payment”</p>	<p>a payment identified in the Order Form, if applicable, to be made following the issue of a Milestone Achievement Certificate;</p>
<p>“Month”</p>	<p>a calendar month. “Months” shall be construed accordingly;</p>
<p>“New Fair Deal”</p>	<p>the revised Fair Deal position set out in the HM Treasury guidance: “Fair Deal for staff pensions: staff transfer from central government” issued in October 2013;</p>
<p>“New Releases”</p>	<p>an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;</p>
<p>“NHS”</p>	<p>means the National Health Service;</p>
<p>“NHS Constitution”</p>	<p>the constitution for the NHS in England set out in Law and/or Guidance from time to time which establishes the principles and values of the NHS in England</p>

	and sets out the rights, pledges and responsibilities for patients, the public and staff;
“NHS Beneficiary”	means: (i) an NHS body or organisation; or (ii) a party providing care for, or treatment of, any NHS patient or NHS-funded patient
“NHS Contract”	a contract within the meaning of section 9 of the National Health Service Act 2006;
“NHS Digital”	means the Health and Social Care Information Centre, commonly known as NHS Digital;
“NHS England”	means the National Health Service Commissioning Board (which has adopted the name of and is known as NHS England) and any successor entity;
“NHS Improvement”	means Monitor and the National Health Service Trust Development Authority commonly known as NHS Improvement;
“Non-performed Services”	has the meaning given at Clause 11.1 of Schedule 10 of these Call-Off Terms and Conditions;
“Non-Party IPRs”	has the meaning set out in Clause 17.1.4(d) of Schedule 2 of these Call-Off Terms and Conditions;
“Non Principal Suppliers”	means all those Suppliers who are not a Principal Supplier;
“Non-trivial Customer Base”	means a significant customer base with respect to the date of first release and the relevant market but excluding Affiliates and other entities related to the licensor;
“Object Code”	means software and/or data in machine-readable, compiled object code form;
“Occasion of Tax Non-Compliance”	means: (a) any tax return of the Suppliers submitted to a Relevant Tax Authority on or after 1 October 2012 that is found on or after 1 April 2013 to be incorrect as a result of: (i) a Relevant Tax Authority successfully challenging the Suppliers under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; (ii) the failure of an avoidance scheme which the Suppliers were involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or (b) any tax return of the Suppliers submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;

“Open Source”	means computer Software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as such;
“Open Source Publication Material”	has the meaning given in Clause 17.1 of Schedule 2 of these Call-Off Terms and Conditions;
“Order Form”	means the order form for the Goods and Services issued by the Authority in accordance with the DPS Framework Agreement, which shall be a completed version of the form of order form set out at Schedule 4 of these Call-Off Terms and Conditions;
“Order Form Date”	means the date of the Order Form;
“Ordering Procedure”	means the procedure for the placing of orders and for the accepting and declining of orders under the DPS Framework Agreement as set out at Schedule 5 of the DPS Framework Agreement;
“Other Suppliers”	any supplier to the Authority (other than the Suppliers) which is notified to the Suppliers from time to time and/ or of which the Suppliers should have been aware;
“Outgoing Supplier”	the organisation or organisations providing the Services (or any part thereof) up until the Staff Transfer Date, which may include the Authority;
“Output”	means any document, product or material developed or provided by the Suppliers or their agents, Sub-contractors or employees as part of, or in relation to the Deliverables in any form or media, including drawings, maps, plans, diagrams, designs, pictures, data, specifications and reports (including drafts) that is specified in the Specification to be provided to the Authority, or as may be agreed by the Parties in writing from time to time to be owned by the Authority, but excluding any Licensed Software.
“Painshare Arrangement”	means any painshare arrangement (including any sharing of certain losses and/or over expenditure) specified by the Authority in the Call-Off ITT;
“Party”	means the Authority or the Suppliers (or any one of the Suppliers if more than one) as appropriate and Parties means both the Authority and each and every Supplier;
“Permitted Maintenance”	has the meaning set out in Clause 7.5.1 of Schedule 2 of these Call-Off Terms and Conditions;
“Personal Data”	means personal data as defined in the Data Protection Legislation;
“Personal Data Breach”	has the meaning set out in the Data Protection Legislation;
“Policies”	means the policies, rules and procedures of the Authority as notified to the Suppliers from time to time or to which the Authority has granted the Suppliers access from time to time;

“Potential Subsequent Transferring Employees”	any Transferring Employee or any other employee employed by the Suppliers and assigned to any part of the Deliverables;
“Premises and Locations”	has the meaning given under Clause 5.1 of Schedule 2 of these Call-Off Terms and Conditions;
“Primary KPI Failure”	has the meaning given in the Call-Off ITT and/or Specification;
“Primary KPI Failure Points”	has the meaning given in the Call-Off ITT and/or Specification;
“Principal Supplier”	means a Supplier indicated in the Order Form as a Principal Supplier who shall be first recourse for the Authority and/or DHSC (as applicable) for the enforcement of liabilities owed to the Authority and/or DHSC (as applicable) arising under or in connection with this Contract as described in Clause 9 of Schedule 1 of these Call-Off Terms and Conditions;
“Principal Suppliers”	means more than one Principal Supplier;
“Priority Deliverable”	means any portion or portions of the Deliverables that are designated as being a priority deliverable in the Specification and/or Call-Off ITT and/or the Order Form;
“Process”	has the meaning given to it under the Data Protection Legislation and, for the purposes of this Contract, it shall include both manual and automatic processing. Processing and Processed shall be construed accordingly;
“Processor”	has the meaning given to it under the Data Protection Legislation;
“Product Information”	means information concerning the Goods as may be reasonably requested by the Authority and supplied by the Suppliers to the Authority in accordance with Clause 30 of Schedule 2 of these Call-Off Terms and Conditions from time to time;
“Protective Measures”	<p>means appropriate technical and organisational measures which may include:</p> <ul style="list-style-type: none"> (a) pseudonymising and encrypting Personal Data; (b) ensuring the ongoing confidentiality, integrity, availability and resilience of systems and services; (c) ensuring that availability of and access to Personal Data can be restored in a timely manner in the event of a physical or technical incident; and <p>regularly testing, assessing and evaluating the effectiveness of those measures adopted by it;</p>
“Quality Plan”	means the plans as described in Clause 35 of Schedule 2 of these Call-Off Terms and Conditions;

“Quarter”	each consecutive three Month period commencing on 1 st March 1 st June, 1 st September, 1 st December save that the first such period during the Term shall start on the Effective Date and end on the next 1 st March, 1 st June, 1 st September or 1 st December (as applicable) and the last such period during the Term shall commence on one of such dates and end on the date of expiry or termination of this Contract;
“Redundancy Costs”	any Losses incurred by the Suppliers or Successor as a result of a redundancy situation as defined by Section 139 of the Employment Rights Act 1996, limited to statutory and contractual redundancy payments;
“Regulatory or Supervisory Body”	any statutory or other body having authority to issue guidance, standards or recommendations with which the Suppliers and/or Supplier Personnel must comply or to which it or they must have regard, including but not limited to: <ul style="list-style-type: none"> (i) the CQC; (ii) NHS Improvement; (iii) NHS England; (iv) DHSC; (v) National Institute for Health and Care Excellence; (vi) Healthwatch England and Local Healthwatch; (vii) Public Health England; (viii) the General Pharmaceutical Council; (ix) the Healthcare Safety Investigation Branch; (x) Information Commissioner; (xi) European Data Protection Board; (xii) Any relevant Local Authority.
“Rejected Goods”	has the meaning given at Clause 3.2 of Schedule 2 of these Call-Off Terms and Conditions;
“Relevant Commencement Date”	means the Effective Date, Deliverables Commencement Date, Goods Commencement Date, Services Commencement Date, or any other date on which a portion of the Deliverables is first delivered as applicable;
“Relevant IPR”	means IPR used to provide the Deliverables or as otherwise provided and/or licensed by the Suppliers (or to which the Suppliers have provided access) to the Authority or a third party in the fulfilment of the Suppliers’ obligations under these Call-Off Terms and Conditions including Foreground IPR, Supplier Owned Foreground IPR, IPR in the Specially Written Software, the Supplier Non-COTS Software, the Supplier Non-COTS Background IPR, the Third Party Non-COTS Software and the Third Party Non-COTS IPR but excluding any IPR in the Authority Software or the Authority Background IPR;
“Relevant Tax Authority”	means HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the Suppliers are established;

“Relevant Transfer”	a transfer pursuant to and governed by the Employment Regulations;
“Relevant Transfer Date”	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
“Remedial Proposal”	has the meaning given under Clause 22.1 of Schedule 2 of these Call-Off Terms and Conditions;
“Repeat Failure” KPI	means a KPI Failure as described in paragraph 9 of Annex 1 Part 2 of the Order Form
“Replacement Services”	any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination or partial termination of this Contract, whether those services are provided by the Authority internally and/or by any third party;
“Replacement Supplier”	any third party service provider of Replacement Services appointed by the Authority from time to time (or where the Authority is providing Replacement Services for its own account, the Authority)
“Report”	has the meaning given in Clause 11.3 of Schedule 2 of these Call-Off Terms and Conditions;
“Required Action”	means, where step-in rights are exercised by the Authority pursuant to Clause 23 of Schedule 2 of these Call-Off Terms and Conditions or by DHSC pursuant to Clause 24 of Schedule 2 of these Call-Off Terms and Conditions the actions the Authority or DHSC (as applicable) wishes to take and the affected Deliverable(s) that are subject to the relevant Step-In Notice;
“Requirement to Recall”	has the meaning given at Clause 3.10 of Schedule 2 of these Call-Off Terms and Conditions;
“S.251 Authorisation”	means an authorisation pursuant to s.251 of the National Health Service Act 2006 (as amended) or broadly similar Law;
“SaaS Applications”	means Licensed Software made available by the Suppliers or the relevant Third Party to the Authority as a software-as-a-service arrangement via a network (such as the internet), where such Licensed Software are hosted remotely from the Authority on processors owned or controlled by the Suppliers or the Third Party and are not materially developed to meet the requirements of the Authority;
“SaaS Documentation”	means the document(s) made available to the Authority by the Suppliers via such other web address notified by the Suppliers to the Authority from time to time which sets out a description of the SaaS Services and the user instructions for the SaaS Services and SaaS Applications;
“SaaS Services”	means the subscription services for access to the SaaS Applications provided by the Suppliers to the Authority pursuant to this Contract via such website

	notified to the Authority by the Suppliers from time to time, as more particularly described in the SaaS Documentation;
“Secondary KPI Failure”	has the meaning given in the Call-Off ITT and/or Specification;
“Secondary KPI Failure Points”	has the meaning given in the Call-Off ITT and/or Specification;
“Service Category”	Means a service category, as outlined in the DPS Framework Agreement. “Service Categories” shall be construed accordingly;
“Services”	means the services described in the Specification, if any, which form part or all of the Deliverables;
“Services Commencement Date”	means the date delivery of the Services shall commence as specified in the Order Form. If no date is specified in the Order Form, the services commencement date shall be the Effective Date;
“Service Credit”	means any amount (in £/pounds sterling) that may become due from a Supplier to the Authority pursuant to the provisions of the Specification and/or Call-Off ITT and/or the Order Form and/or as otherwise arising under this Contract including (but not limited to) any amount due from the Supplier to the Authority in a Report and/or pursuant to Clauses 12.7 and/or 12.13 of Schedule 2 of these Call-Off Terms and Conditions and/or pursuant to Clause 23.7 of Schedule 2 of these Call-Off Terms and Conditions;
“Service Credit Cap”	means 15% of the proportion of the Contract Price payable by the Authority to the Suppliers in any Month or other applicable payment period as determined in accordance with Clause 12.3.3 of Schedule 2 of these Call-Off Terms and Conditions (which for the avoidance of doubt may include any arrangement for the payment on the Achievement of Milestones and/or any arrangement for payment on completion of the Services and/or payment of a fixed contract price or budget);
“Services Information”	means information concerning the Services as may be reasonably requested by the Authority and supplied by the Suppliers to the Authority in accordance with Clause 30 of Schedule 2 of these Call-Off Terms and Conditions;
“Software”	Specially Written Software, Supplier Software and Third-Party Software (as applicable);
“Software Supporting Materials”	means all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software;
“Source Code”	means computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;

“Special Categories of Personal Data”	has the meaning set out in the Data Protection Legislation;
“Specially Written Software”	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Suppliers (or by a subcontractor or other third party on behalf of the Suppliers) specifically for the purposes of these Call-Off Terms and Conditions, including any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of these Call-Off Terms and Conditions;
“Specification”	means the specification and KPIs set out at Annex 1 to the Order Form and as amended and/or updated in accordance with this Contract;
“Staff”	means all persons employed or engaged by the Suppliers to perform their obligations under this Contract;
“Staff Transfer Date”	the Actual Services Commencement Date or the date on which the Suppliers actually commence delivery of any part of the Services within which the relevant Transferring Employees are employed;
“Standard Licence Terms”	<p>such reasonable licence terms and conditions as the Suppliers can demonstrate to the Authority’s satisfaction that are the terms and conditions upon which the Suppliers usually and generally make the applicable Software and/or Documentation commercially available, excluding any provision relating to:</p> <ul style="list-style-type: none"> a) the price payable by the Authority; b) the duration of the licence; c) any provision that would conflict with the obligation to provide a licence in the form set out in Clause 14.6.2 of Schedule 2 of these Call-Off Terms and Conditions; d) any provision that would conflict with the warranties set out at Clause 13 of this Schedule 2 of these Call-Off Terms and Conditions or the indemnities at Clauses 14.13 or 18 of Schedule 2 of these Call-Off Terms and Conditions; e) any provision that would conflict with the provisions of Clause 15.7 to Clause 15.11 (inclusive) of Schedule 2 of these Call-Off Terms and Conditions; f) any provision that would conflict with the provisions of Clauses 15.14 to 15.15 (inclusive) of Schedule 2 of these Call-Off Terms and Conditions; or g) any provision that would conflict with the provisions of Clause 15.24 of Schedule 2 of these Call-Off Terms and Conditions. <p>All applicable Standard Licence Terms shall be set out at Annex 8 to the Order Form.</p>
“Standards”	means the standards, policies and/or procedures identified in Schedule 7 of these Call-Off Terms and Conditions. “Standard” shall be construed accordingly;

“Step-In Notice”	means a notice served by the Authority or by DHSC (as applicable) on the Suppliers pursuant to Clause 23 or Clause 24 of Schedule 2 of these Call-Off Terms and Conditions;
“Step-In Trigger Event”	means a circumstance permitting the Authority to terminate this Contract (or at its election part of the Contract) as set out at Clause 22.2 and/or 22.5 of Schedule 2 of these Call-off Terms and Conditions;
“Step-Out Date”	means the date on which the Authority or DHSC (as applicable) ceases to exercise its rights of step-in pursuant to this Contract in relation to a portion of the Deliverables;
“Step-Out Notice”	means a notice served by the Authority or by DHSC (as applicable) on the Suppliers pursuant to Clause 23 or Clause 24 of Schedule 2 of these Call-Off Terms and Conditions;
“Sub-processor”	any third party appointed to process Personal Data on behalf of a Processor in relation to a Contract;
“Subsequent Transfer Date”	means the point in time, if any, at which services the same as or of a similar nature to the Services (either in whole or in part) are first provided by a Successor, giving rise to a Relevant Transfer;
“Subsequent Transferring Employees”	means any employee, agent, consultant and/or contractor or Suppliers’ Personnel who, immediately prior to the Subsequent Transfer Date, is wholly or mainly engaged in the performance of the Services (either in whole or in part);
“Successor”	means any third party who provides services the same as or of a similar nature to the Services (either in whole or in part) in immediate or subsequent succession to the Suppliers upon the expiry or earlier termination of this Contract and which may be the Authority itself;
“Supplier Background IPR”	(a) Intellectual Property Rights owned by the Suppliers before the Effective Date; and/or (b) Intellectual Property Rights created by the Suppliers independently of this Contract, which in each case is or will be used before or during the Term for designing, testing implementing or providing the Deliverables;
“Supplier COTS Background IPR”	means any embodiments of Supplier Background IPR that: (a) the Suppliers make generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Suppliers save as to price; and (b) has a Non-trivial Customer Base;
“Supplier COTS Software”	means Supplier Software (including open source software) that:

	<p>(a) the Suppliers make generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Suppliers save as to price; and</p> <p>(b) has a Non-trivial Customer Base;</p>
“Supplier Equipment”	the equipment used by the Suppliers or their subcontractors (but not hired, leased or loaned from the Authority) for the provision of the Services which may include IT Hardware, computer and telecoms devices;
“Supplier Matrix”	means the matrix set out at paragraph 1.2 of Annex 1 of the Order Form setting out the identity of the providers (whether Suppliers or sub-contractors) who shall deliver each portion of the Deliverables as identified by the Suppliers in their response to the DPS Framework ITT;
“Supplier Non-COTS Background IPR”	means any embodiments of Supplier Background IPR that have been delivered by the Suppliers to the Authority and that are not Supplier COTS Background IPR;
“Supplier Non-COTS Software”	means Supplier Software that is not Supplier COTS Software;
“Supplier Owned Foreground IPR”	means Foreground IPR that the Order Form specifically provides is to be owned by the Suppliers;
“Supplier Personnel”	all directors, officers, employees, agents, consultants and contractors of the Suppliers and/or of any sub-contractor or Sub-processor who are either partially or fully assigned to and/or engaged in the performance of the Suppliers’ obligations under this Contract;
“Supplier Retained Equipment”	means the Equipment, listed in the Order Form, whose title will not transfer to the Authority, if any;
“Supplier Specific Standards”	means any additional Standards listed in ‘Supplier Specific Standards’ section of the Order Form that the Suppliers are required to comply with;
“Supplier Software”	means software which is proprietary to the Suppliers (or an Affiliate of the Suppliers) and which is or will be used by the Suppliers for the purposes of providing the Services, including the software specified as such in Annex 11 of the Order Form ;
“Supplier Solution”	the Suppliers’ solution for the Deliverables set out in Annex 6 of the Order Form
“Supplier System”	means the information and communications technology system used by the Suppliers in implementing and performing the Deliverables including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority System);

“Suppliers”	means the supplier or suppliers named on the Order Form and “Supplier” means one of the suppliers where there is more than one supplier named on the Order Form;
“Supply of Goods Commencement Date”	means the date supply of the Goods shall commence as specified in the Order Form. If no date is specified in the Order Form this date shall be the Effective Date;
“Supporting Documentation”	sufficient information in writing to enable the Authority reasonably to assess whether the sums due from the Authority detailed in the invoice are properly payable, including copies of any applicable Milestone Achievement Certificates or receipts;
“Target Performance Level”	means the minimum level of performance for a KPI which is required by the Authority, as set out against the relevant KPI in the tables in Annex 1 Part 3 of the Order Form;
“Term”	means the term as referred to in the Key Provisions and as set out in the Order Form together with any periods of extension that the Authority elects to initiate on notice pursuant to this Contract;
“Third Party”	means any supplier of the Services or services of the same or similar nature to the Services (either in whole or in part) immediately before the Transfer Date;
“Third Party COTS IPR”	means Third Party IPR that: (a) the supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price; and (b) has a Non-trivial Customer Base;
“Third Party COTS Software”	means Third Party Software (including open source software) that: (a) the supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price; and (b) has a Non-trivial Customer base;
“Third Party IPR”	means Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;
“Third Party Non-COTS IPR”	means Third Party IPR that are not Third Party COTS IPR;
“Third Party Non-COTS Software”	means Third Party Software that is not Third Party COTS Software;
“Third Party Software”	software which is proprietary to any third party (other than an Affiliate of the Suppliers) or any Open Source Software which in any case is, will be or is proposed to be used by the Suppliers for the purposes of providing the

	Services, including the software specified as such in Annex 11 of the Order Form ;
“Tranche”	the tranche as described in the Order Form
“Transferring Authority Employees”	those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date. Transferring Authority Employee shall be construed accordingly;
“Transferring Employees”	means any Transferring Authority Employee together with any Transferring Former Supplier Employee;
“Transferring Former Supplier Employees”	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date. Transferring Former Supplier Employee shall be construed accordingly;
“Transfer Date”	means the Actual Services Commencement Date;
“UK GDPR”	means the General Data Protection Regulation (EU) 2016/679 as it forms part of the law of England and Wales by virtue of section 3 of the European Union (Withdrawal) Act 2018.
“Updates”	in relation to any Software and/or any Deliverable means a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item;
“Upgrades”	any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Suppliers or a third party software supplier (or any Affiliate of the Suppliers or any third party) releases during the Term;
“VAT”	means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax.

- 1.2 References to any statute or order shall include any order, regulation, bye law or other subordinate legislation and any extension, modification, replacement or re enactment of that statute, order, regulation, bye-law or subordinate legislation from time to time. References to any order, regulation, bye law or other subordinate legislation shall include any extension, modification, replacement or re enactment of that order, regulation, bye-law or subordinate legislation from time to time.
- 1.3 References to any legal entity shall include any body that takes over responsibility for the functions of such entity.
- 1.4 References in this Contract to a “Schedule”, “Appendix”, “Paragraph” or to a “Clause” are to schedules, appendices, paragraphs and clauses of, this Contract (save for any schedule, appendix, paragraph or clause that specifically refers to the DPS Framework Agreement where references to that schedule, appendix, paragraph or clause shall be to the schedule, appendix, paragraph or clause of the DPS Framework Agreement).
- 1.5 References in this Contract to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.

- 1.6 Unless set out in the Contract as a chargeable item and subject to Clause 42.7 of Schedule 2 of these Call-Off Terms and Conditions, the Suppliers shall bear the cost of complying with their obligations under this Contract.
- 1.7 The headings are for convenience only and shall not affect the interpretation of this Contract.
- 1.8 Words denoting the singular shall include the plural and vice versa.
- 1.9 Where a term of this Contract provides for a list of one or more items following the word “including” or “includes” then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.
- 1.10 Where there is a conflict between the Suppliers’ responses to the requirements set out in the Specification and Call-Off ITT and any other part of this Contract, such other part of this Contract shall prevail.
- 1.11 Where a document is required under this Contract, the Parties may agree in writing that this shall be in electronic format only.
- 1.12 Where a term defined in the Data Protection Legislation is not defined in this Schedule 3 of these Call-Off Terms and Conditions and is used in Schedule 5 of these Call-Off Terms and Conditions (unless the context requires otherwise), Schedule 5 of these Call-Off Terms and Conditions shall be construed in accordance with such statutory definition.
- 1.13 References in this Contract to a European Directive or European Regulations shall be construed to include any legislation incorporating the terms of such Directive or such Regulations (or broadly similar provisions) into English law following the exit of the United Kingdom from the European Union.

Schedule 4 of these Call-Off Terms and Conditions

Dynamic Purchasing System Framework: Template Order Form

This document is a template order form to be used when calling-off from the Dynamic Purchasing System Framework (DPS).

The completed order form is part of the Call-Off ITT and sets out your requirements to potential bidders. When a successful bidder has been selected, the order form is updated with details of their solution and becomes part of the contract.

Text marked in grey is advice on completing the order form and should be replaced before the Call Off ITT is sent to potential bidders. In this Order Form, words beginning with a capital letter are defined term as outlined in Schedule 3 of the Call-Off Terms and Conditions.

<u>References and Date</u>	
Order Reference Number	Insert administrative reference number. Please contact england.phmsupport@nhs.net to obtain a DPS Framework reference number.
Date of Order Form	<i>Insert date this Order Form is signed by the Authority– this will be the Order Form Date for the purposes of the Contract.</i>
<u>Parties and Key Persons</u>	
Authority	<i>Insert legal identity of the Authority or Authorities calling off from the DPS Framework Agreement, this should be the Authority's full official name. If more than one Authority is calling off together then either: 1) they will all be parties to the Contract; or 2) one Authority shall contract on behalf of them all. If one Authority is to contract for all, then the Authorities are advised to agree in writing between themselves how their agreement works.</i>
Suppliers	<i>Insert the official name of the Supplier (not trading name) that is successful on relevant mini-competition. Insert the official names of multiple Suppliers where the successful bidder is a consortium of co-bidders. Each co-bidder will be required to enter into the Contract as a Party.</i>

<p>Principal Supplier(s)</p>	<p><i>Insert identity of any of the Suppliers that are Principal Suppliers.</i></p> <p><i>Indicate any other variations to the liability provisions between Suppliers and include any such variation as an Extra Key Provision.</i></p>						
<p>Key Roles for the supply or performance of the Deliverables and the personnel who will fill those Key Roles (“Key Personnel”)</p>	<p><i>Identify any roles that are key to the supply or performance of the Deliverables and insert the identity of any staff of the Supplier(s) who are to fulfil those Key Roles.</i></p>						
<p>Contract Managers</p>	<p><i>Insert the Contract Managers at the commencement of this Contract.</i></p> <p><i>Where the Authority comprises more than one organisation insert details of a single Contract Manager or a Contract Manager per organisation as applicable.</i></p> <p><i>Where the Supplier comprises more than one organisation insert details of a Contract Manager for each organisation.</i></p> <table border="1" data-bbox="616 1025 1351 1229"> <tr> <td data-bbox="616 1025 820 1128"><i>Authority’s Contract Manager</i></td> <td data-bbox="820 1025 983 1128"><i>Contract</i></td> <td data-bbox="983 1025 1351 1128"><i>Complete as appropriate</i></td> </tr> <tr> <td data-bbox="616 1128 820 1229"><i>Supplier’s Contract Manager(s)</i></td> <td data-bbox="820 1128 983 1229"><i>Contract</i></td> <td data-bbox="983 1128 1351 1229"><i>Complete as appropriate</i></td> </tr> </table>	<i>Authority’s Contract Manager</i>	<i>Contract</i>	<i>Complete as appropriate</i>	<i>Supplier’s Contract Manager(s)</i>	<i>Contract</i>	<i>Complete as appropriate</i>
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<p>Lead Contract Manager (if applicable)</p>	<p><i>Insert the Lead Contract Manager at the commencement of this Contract</i></p> <table border="1" data-bbox="616 1330 1351 1532"> <tr> <td data-bbox="616 1330 983 1433"><i>Authority’s Lead Contract Manager</i></td> <td data-bbox="983 1330 1351 1433"><i>Complete as appropriate</i></td> </tr> <tr> <td data-bbox="616 1433 983 1532"><i>Supplier’s Lead Contract Manager</i></td> <td data-bbox="983 1433 1351 1532"><i>Complete as appropriate</i></td> </tr> </table>	<i>Authority’s Lead Contract Manager</i>	<i>Complete as appropriate</i>	<i>Supplier’s Lead Contract Manager</i>	<i>Complete as appropriate</i>		
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<i>Supplier’s Lead Contract Manager</i>	<i>Complete as appropriate</i>						
<p>Person(s) to receive notices under the Contract</p>	<p><i>Insert the name and contact details for each party as nominated at the commencement of this Contract.</i></p> <p><i>Where the Authority comprises more than one organisation insert details of a coordinating person or a person for each Authority.</i></p> <p><i>Where the Supplier comprises more than one organisation insert details of a person for each organisation.</i></p>						

	<table border="1"> <tr> <td><i>Authority's nominated person and contact details for service of notices</i></td> <td> <i>Name</i> <i>Postal Address</i> <i>Email Address</i> </td> </tr> <tr> <td><i>Supplier's nominated person and contact details for service of notices</i></td> <td> <i>Name</i> <i>Postal Address</i> <i>Email Address</i> </td> </tr> </table>	<i>Authority's nominated person and contact details for service of notices</i>	<i>Name</i> <i>Postal Address</i> <i>Email Address</i>	<i>Supplier's nominated person and contact details for service of notices</i>	<i>Name</i> <i>Postal Address</i> <i>Email Address</i>		
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<i>Supplier's nominated person and contact details for service of notices</i>	<i>Name</i> <i>Postal Address</i> <i>Email Address</i>						
Notified Sub-contractors in the event of a TUPE transfer at a Relevant Commencement Date	<i>Where at any Relevant Commencement Date there is a Relevant Transfer such that the provisions of Schedule 12 of these Call-Off Terms and Conditions shall apply then any sub-contractor to whom Transferring Authority Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date shall be identified in Annex 10 to the Order Form;</i>						
<u>General</u>							
Status of Order Form	<p>Issue of this Order Form is an "invitation to treat" by the Authority following the Suppliers' Call-Off ITT Response submitted by the Supplier(s) in response to the relevant mini-competition conducted under and in accordance with the DPS Framework Agreement. On the signature of the Order Form by the Suppliers and its return to the Authority, the signature of the Order Form by the Authority shall be the point at which a contract is formed between the Authority and the Suppliers. This Order Form, together with the Call-Off Terms and Conditions and the applicable provisions of the DPS Framework Agreement (and the other provisions as set out in the Call-Off Terms and Conditions) form a contract (defined as "the Contract" in the Call-Off Terms and Conditions) between the parties as at and from the date of this Order Form.</p> <p>All terms defined in the Call-Off Terms and Conditions have the same meaning when utilised in this Order Form.</p>						
Call-Off Terms and Conditions	<p>The Call-Off Terms and Conditions comprise the following Schedules of Appendix A of the DPS Framework Agreement:</p> <table border="1"> <tr> <td>Schedule 1</td> <td>Key Provisions</td> </tr> <tr> <td>Schedule 2</td> <td>General Terms and Conditions</td> </tr> <tr> <td>Schedule 3</td> <td>Definitions and Interpretations Provisions</td> </tr> </table>	Schedule 1	Key Provisions	Schedule 2	General Terms and Conditions	Schedule 3	Definitions and Interpretations Provisions
Schedule 1	Key Provisions						
Schedule 2	General Terms and Conditions						
Schedule 3	Definitions and Interpretations Provisions						

	Schedule 4	This Order Form
	Schedule 5	Information Governance
	Schedule 6	Security Management
	Schedule 7	Standards
	Schedule 8	Software
	Schedule 9	Installation and Commissioning Services
	Schedule 10	Maintenance Services
	Schedule 11	Not Used
	Schedule 12	Staff Transfer
	Schedule 13	Change Control Process
	Schedule 14	Acceptance Testing
	Any additional Extra Key Provisions set out at Annex 2 below shall be incorporated into the Contract formed by the signature and completion of this Order Form.	
DPS Framework Agreement	The Dynamic Purchasing System Framework established by the Department of Health and Social Care (DHSC) for and on behalf of DHSC and other organisations/authorities permitted to use the DPS Framework. (the “ DPS Framework Agreement ”).	
Call-Off ITT	The Call-Off ITT as issued by the Authority to invite responses to the relevant mini-competition conducted under and in accordance with the DPS Framework Agreement.	
Call-Off ITT Response	The Suppliers’ response to the relevant Call-Off ITT submitted by the Suppliers in response to the relevant mini-competition conducted under and in accordance with the DPS Framework Agreement and initiated by the issue of a Call-Off ITT by the Authority.	
Contract Meetings	<p><i>Please insert the frequency of Contract Meetings. If a frequency is not specified, meetings will take place on a monthly basis unless the Parties agree otherwise.</i></p> <p><i>The default position is that the Authority will minute each meeting in accordance with Clause 11 of Schedule 2 of the Call-Off Terms and Conditions. If alternative provisions apply, please state them here.</i></p> <p><i>Please note that any changes to the Processing arrangements outlined in Annex 7 of this Order Form should be dealt with under the procedure outlined in Clause 31.3 of the Call-Off Terms and Conditions.</i></p>	

Fast-track Change values	<i>Insert value of Fast-track Change maximum under the Change Control Procedure.</i>
<u>Contract Term and Termination Provisions</u>	
Term of the Contract	<p><i>The common position is that the Term will be the length of the Contract from the Effective Date. You may therefore choose for the Term to be the length of the Contract from an alternative definition such as;</i></p> <ul style="list-style-type: none"> <i>• Actual / Deliverables Commencement Date;</i> <i>• Actual / Services Commencement Date; or</i> <i>• Actual / Goods Commencement Date.</i>
Extension of Term	<p><i>Specify any extension periods that can be initiated at the election of the Authority (including details of notice periods and durations of permitted extensions)</i></p> <p><i>If no specific provisions are inserted here the default position under the Contract is for the Authority to have the right to extend on one or more occasions, on at least 6 months' notice, up to a maximum 18 Months extension in aggregate. (see Clause 21.2 of Schedule 2 of the Call-Off Terms and Conditions)</i></p> <p><i>If the call-off is for a fixed price contract, outcome based contract, or a contract with a Painshare and/or Gainshare arrangement then consider removal of the automatic right of extension.</i></p>
Unilateral Authority right of termination notice period	<i>Insert the period of notice required for the Authority to exercise its right of unilateral termination pursuant to Clause 25 of Schedule 2 of these Call-Off Terms and Conditions, which shall not be less than 6 months.</i>
Insurance on Expiry or Termination	<p><i>On the expiry or earlier termination of this Contract, the Suppliers are required to ensure that:</i></p> <ol style="list-style-type: none"> <i>1) unless otherwise required in the Extra Key Provisions, any ongoing liability that they have or may have arising out of this Contract shall continue to be the subject of appropriate insurance and/or indemnity arrangements and/or membership of the risk pooling statutory schemes for the period of six (6) years from termination or expiry of this Contract; and</i> <i>2) where the Deliverables or any part of them could result in liability to any patient in respect of care and/or advice funded by an NHS body, any ongoing liability that the Suppliers have or may have arising out of this Contract shall continue to be the subject of appropriate insurance and/or indemnity</i>

	<p><i>arrangements and/or membership of the risk pooling statutory schemes for the period of up to twenty-one (21) years from termination or expiry of this Contract.</i></p> <p><i>(See Clauses 20.8 and 20.9 of Schedule 2 of the Call-Off Terms and Conditions, respectively)</i></p> <p><i>Having regard to the nature of the Deliverables, the Authority should consider whether the period of 6 years (as set out in Clause 20.8) is long enough or whether liability may continue beyond this period and therefore whether a longer period should be specified.</i></p>
<u>Contract Deliverables</u>	
Deliverables	<p>The Deliverables to be provided by the Supplier(s) under the Contract shall be the Services and/or Ad Hoc Services and/or Goods and/or any other requirement whatsoever (including without limitation any item, feature, material, outcome or output). The Deliverables are described at Annex 1 Part 1 of this Order Form (“the Specification”), shall be provided from the Deliverables Commencement Date set out below in accordance with the KPIs set out in the Specification.</p> <p>Where the Suppliers are comprised of more than a single Supplier the Supplier Matrix at Annex 1 of the Order Form, shall indicate which portion of the Deliverables are to be provided by which of the Suppliers.</p>
Priority Deliverable	<i>Insert any portion of portions of the Deliverables that are a Priority Deliverable, giving the Authority and/or DHSC a right to step-in in the event of a material breach.</i>
Deliverables Commencement Date	<i>Insert date delivery of the Deliverables is required to commence.</i>
Services Commencement Date	<i>Insert date delivery of the Services is required to commence.</i>
Goods Commencement Date	<i>Insert date delivery of the Goods is required to commence.</i>
Long Stop Date	<p><i>Insert date (if any) by which performance of the Deliverables must have been commenced and, failing which, the Authority shall, under the Call-Off Terms and Conditions, have the right to terminate the Contract by notice in writing to the Suppliers</i></p> <p><i>This date can be different for different portions of the Deliverables if required.</i></p>

Implementation Plan	The implementation plan submitted as part of the Call-Off ITT Response (if required by the relevant mini-competition conducted in accordance with the Call-Off ITT) and set out at Annex 4 below.
Quality Plans	<i>Indicate here whether Clause 35 of the Call-Off Terms and Conditions shall apply to the Contract with regards to Quality Plans.</i>
Information Security Management Plan	The information security management plan submitted as part of the Call-Off ITT Response (if required by the relevant mini-competition conducted in accordance with the Call-Off ITT) and set out at Annex 5 below, as may be amended from time to time in accordance with Schedule 6 of the Call-Off Terms and Conditions.
Insurance	<i>The value and risk attaching to the particular call-off should be considered to evaluate the level of insurance required. Where any type of insurance is required to be taken out of a greater level of indemnity than £5 million per claim then that level and the type of insurance for which it is required should be stated here.</i>
Supplier Specific Standards	<i>Indicate here if there are any additional standards not listed in Schedule 7 of this agreement, that the Suppliers will be required to comply with under a given call-off contract.</i>
<u>Premises and Property</u>	
Premises and Location(s) for the Delivery of the Deliverables	<i>Insert the details of the premises and location or locations from which or to which the Deliverables must be provided (if applicable).</i>
Property Licence(s) and/or Lease(s) granted to the Suppliers	<i>Insert details of any rights of occupation to be granted to the Supplier(s) connected with their provision of the Deliverables.</i>
<u>Information Governance</u>	
Information Governance Provisions (Schedule 5)	<p><i>The default position under the Call-Off Terms and Conditions is that the Authority shall act as a Controller and the Supplier shall act as a Processor.</i></p> <p><i>Alternative information governance provisions will be required in the following situations:</i></p> <p>i) <i>where the Authority and the Suppliers are joint data Controllers;</i></p>

	<p>ii) <i>where the Suppliers (and not the Authority) are Controllers; and/or</i></p> <p>iii) <i>where the contract involves the processing of anonymised/ pseudonymised data within a controlled environment.</i></p>
Processing of Personal Data	<i>Where the Deliverables include the processing of any Personal Data then please complete Annex 7 of the Order Form, which shall be inserted as the Annex to Schedule 5 of the Call-Off Terms and Conditions.</i>
<u>Intellectual Property Rights and Licencing</u>	
Intellectual Property	<p><i>Please see Clause 14 of Schedule 2 of these Call-Off Terms and Conditions and insert any variant provisions. If the Suppliers are to own any of the Foreground IP then this must be stated here.</i></p> <p><i>Please consider whether the Authority need to take ownership of the Foreground IPR or whether a licence granted in favour of the Authority may be a suitable alternative.</i></p> <p><i>In addition, consider, by reference to the nature of the Deliverables, whether any warranties from the Authority re the Authority Background IPR should apply as set out at Clause 14.14 of Schedule 2 and/or whether the Authority should indemnify the Suppliers against IPR infringement claims in relation to the Suppliers' use of the Authority Background IPR for the provision of the Deliverables as set out in Clause 14.15 of Schedule 2.</i></p>
Supplier Owned Foreground IPR	<i>Indicate any part of the Deliverables (whether Software or other IPR) where the Foreground IPR is to be owned by the Suppliers pursuant to Clause 14.6 of Schedule 2, for example specific elements of the Specification, or any Supplier COTS Software or SaaS Applications.</i>

<p align="center">Standard Licence Terms</p>	<p><i>Stipulate if: a) Supplier Non-COTS Software; or b) SaaS Applications is/are to be provided on Standard Licence Terms; or c) any other elements of the Deliverables that Suppliers may offer under their Standard Licence Terms which could include but not be limited to: SaaS Documentation, and/or Licensed Software. Consider if the Extra Key Provisions need to state whether any aspect of the Standard Licence Terms prevail over the Call-Off Terms and Conditions.</i></p> <p><i>Any Standard Licence Terms to be inserted at Annex 8 to the Order Form</i></p>
<p>Supplier Software and Third Party Software</p>	<p><i>Record any Supplier Software or Third Party Software licensed by the Supplier or third parties for the purposes of the delivery of the Services at Annex 11 to the Order Form.</i></p>
<p><u>Contract Price and Payment</u></p>	
<p>Contract Price</p>	<p>The price(s) to be paid by the Authority to the Suppliers for the provision of the Services, as set out in the Call-Off ITT Response and reproduced at Annex 3.</p>
<p>Financial Model</p>	<p>The Suppliers' Financial Model, submitted if required by the Authority in the Supplier's Call-Off ITT Response and reproduced at Annex 3.</p>
<p>Total Contract Price for the purposes of Clause 19 (Limitation of Liability)</p>	<p>As outlined in Annex 3 of this Order Form</p>
<p>Payment Provisions</p>	<p>The payment terms for the payment by the Authority to the Suppliers of the Contract Price for the Services, as set out in the Call-Off ITT and reproduced at Annex 3; and</p> <p>The level of reimbursement by the Suppliers to the Authority relating to any service credits in respect of failures by the Suppliers to meet the KPIs, as set out in the Call-Off ITT and reproduced at Annex 3.</p>

Signed by the authorised representative of each AUTHORITY (as applicable)

Name:	Signature:
Position:		

<i>(Insert an additional signature block for each additional Authority)</i>			
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Signed by the authorised representative of each of the SUPPLIERS (as applicable)

Name:	Signature
Position:		
<i>(Insert an additional signature block for each co-bidder)</i>			

Order Form Annexes

Annex 1

Part 1: Specification

Part 2: KPI Overview

Part 3: KPIs

Part 4: Calculation of Service Credits

Part 5: Termination Trigger for Accrued KPI Failures

Part 6: Excusing Events

Annex 2 - Extra Key Provisions

Annex 3

Contract Price and Payment Terms

Maximum Payments on Unilateral Termination

Supplier's Financial Model

Annex 4 - Implementation Plan

Annex 5 - Information Security Management Plan

Annex 6 - Supplier Solution

Annex 7 - Processing of Personal Data

Annex 8 - Standard Licence Terms

Annex 9 - Notified Sub-Contractors

Annex 10 - Supplier Software and Third Party Software

Annex 1

Annex 1 Part 1: Specification

1.1 The Deliverables

Main object:

- *Insert specification from the Call-Off ITT, together with binding elements of the Call-Off ITT Response that do not conflict with and are not inconsistent with the terms of the specification from the Call-Off ITT*

Please also consider:

- *Please specify which of the Deliverables, if any, are Priority Deliverables*
- *Please outline the Background IPR to be brought to the provision of the Deliverables.*
- *Please indicate whether the parties anticipate modifications or enhancements to Supplier Software or Third Party Software being generated under the Deliverables.*
- *Please indicate whether any Specially Written Software will be generated under the Services.*
- *Please specify any Supplier COTS Software or Third Party COTS Software and whether standard licence terms will be varied through Extra Key Provisions*
- *Please specify any Supplier Non-COTS Software or Third Party Non-COTS Software and whether standard licence terms will apply and/or be varied through Extra Key Provisions.*
- *Please indicate if any Deliverable, Specially Written Software or Foreground IPR are to be made available as Open Source*
- *Please insert any Policies and/or procedures and requirements in relation to any environmental and social requirements, characteristics and impacts of the Services and the Suppliers' supply chain*

1.2 Division of Service provision between Suppliers/Sub-contractors

The division of the services between Suppliers (where more than one Supplier) must be consistent with the completed Supplier Matrix, subject to any assignment/subcontracting permitted by the terms of the DPS Framework Agreement after the commencement date of the DPS Framework Agreement.

Supplier Matrix

supplier	Service
<i>Insert Supplier/subcontractor's name</i>	<i>Insert Deliverables supplied by the relevant Supplier/subcontractor, utilising the identical description utilised in the Specification</i>

Annex 1 Part 2: KPI Overview

Key Performance Indicators

- 1 During the Term of the Contract the Suppliers shall provide the Deliverables so as to meet the standard under each of the KPIs described below.
- 2 Annex 1 Part 3 of this Order Form sets out the Key Performance Indicators that the Parties have agreed shall be used to measure the performance of the Deliverables by the Suppliers.
- 3 The Suppliers shall monitor their performance against each KPI and shall send the Authority a report detailing the level of service actually achieved in accordance with the provisions of this Contract.
- 4 Subject to:
 - (a) any breach of any express provision of this Contract by the Authority (unless, and to the extent, caused or contributed to by the Suppliers); and
 - (b) any deliberate act or omission of the Authority or any failure by the Authority to take reasonable steps to carry out its activities in a manner which minimises significant interference with the Suppliers' performance of the Deliverables (save where, and to the extent, caused or contributed to by the Suppliers);a failure by the Suppliers to meet any of the KPIs shall be KPI Failure (as defined in the Call-Off Terms and Conditions). Failure to meet a Primary KPI shall be a Primary KPI Failure and failure to meet a Secondary KPI shall be a Secondary KPI Failure.
- 5 KPI Failure Points, and therefore Service Credits, shall accrue for any KPI Failure. Service Credits shall be calculated in accordance with Annex 1 Part 4 of this Order Form

KPI Failure Points

- 6 If the level of performance of the Suppliers during a Measurement Period achieves the Target Performance Level in respect of a KPI, no KPI Failure Points shall accrue to the Suppliers in respect of that KPI.
- 7 If the level of performance of the Suppliers during a Measurement Period is below the Target Performance Level in respect of a KPI, KPI Failure Points shall accrue to the Suppliers in respect of that KPI as set out in Annex 1 Part 4 of this Order Form
- 8 The number of KPI Failure Points that shall accrue to the Suppliers in respect of a KPI Failure shall be the applicable number as set out in Annex 1 Part 3 of this Order Form depending on whether the KPI Failure is a minor KPI Failure, a serious KPI Failure or a severe KPI Failure

as indicated in Annex 1 Part 3 of this Order Form, unless the KPI Failure is a Repeat KPI Failure when the provisions of Paragraphs 9 and 10 of this Annex1 Part 2 shall apply.

Repeat KPI Failures

Repeat KPI Failures

- 9 If a KPI Failure occurs in respect of the same KPI in any two consecutive Measurement Periods, the second and any subsequent such KPI Failure shall be a “Repeat KPI Failure”.
- 10 The number of KPI Failure Points that shall accrue to the Suppliers in respect of a KPI Failure that is a Repeat KPI Failure shall be calculated as follows:

$$SP = P \times 2$$

where:

SP = the number of KPI Failure Points that shall accrue for the Repeat KPI Failure;
and

P = the applicable number of KPI Failure Points for that KPI Failure as set out in Annex 1 Part 3 depending on whether the Repeat KPI Failure is a minor KPI Failure, a serious KPI Failure, a severe KPI Failure or a failure to meet the KPI service threshold.

Worked example based on the following KPI Failure Points regime for a service availability KPI:

Severity Levels	KPI Failure Points
Target Performance Level: 99%	0
Minor KPI Failure: 98.0% - 98.9%	1
Serious KPI Failure: 97.0% - 97.9%	2
Severe KPI Failure: 96.0% - 96.9%	3
KPI Service Threshold: below 96%	4

Example 1:

If the Suppliers achieve a service availability of 98.5% in a given Measurement Period, this will be a minor KPI Failure for this KPI in that Measurement Period and accordingly will accrue 1 KPI Failure Point. If, in the next Measurement Period, it achieves a service availability of 96.5%, this will be a severe KPI Failure and accordingly would normally accrue 3 KPI Failure Points, but as the failure will in these circumstances be a Repeat KPI Failure, this amount is doubled and so the Suppliers will incur 6 KPI Failure Points for this failure (i.e. $SP = 3 \times 2$). If in the next Measurement Period it achieves a service availability of 96.5%, the Suppliers will again incur 6 KPI Failure Points.

Example 2:

If the Suppliers achieve a service availability of 96.5% in a given Measurement Period, this will be a severe KPI Failure for this KPI in that Measurement Period and accordingly accrue 3 KPI Failure Points. If, in the next Measurement Period, it achieves a service availability of 98.5%, this will be a minor KPI Failure and accordingly accrue 1 KPI Failure Point, but as the failure will in these circumstances be a Repeat KPI Failure, this amount is doubled and so the Suppliers will incur 2 KPI Failure Points for this failure (i.e. $SP = 1 \times 2$). If in the next Measurement Period it achieves Service Availability of 96.5%, the Supplier will incur 6 KPI Failure Points.

Related KPI Failures

- 11 If any specific KPI refers to both Service Availability and System Response Times, the System Response Times achieved by the Supplier for any period of time during a Service Period during which the relevant Service or element of a Service is determined to be Non-Available shall not be taken into account in calculating the average System Response Times over the course of that Service Period. Accordingly, the Supplier shall not incur any Service Points for failure to meet System Response Times in circumstances where such failure is a result of, and the Supplier has already incurred Service Points for, the Service being Non-Available.

Annex 1 Part 3: KPIs

Insert KPIs specified in the Call-Off ITT. If there are not any KPIs applicable to this contract please delete the section below and insert "not used" The KPIs set out below are indicative only and optional and provide a framework to be utilised if applicable for the development of KPIs relevant to the Deliverables

Primary KPIs

Please delete the table below and replace with "Not used" if Primary KPIs are not applicable to this Contract.

1 Primary Key Performance Indicators

No.	Key Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels	Service Points

No.	Key Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels	Service Points

2. Secondary Key Performance Indicators

Please delete the table below and replace with "Not used" if Secondary KPIs are not applicable to this Contract.

No.	Key Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels	Service Points
				<i>Target Performance Level: [xx%]</i> <i>Service Threshold: [xx%]</i>	
				<i>Target Performance Level: [xx%]</i> <i>Service Threshold: [xx%]</i>	

3. Definitions

The following definitions to be utilised in the KPIs may be adapted for use in each Order Form.

Annex 1 Part 4: Calculation of Service Credits

Calculation of Service Credits – Primary KPIs

Please insert mechanism for calculating Service Credits arising from the Suppliers' failure to meet any or each Primary KPI standard – The mechanism will need to convert Primary KPI Failure Points into Service Credits (. Each Service Credit should be attributed a value in £/Pounds Sterling...Please complete "Not used" if Service Credits will not be due from any Suppliers as a consequence of breaching any of the Primary KPIs under this Contract.

Consequences of accruing Secondary Failure Points

Please insert mechanism for calculating Service Credits arising from the Suppliers' failure to meet any or each Secondary KPI standard. The mechanism will need to convert Secondary KPI Failure Points into Service Credits. Each Service Credit should be attributed a value in £/Pounds Sterling. Please complete "Not used" if Service Credits will not be due from the Suppliers as a consequence of breaching any of the Secondary KPIs under this Contract. and/or

Specify alternative remedies such as accelerated contract management meeting or issue of Breach Notice for example

Annex 1 Part 5: Termination Trigger for Accrued KPI Failures

Termination for accrued KPI Failures

Insert figures and measurement periods for the purposes of Clauses 22.5.5, 22.5.6 and 22.5.7 of Schedule 2 of the Call-Off Terms and Conditions

The right for the Authority to terminate the Contract (or at its election part of the Contract relating to a specified portion of the Deliverables) forthwith by notice in writing to the Suppliers shall arise:

- pursuant to Clause 22.5.5 of Schedule 2 of the Call-Off Terms and Conditions upon the accrual of [insert number] Primary KPI Failure Points in any [Month/Quarter - specify];
and
- pursuant to Clause 22.5.6 of Schedule 2 of the Call-Off Terms and Conditions upon the accrual of [insert number] Secondary KPI Failure Points in any [Month/Quarter - specify];
and
- pursuant to Clause 22.5.7 of Schedule 2 of the Call-Off Terms and Conditions upon the occurrence of [insert number] KPI Failures in any Month or upon the occurrence of [insert number] KPI Failures in any Quarter

Annex 1 Part 6: Excusing Events

Insert specific events/actions/circumstances entitling relief from KPI regime and/or other sanction under the Contract that apply to specific Call-Off.

Annex 2 Extra Key Provisions

Insert extra key provisions identified in the Call-Off ITT or agreed with the Supplier in respect of a Deliverable that is only available on a provider's standard terms and conditions.

Specify whether any subcontractor set out in the Supplier Matrix is excluded from the audit obligations under Clause 34.4 of Schedule 2.

Specify whether any subcontractor set out in the Supplier Matrix is excluded from the obligation(s) to include third party rights and/or warranties in favour of the Authority and/or DHSC in Clauses 39.15.12, 39.15.13, 39.16.2 or 39.16.3 of Schedule 2

Specify if the value of £10,000 in Paragraph 2 of the Change Control Process in Schedule 13 of the Call-Off Terms and Conditions is to be varied.

Consider for contracts of a long duration whether an extra key provision is required to allow for the costs of Suppliers to be recovered where these are caused by a discriminatory change of law.

Consider whether provision for any of the software provided by the Suppliers to be held in escrow is required.

Specify if the Authority is to give any further warranties pursuant to Clauses 13.2.5 of Schedule 2.

Consider if liability for clinical decisions made using the Deliverables (e.g. software) should be excluded or apportioned, if not covered already in the Suppliers' standard licence terms.

Annex 3

Contract Price and Payment Terms

Contract Price

Insert contract price offer from Call-Off ITT Response

Each Supplier's Contract Price to be stated separately in respect of their portion of the Services.

Contract Price for permitted extensions to the Term

Insert Contract Price for any extension pursuant to Clause 21 of Schedule 2 of the Call-Off Terms and Conditions.

Insert Contract Price for any other extension stipulated in the Call-Off ITT and/or Order Form.-

Total Contract Price for the purposes of Clause 19 (Limitation of Liability)

Insert either:

The total Contract price(s) to be paid by the Authority to the Suppliers for the provision of the Deliverables, as set out in the Call-Off ITT Response and reproduced at Annex 3.

OR

Such different figure adjusted to reflect any Painshare Arrangement or any Gainshare Arrangement or any Outcomes

Payment Provisions

Insert payment provisions/structure from Call-Off ITT

Payment provisions/structure in respect of each Supplier to be stated separately in respect of their portion of the Deliverables

Please state if in any case invoicing arrangements and/or payment is to be via a third party or another Supplier.

Suppliers' Financial Model (if applicable)

Annex 4

Implementation Plan (if any)

Insert Implementation Plan from Call-Off ITT Response

Annex 5

Information Security Management Plan

Insert Information Security Management Plan from Call-Off ITT Response

Annex 6

Supplier Solution

To be completed on award [This annex shall consist of the Supplier's responses to this Call-Off ITT]

Annex 7

Processing of Personal Data

This annex shall be inserted as the Annex to Schedule 5 of the Call-Of Terms and Conditions.

1. The Suppliers are only authorised to Process Personal Data in accordance with this Annex.
2. The Suppliers shall comply with any further written instructions with respect to Processing from the Authority from time to time.
3. Any such further instructions shall be incorporated into this Annex.

Description	Data
Subject matter of the processing	2 [This should be a high level, short description of what the processing is about i.e. its subject matter]
Duration of the processing	3 [Clearly set out the duration of the processing including dates]
Nature and purposes of the processing	<p>[Please be as specific as possible, but make sure that you cover all intended purposes.]</p> <p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.]</p>
Type of Personal Data	[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.]
Categories of Data Subject	[Examples include patients, members of the public users of a particular website etc.]
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	[Describe how long the data will be retained for, how it will be returned or destroyed.]

For the avoidance of doubt this list will be amended through the Contract Meetings as set out above and in line with Clause 31.3 of Annex 2 of this Order Form.

Annex 8

Standard Licence Terms

[Insert if any]

Annex 9

Notified Sub-Contractors

[Insert if applicable and if any]

Annex 10

Supplier Software and Third Party Software

Supplier Software

The Supplier Software includes the following items:

Software	Supplier (if an Affiliate of the Supplier)	Purpose	Number of Licences	Restrictions	Number of Copies	Type (COTS or Non- COTS)

Third Party Software

The Third Party Software includes the following items:

Third Party Software	Supplier	Purpose	Number of Licences	Restrictions	Number of Copies	Type (COTS or Non- COTS)

Schedule 5 of these Call-Off Terms and Conditions

Information Governance Provisions Confidentiality

- 1.1 In respect of any Confidential Information it may receive directly or indirectly from the other Party (“**Discloser**”) and subject always to the remainder of Clause 1 of this Schedule 5 of these Call-Off Terms and Conditions, each Party (“**Recipient**”) undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser’s prior written consent provided that:
- 1.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Order Form Date;
- 1.1.2 the provisions of Clause 1 of this Schedule 5 of these Call-Off Terms and Conditions shall not apply to any Confidential Information:
- (a) which is in or enters the public domain other than by breach of this Contract or other act or omissions of the Recipient;
 - (b) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
 - (c) which is authorised for disclosure by the prior written consent of the Discloser;
 - (d) which the Recipient can demonstrate was in its possession without any obligation of confidentiality prior to receipt of the Confidential Information from the Discloser; or
 - (e) which the Recipient is required to disclose purely to the extent to comply with the requirements of any relevant stock exchange.
- 1.2 Subject to Clause 1.3 of this Schedule 5 of these Call-Off Terms and Conditions, where the Recipient is the Suppliers then consent to the disclosure of such Confidential Information to any subcontractor of the Suppliers for the purposes of supplying or performing the Deliverables is deemed given for the purposes of Clause 1.1 of this Schedule 5 of these Call-Off Terms and Conditions.
- 1.3 Any disclosure by the Suppliers to a subcontractor as envisaged by Clause 1.2 of this Schedule 5 of these Call-Off Terms and Conditions is deemed to have been given consent on the condition that the Suppliers impose identical obligations to those obligations set out at Clause 1.1 of this Schedule 5 of these Call-Off Terms and Conditions on such subcontractor. The Suppliers shall impose identical obligations to

those obligations set out at Clause 1.1 of this Schedule 5 of these Call-Off Terms and Conditions on each such subcontractor prior to the disclosure of any such Confidential Information.

- 1.4 Nothing in Clause 1 of this Schedule 5 of these Call-Off Terms and Conditions shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Freedom of Information Act 2000 (“FOIA”), codes of practice on access to government information, on the discharge of public authorities’ functions or on the management of records (“Codes of Practice”) or the Environmental Information Regulations 2004 (“Environmental Regulations”).
- 1.5 Provided the Authority makes clear the confidential nature of such information and requires that it must not be further disclosed except in accordance with Law or this Clause 1.5 of this Schedule 5 of these Call-Off Terms and Conditions, the Authority may disclose the Suppliers’ Confidential Information to the following third parties and in the following circumstances:
 - 1.5.1 any Contracting Authority provided that Contracting Authority is not a supplier that is party to a framework agreement on the same terms and for the same services as the DPS Framework Agreement (the Parties agree that all Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities, provided that such Contracting Authorities are not suppliers that are party to a framework agreement on the same terms and for the same services as the DPS Framework Agreement, on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority);
 - 1.5.2 to any consultant, contractor or other person engaged by the Authority and/or the Contracting Authority receiving such information;
 - 1.5.3 to any relevant party for the purpose of the examination and certification of the Authority’s accounts;
 - 1.5.4 for the purposes set out in Clause 11 and/or Clause 34 of Schedule 2 of these Call-Off Terms and Conditions; or
 - 1.5.5 to any relevant party for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources,provided that the Authority imposes on each such recipient obligations in respect of such Suppliers’ Confidential Information equivalent to the Authority’s obligations set out at Clause 1.1 of this Schedule 5 of these Call-Off Terms and Conditions.
- 1.6 The Suppliers may only disclose the Authority’s Confidential Information, and any other information provided to the Suppliers by the Authority in relation to the supply or performance of the Deliverables, to the Suppliers’ Supplier Personnel or professional

advisors who are directly involved in the performance of or advising on the Suppliers' obligations under this Contract. The Suppliers shall ensure that such Supplier Personnel are aware of and shall comply with the Suppliers' obligations in Clause 1 of this Schedule 5 of these Call-Off Terms and Conditions as to confidentiality and that all information, including Confidential Information, is held securely, protected against unauthorised use or loss and, at the Authority's written election, destroyed securely or returned to the Authority when it is no longer required. The Suppliers shall not, and shall ensure that the Supplier Personnel do not, use any of the Authority's Confidential Information otherwise than for the purposes of performing the Suppliers' obligations in this Contract.

- 1.7 For the avoidance of doubt, save as required by Law or as otherwise set out in this Schedule 5 of these Call-Off Terms and Conditions, the Suppliers shall not, without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed), announce that they have entered into this Contract and/or that they have been appointed as Suppliers to the Authority and/or make any other announcements about this Contract.
- 1.8 Clause 1 of this Schedule 5 of these Call-Off Terms and Conditions shall remain in force:
 - 1.8.1 without limit in time in respect of Confidential Information which comprises:
 - (a) Personal Data;
 - (b) Sensitive Personal Data;
 - (c) Special Categories of Personal Data;
 - (d) Criminal Offence Data; and/or
 - (e) which relates to national security; and
 - 1.8.2 for all other Confidential Information for a period of three (3) years after the expiry or earlier termination of this Contract.

2 Data protection

- 2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Suppliers are the Processor. The only processing that the Suppliers are authorised to undertake is listed in the Annex to this Schedule 5 of these Call-Off Terms and Conditions.
- 2.2 The Suppliers shall notify the Authority immediately if they consider that any of the Authority's instructions infringe the Data Protection Legislation.
- 2.3 The Suppliers 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:

- (a) a systematic description of the envisaged Processing operations and the purpose of the Processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Deliverables;
 - (c) an assessment of the risks to the rights and freedoms of natural persons; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 2.4 The Suppliers shall provide all reasonable assistance to the Authority if the outcome of the Data Protection Impact Assessment leads the Authority to consult the Information Commissioner.
- 2.5 The Suppliers shall, in relation to any Personal Data Processed in connection with their obligations under this Contract:
- 2.5.1 Process that Personal Data only in accordance with the instructions set out in the Annex to this Schedule 5 of these Call-Off Terms and Conditions, unless the Suppliers are required to do otherwise by Law. If the Suppliers are so required, they shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
 - 2.5.2 ensure that they have in place Protective Measures which are appropriate to protect against a Data Loss Event, which the Authority may reasonably reject (but failure to reject shall not amount to approval by the Authority of the adequacy of the Protective Measures), having taken account of the:
 - (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;
 - (c) state of technological development; and
 - (d) cost of implementing any measures;
 - 2.5.3 ensure that:
 - (a) the Supplier Personnel do not process the Personal Data except in accordance with this Contract (and in particular the Annex to this Schedule 5 of these Call-Off Terms and Conditions);
 - (b) they take all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who will have access to Personal Data and ensure that the Supplier Personnel:

- (A) are aware of and comply with the Suppliers' duties under this Clause 2 of this Schedule 5 of these Call-Off Terms and Conditions;
- (B) are subject to confidentiality undertakings with the Suppliers (or, where the Authority permits the Suppliers to sub-contract the processing of Personal Data pursuant to Clause 2.7 below, with the relevant sub-contractors) that are in writing and are legally enforceable in respect of the Personal Data processed under this Contract. Such confidentiality undertakings must as a minimum require each member of Supplier Personnel to keep all Personal Data Processed under this Contract confidential;
- (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in advance and in writing to do so by the Authority or as otherwise permitted by this Contract; and
- (D) have undergone adequate training in the use, care, protection and handling of Personal Data that enables them and the Suppliers to comply with their responsibilities under the Data Protection Legislation and this Contract. The Suppliers shall provide the Authority with evidence of the completion and maintenance of that training within three (3) Business Days of request by the Authority; and

2.5.4 not cause or allow Personal Data to be transferred outside the European Economic Area unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:

- (a) the Authority or the Suppliers have provided appropriate safeguards in relation to the transfer (in compliance with the Data Protection Legislation) as determined by the Authority;
- (b) the Data Subject has enforceable rights and effective legal remedies;
- (c) the Suppliers comply with their obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if they are not so required to comply, use their best endeavours to assist the Authority in meeting its obligations); and
- (d) the Suppliers comply with any reasonable instructions notified to them in advance by the Authority with respect to the processing of the Personal Data;

- 2.5.5 without prejudice to Clause 26.2.3 of Schedule 2 of these Call-Off Terms and Conditions, at the written direction of the Authority, delete or return the Personal Data (and any copies of it) to the Authority on termination of this Contract unless the Suppliers are required by Law to retain the Personal Data. If the Suppliers are asked to delete the Personal Data by the Authority, the Suppliers shall provide the Authority with evidence that the Personal Data has been securely deleted in accordance with the Data Protection Legislation within the period stated within the written direction of the Authority.
- 2.6 Taking into account the state of the art, the cost of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Suppliers shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including, but not limited to, as appropriate:
- 2.6.1 the pseudonymisation and encryption of Personal Data;
 - 2.6.2 the ability to ensure the ongoing confidentiality, integrity, availability and resilience of Processing systems and services;
 - 2.6.3 the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident; and
 - 2.6.4 a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of Processing.
- 2.7 Before permitting any Sub-processor of the Suppliers to Process Personal Data related to this Contract, the Suppliers must:
- 2.7.1 notify the Authority in writing of the intended Sub-processor and Processing, save where such intended Sub-processor has been specified in the Supplier's response to the Call-Off ITT ;
 - 2.7.2 obtain the written consent of the Authority save where such intended Sub-processor has been specified in the Supplier's response to the Call-Off ITT ;
 - 2.7.3 enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Clause 2 of this Schedule 5 of these Call-Off Terms and Conditions such that they apply to the Sub-processor and in respect of which the Authority is given the benefit of third party rights to enforce the same; and
 - 2.7.4 provide the Authority with such information regarding Sub-processor as the Authority may reasonably require.
- 2.8 The Suppliers shall ensure that the Sub-processor's access to the Personal Data terminates automatically on the termination of this Contract save that the Sub-processor may access the Personal Data in order to securely destroy it (or at the option

of the Authority return it) in accordance with the requirements of the Data Protection Legislation.

2.9 For the avoidance of doubt, the Suppliers shall remain fully liable for all acts and omissions of any Sub-processor that they appoint to Process Personal Data on their behalf in relation to this Contract.

2.10 Subject to Clause 2.11 of this Schedule 5 of these Call-Off Terms and Conditions below, the Suppliers shall notify the Authority immediately if they:

- (a) receive a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receive a request to rectify, block or erase any Personal Data;
- (c) receive any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receive any communication from the Information Commissioner or any other Regulatory or Supervisory Body in connection with Personal Data processed under this Contract;
- (e) receive a request from any third party for disclosure of Personal Data; or
- (f) become aware of an actual or suspected Data Loss Event.

2.11 The Suppliers' obligation to notify the Authority under Clause 2.10 above shall include the prompt provision of further information relevant to the request, complaint or communication or Data Loss Event to the Authority, as it becomes available.

2.12 The Suppliers shall not respond substantively to the requests, complaints or communications listed in Clause 2.10 above save that they may respond to a Regulatory or Supervisory Body following prior consultation with the Authority.

2.13 Taking into account the nature of the Processing, the Suppliers 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 2.10 of this Schedule 5 of these Call-Off Terms and Conditions above (and within the timescales reasonably required by the Authority) including by promptly providing:

- (a) the Authority with full details and copies of the complaint, communication or request;
- (b) 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;

- (c) such assistance as is reasonably requested by the Authority to enable the Authority to comply with other rights granted to individuals by the Data Protection Legislation including the right of rectification, the right to erasure, the right to object to Processing, the right to restrict Processing, the right to data portability and the right not to be subject to an automated individual decision (including profiling);
- (d) the Authority, at its request, with any Personal Data the Suppliers hold in relation to a Data Subject;
- (e) such assistance as is requested by the Authority following any Data Loss Event;
- (f) such assistance as is requested by the Authority in relation to informing a Data Subject about any Data Loss Event, including communication with the Data Subject;
- (g) such assistance as is 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.

- 2.14 The Suppliers shall take such prompt and proper remedial action regarding any Data Loss Event as is agreed with the Authority.
- 2.15 The Suppliers shall provide the Authority with copies of any requests from Data Subjects seeking to exercise their rights under the Data Protection Legislation.
- 2.16 The Suppliers shall provide the Authority with evidence to demonstrate their compliance with this Clause 2 of this Schedule 5 of these Call-Off Terms and Conditions and the Data Protection Legislation.
- 2.17 The Suppliers shall allow for audits of their Processing activity by the Authority or the Authority's designated auditor, who for the avoidance of doubt shall enter into obligations of confidentiality and non-use the same as those in this Schedule 5 of these Call Off Terms and Conditions and the audits shall be conducted during normal business hours having given advance written notice of no less than five (5) Business Days. The Suppliers shall provide all reasonable cooperation with such audit and accompany the Authority or its authorised representative(s) if requested. The Authority (or the Authority's designated auditor) shall not be permitted to conduct such an audit on more than 2 occasions in each 6 Month period, except with the agreement of the Suppliers (not to be unreasonably withheld or delayed).

- 2.18 The Suppliers shall each designate a Data Protection Officer if required by the Data Protection Legislation and shall notify the Authority of the name and contact details of any such officer.
- 2.19 The Suppliers shall maintain complete and accurate records and information to demonstrate their compliance with this Contract, the Data Protection Legislation and the Data Guidance. The Suppliers shall create and maintain a record of all categories of data Processing activities carried out under this Contract, containing:
- 2.19.1 the categories of Processing carried out under this Contract;
 - 2.19.2 where applicable, transfers of Personal Data to a third country or an international organisation, including the identification of that third country or international organisation and, where required to ensure compliance with the Data Protection Legislation, the documentation of suitable safeguards;
 - 2.19.3 a general description of the Protective Measures taken to ensure the security and integrity of the Personal Data Processed under this Contract; and
 - 2.19.4 a log recording the Processing of Personal Data in connection with this Contract comprising, as a minimum, details of the Personal Data concerned, how the Personal Data was Processed, where the Personal Data was Processed and the identity of any individuals who had access to the Personal Data.
- 2.20 The Suppliers shall ensure that the record of Processing maintained in accordance with Clause 2.19 of this Schedule 5 of these Call-Off Terms and Conditions is provided to the Authority within four (4) Business Days of a written request from the Authority.
- 2.21 This Contract does not relieve the Suppliers from any obligations conferred upon them by the Data Protection Legislation.
- 2.22 The Parties agree to take account of any guidance issued by the Information Commissioner. The Authority may on not less than thirty (30) Business Days' notice to the Suppliers amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner.
- 2.23 The Authority may, at any time on not less than 30 Business Days' notice, revise this Clause 2 of this Schedule 5 of these Call-Off Terms and Conditions by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme issued by the European Commission, the Information Commissioner's Office or any other competent authority (which shall apply when incorporated by attachment to this Contract).
- 2.24 Where the Suppliers are Processing Personal Data under or in connection with this Contract the Suppliers shall:
- 2.24.1 where such Personal Data is patient identifiable Personal Data ensure that such Personal Data is only:

- a) used for the purposes of providing direct care for the relevant person to whom such Personal Data relates; or
 - b) used as otherwise permitted by Law; and
- 2.24.2 where such Personal Data is Processed pursuant to a S.251 Authorisation, only Process such Personal Data in accordance with the terms of such S.251 Authorisation.
- 2.25 The Suppliers and the Authority shall ensure that Personal Data is safeguarded at all times in accordance with the Law. This obligation will include but not be limited to (if transferred electronically) only transferring Personal Data:
 - 2.25.1 if such transfer of Personal Data is essential, having regard to the purpose for which the transfer is conducted; and
 - 2.25.2 if such Personal Data is encrypted in accordance with any international data encryption standards for healthcare, and as otherwise required by those standards applicable to the Authority under any Law and Guidance (this includes, without limitation, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).
- 2.26 Where, as a requirement of this Contract, the Suppliers are Processing Personal Data (to include, without limitation, Special Categories of Personal Data and Criminal Offence Data) relating to patients and/or service users as part of the Services, the Suppliers shall:
 - 2.26.1 comply with the requirements of the Data Security and Protection Toolkit;
 - 2.26.2 nominate an information governance lead able to communicate with the Suppliers' board of directors or equivalent governance body, who will be responsible for information governance and from whom the Suppliers' board of directors or equivalent governance body will receive regular reports on information governance matters including, but not limited to, details of all incidents of data loss and breach of confidence;
 - 2.26.3 put in place and maintain policies that describe individual personal responsibilities for handling Personal Data and apply those policies vigorously; and
 - 2.26.4 where appropriate, have a system in place and a policy for the recording of any telephone calls in relation to the Services, including the retention and disposal of those recordings.
- 2.27 The Suppliers shall assist the Authority in ensuring compliance with the obligations set out at Articles 32 to 36 of the GDPR and equivalent provisions implemented into Law, taking into account the nature of the Processing and the information available to the Suppliers.

- 2.28 The Suppliers shall assist the Authority by taking appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Authority's obligation to respond to requests for exercising rights granted to individuals by the Data Protection Legislation.
- 2.29 The Suppliers warrant and undertake that they will Process Personal Data in accordance with all Data Protection Legislation, any Data Guidance and this Contract and in particular that they have in place Protective Measures that are sufficient to ensure that the Processing of any Personal Data complies with the Data Protection Legislation and ensures that the rights of Data Subjects are protected. The Suppliers shall not do or omit to do anything that may put the Authority in breach of the Data Protection Legislation or the Data Guidance.
- 2.30 The Suppliers shall indemnify and keep the Authority indemnified against, any loss, damages, costs, fines, penalties, expenses (including without limitation legal costs and expenses), claims or proceedings whatsoever or howsoever arising from the Suppliers' unlawful or unauthorised Processing, misuse destruction and/or damage to Personal Data in connection with this Contract or any other breach of the Suppliers' obligations relating to Personal Data under this Contract. In the event that the Authority and the Suppliers are jointly liable for any such loss, damages, costs, fines, penalties, expenses, claims or proceedings under the Data Protection Legislation, the Suppliers' liability under this Clause 2.27 of this Schedule 5 of these Call-Off Terms and Conditions shall be reduced by a fair and reasonable amount proportionate to the Authority's responsibility for such loss, damages, costs, fines, penalties, expenses, claims or proceedings, as may be agreed between the Parties or, in the absence of such agreement, as determined by an Expert in accordance with Clause 32 of Schedule 2 of these Call-Off Terms and Conditions.

3 Freedom of Information and Transparency

- 3.1 The Parties acknowledge the obligations, duties and commitments of Contracting Authorities under the FOIA, Codes of Practice and Environmental Regulations and shall give each other all reasonable assistance as appropriate or necessary to enable compliance with those duties.
- 3.2 The Suppliers shall assist and cooperate with the Authority to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Suppliers agree:
- 3.2.1 that this Contract and any recorded information held by the Suppliers on the Authority's behalf for the purposes of this Contract are subject to the obligations, duties and commitments of the Authority under the FOIA, Codes of Practice and Environmental Regulations;
- 3.2.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received

- under the FOIA, Codes of Practice and Environmental Regulations is a decision solely for the Authority;
- 3.2.3 that where the Suppliers receive a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Suppliers themselves are subject to the FOIA, Codes of Practice and Environmental Regulations it will liaise with the Authority as to the contents of any response before a response to a request is issued and will promptly (and in any event within two (2) Business Days) provide a copy of the request and any response to the Authority;
- 3.2.4 that where the Suppliers receive a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Suppliers are not themselves subject to the FOIA, Codes of Practice and Environmental Regulations, they will not respond to that request (unless directed to do so by the Authority) and will promptly (and in any event within two (2) Business Days) transfer the request to the Authority;
- 3.2.5 that the Authority, acting in accordance with the Codes of Practice issued and revised from time to time under both section 45 of FOIA, and regulation 16 of the Environmental Regulations, may disclose information concerning the Suppliers and this Contract; and
- 3.2.6 to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA and the Environmental Regulations) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of FOIA, and providing copies of all information requested by the Authority within five (5) Business Days of that request and without charge.
- 3.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations, the content of this Contract is not Confidential Information.
- 3.4 Notwithstanding any other term of this Contract, the Suppliers consent to the publication of this Contract in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations.
- 3.5 In preparing a copy of this Contract for publication under Clause 3.4 of this Schedule 5 of these Call-Off Terms and Conditions, the Authority may consult with the Suppliers to inform the Authority's decision making regarding any redactions but the final decision in relation to the redaction of information will be at the Authority's absolute discretion.
- 3.6 The Suppliers shall assist and cooperate with the Authority to enable the Authority to publish this Contract.

- 3.7 Where any information is held by any subcontractor of the Suppliers in connection with this Contract, the Suppliers shall procure that such subcontractor shall comply with the relevant obligations set out in Clause 3 of this Schedule 5 of these Call-Off Terms and Conditions, as if such subcontractor were the Suppliers.

4 Information Security

- 4.1 The Suppliers shall ensure that appropriate safety and security systems and procedures are maintained and enforced to prevent unauthorised access or damage to the IT Environment and related networks or resources, and the Authority Data, in accordance with Good Industry Practice
- 4.2 Without limitation to any other information governance requirements set out in this Schedule 5 of these Call-Off Terms and Conditions, the Suppliers shall:
- 4.2.1 notify the Authority immediately about any Data Loss Event or any other information security breaches or near misses (including without limitation any potential or actual breaches of confidentiality or actual information security breaches) in line with the Authority's information governance Policies; and
 - 4.2.2 make available to the Authority all information necessary to demonstrate compliance with the requirements of this Schedule 5 of these Call-Off Terms and Conditions, and to fully cooperate with any audits or investigations conducted by the Authority or auditors or investigators appointed by the Authority.
- 4.3 The Suppliers' notification to the Authority of an information security breach or near miss pursuant to Clause 4.2 of this Schedule 5 of these Call-Off Terms and Conditions shall be without prejudice to the Suppliers' other obligations under this Schedule 5 of these Call-Off Terms and Conditions and the Suppliers shall use all reasonable endeavours to promptly remedy any such breach or to effectively mitigate against the reoccurrence of any near miss.
- 4.4 Where required in accordance with the Specification and Call-Off ITT and/or the Order Form, the Suppliers will ensure that they put in place and maintain (in accordance with Schedule 6 of these Call-Off Terms and Conditions) an Information Security Management Plan appropriate to the Deliverables and the obligations placed on the Suppliers under this Contract and acceptable to the Authority acting reasonably. The Suppliers shall ensure that such plan is consistent with any relevant Policies, Guidance, Good Industry Practice and with any relevant quality standards as may be set out in the DPS Framework Agreement and/or Call-Off ITT and/or the Order Form. The Suppliers shall provide the Authority with a written copy of the Information Security Management Plan at any point during the Term within five (5) Business Days of any request by the Authority for the Suppliers to do so.

- 4.5 Where required by the Specification, the Call-Off ITT and/or the Order Form, the Suppliers shall obtain and maintain certification under the HM Government Cyber Essentials Plus Scheme at the level specified by the relevant documents.

5 Authority Data and Security Requirements

- 5.1 The Suppliers shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 5.2 The Suppliers shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Suppliers of their obligations under this Contract, as permitted under this Contract, or as otherwise expressly authorised in writing by the Authority.
- 5.3 To the extent that Authority Data is held and/or processed by the Suppliers, the Suppliers shall supply that Authority Data to the Authority as requested by the Authority in the format specified in the Specification and/or the Order Form.
- 5.4 The Suppliers shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any subcontractor.
- 5.5 The Suppliers shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Business Continuity Plan. The Suppliers shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than six (6) monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 5.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Baseline Security Requirements.
- 5.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of any act or omission of the Suppliers so as to be unusable, the Authority may:
- 5.7.1 require the Suppliers (at the Suppliers' expense) to restore or procure the restoration of Authority Data and the Supplier shall do so as soon as practicable but not later than five (5) Business Days from the date of receipt of the Authority's notice; and/or
 - 5.7.2 itself restore or procure the restoration of Authority Data, and shall be repaid by the Suppliers any reasonable expenses incurred in doing so.
- 5.8 If at any time the Suppliers suspect or have reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then

the Suppliers shall notify the Authority immediately and inform the Authority of the remedial action the Suppliers propose to take.

- 5.9 The Suppliers shall comply with the requirements of Schedule 6 (*Security Management*).
- 5.10 The Authority shall notify the Suppliers of any changes or proposed changes to the Baseline Security Requirements that it requires at any point during the term and the Suppliers shall promptly implement such requirements using all reasonable endeavours.
- 5.11 If the Suppliers believe that a change or proposed change to the Baseline Security Requirements will have a material and unavoidable cost implication to the Deliverables it may submit a Change Request. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Contract Price shall then be agreed in accordance with the Change Control Process.
- 5.12 Until and/or unless a change to the Contract Price is agreed by the Authority pursuant to Clause 5.11 of this Schedule 5 of these Call-Off Terms and Conditions the Suppliers shall continue to perform the Services in accordance with their existing obligations.

6 Malicious Software

- 6.1 The Suppliers shall ensure that the Supplier System is designed, maintained and upgraded at all times so as to minimise the risk of attack by Malicious Software, including without limitation that the Suppliers shall, at all times, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software in the IT Environment (or as otherwise agreed by the Parties).
- 6.2 Notwithstanding Clause 6.1 of this Schedule 5 of these Call-Off Terms and Conditions, if Malicious Software is found in the IT Environment, the Parties shall cooperate 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 Deliverables to their desired operating efficiency.
- 6.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 6.2 of this Schedule 5 of these Call-Off Terms and Conditions shall be borne by the Parties as follows:
 - 6.3.1 by the Suppliers where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Suppliers or the Authority Data (whilst the Authority Data was under the control of the Suppliers) unless the Suppliers can demonstrate that such Malicious Software was

present and not quarantined or otherwise identified by the Authority when provided to the Suppliers; and

6.3.2 otherwise by the Authority.

6.4 Except for liability within the scope of the indemnity in Clause 2.30 of this Schedule 5 of these Call-Off Terms and Conditions, the Suppliers shall indemnify the Authority for any and all losses, damages, costs, expenses (including reasonable professional advisers' costs and disbursements, and reasonable legal costs and disbursements) arising from or incurred by reason of any breach by the Suppliers of the Suppliers' obligations under this Schedule 5 of these Call-Off Terms and Conditions.

7 Use of Anonymised and Pseudonymised Data

7.1 Without prejudice to the Suppliers' compliance with the other provisions of this Schedule 5 of these Call-Off Terms and Conditions, the Suppliers shall comply with this Clause 7.1 of this Schedule 5 of these Call-Off Terms and Conditions with respect to their processing (which for the avoidance of doubt shall include (without limitation) use, storage or transfer) of De-Identified Data (as defined below).

7.2 For the avoidance of doubt, the De-Identified Data shall be Authority Data and the Suppliers shall comply with all relevant provisions of the Call-Off Terms and Conditions, including without limitation, this Schedule 5 of the Call-Off Terms and Conditions, in respect of such Authority Data. The provisions of this clause 7 are in addition to and are not intended to replace any of the provisions outlined in clause 2 of this Schedule 5 of these Call-Off Terms and Conditions. In the event of any conflict between this clause 7 and in clause 2 of this Schedule 5, the provisions of clause 2 of this Schedule 5 shall prevail.

7.3 In this Clause 7, the following terms shall have the meaning given:

"Anonymised Data" means Personal Data that has been anonymised to a standard of anonymisation that is (a) at least the standard set out in the NHS information standard ISB 1523 (Anonymisation Standard for Publishing Health and Social Care Data) or any amended version or replacement of such standard issued by a competent NHS body; or (b) such other standard of anonymisation for publication purposes as the Authority approves in writing;

"Authorised Processing" shall mean the use of the De-Identified Data in connection with the Deliverables as set out in Annex 7 of Schedule 4 (Order Form) to these Call-Off Terms and Conditions.;

"De-Identified Data" means Anonymised Data and/or Pseudonymised Data;

"Pseudonymised Data" means data derived from Personal Data controlled by the Authority by the use of the Pseudonymisation Keys such that the individual(s) to whom the Personal Data relates cannot be identified without the use of the relevant Pseudonymisation Key; and

“Pseudonymisation Keys” shall mean the information and/or tools to be used for the purpose of pseudonymising and re-identifying Personal Data for use in connection with the Deliverables.

7.4 For the avoidance of doubt, the Suppliers shall process any Anonymised Data only as required for the Deliverables and solely as set out in the Authorised Processing.

7.5 The Suppliers shall, and shall ensure that any applicable Sub-processor shall:

7.5.1 process the De-Identified Data:

(a) at all times solely for and in accordance with the Authorised Processing and for no other purpose without the prior written consent of the Authority;

(b) in accordance with:

A any applicable provisions of the Data Protection Legislation;

B the NHS Information Governance Toolkit or any successor NHS Standard; and

C any applicable guidance issued by the Information Commission or other guidance issued to NHS organisations in England;

7.5.2 implement appropriate technical and organisational measures to safeguard the De-Identified Data from unauthorised or unlawful processing or accidental loss, destruction or damage;

7.5.3 process the De-Identified Data within the European Economic Area;

7.5.4 not attempt to access or use the Pseudonymisation Key used to pseudonymise the Pseudonymised Data;

7.5.5 not attempt to re-identify any of the De-Identified Data;

7.5.6 ensure that their employees are made aware of their obligations in respect of the De-Identified Data with regard to its security and protection and that such employees are subject to or required to enter into binding written obligations to maintain the levels of security and protection for the De-Identified Data;

7.5.7 use reasonable endeavours to monitor their employee's and any applicable Sub-processor's compliance with their obligations in respect of the De-Identified Data and in the event of the breach by an employee take such enforcement action as is appropriate and necessary in accordance with its disciplinary policy;

7.5.8 not divulge the De-Identified Data (in whole or in part) directly or indirectly to any person without the express written permission of the Authority, except to those employees engaged in accordance with this Clause 7 of this Schedule 5 of these Call-Off Terms and Conditions; and

- 7.5.9 comply with its further obligations as set out in Annex 7 of Schedule 4 (Order Form) to these Call-Off Terms and Conditions
- 7.6 If the Suppliers become aware of any actual or potential breach of security, loss of De-Identified Data or other material incident which may affect the confidentiality, accuracy or integrity of the De-Identified Data however caused, they shall promptly, and in any event within twenty-four (24) hours of becoming aware thereof, notify the Authority outlining the steps they have taken or intend to take to rectify such breach or loss and carry out such further actions as are reasonably required by the Authority.
- 7.7 If a breach of security, loss of De-Identified Data or other incident which may affect the confidentiality, accuracy or integrity of the De-Identified Data results in the need to notify the Information Commissioner, the Department of Health or any other Regulatory or Supervisory Body, the Suppliers shall (and shall ensure that their Sub-processor shall) assist the Authority in providing any information reasonably requested and co-operating fully with any investigation conducted by the Information Commissioner or any other such body in respect of such notification.
- 7.8 The Suppliers shall not and shall ensure that their Sub-Processor's shall not take any action in respect of any De-Identified Data that would identify, or could reasonably be expected to lead to the identification or possible identification of, any individual whose Personal Data has been used to derive the Pseudonymised Data (including by using a de-pseudonymisation key or by combining such De-Identified Data with other data relating to such individual), other than as permitted by the Authorised Processing or otherwise in accordance with the written instructions of the Authority.
- 7.9 The Suppliers shall indemnify, keep indemnified and hold the Authority harmless for any loss, costs or damage the Authority suffers in respect of:
- 7.9.1 any third party claims for loss and/or damage (including reasonable costs and expenses incurred as a result of such claims) against the Authority; and/or
- 7.9.2 any fines or other monetary penalty notices issued to, levied against or to which the Authority is made subject by the Information Commissioner or any other Regulatory or Supervisory Body (including any reasonable costs and expenses incurred as a result);

in either case to the extent caused by the Suppliers (which shall expressly include the actions or omissions of Suppliers' employees, agents and Sub-Processors, and their Sub-contractors employees, agents and other sub-contractors) processing the De-Identified Data otherwise than in accordance with:

- (a) the Authorised Processing; and/or
- (b) the written instructions of the Authority; and/or
- (c) the law applicable to the Suppliers.

- 7.10 The indemnity in clause 7.9 of this Schedule 5 of these Call-Off Terms and Conditions shall not be subject to any limitation or exclusion of liability set out on the Call-Off Terms and Conditions.
- 7.11 The Authority may at any time on written notice require the Suppliers (which shall include any applicable Sub-Processor) to stop processing the De-Identified Data, or any part thereof and the Authority shall promptly comply, and shall ensure that its Sub-processor shall promptly comply, with any such notice.
- 7.12 On termination or expiry of these Call-Off Terms and Conditions, or on written notice from the Authority at any time, the Suppliers shall and shall procure that any third party with whom the Suppliers have shared any applicable De-Identified Data shall as promptly as reasonably practicable comply with the data retention and exit strategy obligations set out in the Authorised Processing.

Annex to Schedule 5

TO BE COMPLETED AT ANNEX 7 OF SCHEDULE 4 (THE ORDER FORM) OF THESE CALL-OFF TERMS AND CONDITIONS.

1. The Suppliers are only authorised to Process Personal Data in accordance with this Annex.
2. The Suppliers shall comply with any further written instructions with respect to Processing from the Authority from time to time.
3. Any such further instructions shall be incorporated into this Annex.

Description	Data
Subject matter of the processing	[This should be a high level, short description of what the processing is about i.e. its subject matter]
Duration of the processing	[Clearly set out the duration of the processing including dates]
Nature and purposes of the processing	<p>[Please be as specific as possible, but make sure that you cover all intended purposes.]</p> <p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.]</p>
Type of Personal Data	[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.]
Categories of Data Subject	[Examples include patients, members of the public users of a particular website etc.]
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	[Describe how long the data will be retained for, how it will be returned or destroyed.]

Schedule 6 of these Call-Off Terms and Conditions

Security Management

1 DEFINITIONS

In this Schedule 6 of these Call-Off Terms and Conditions, the following definitions shall apply:

“Breach of Security”	the occurrence of: (a) any unauthorised access to or use of the Deliverables, the Premises and Locations, the Sites, the Supplier System, the Authority System (to the extent that it is under the control of the Suppliers) and/or any IT, information or data (including the Confidential Information and the Authority Data) used by the Authority and/or the Suppliers in connection with these Call-Off Terms and Conditions; and/or (b) the loss, corruption and/or unauthorised disclosure of any information or data (including the Confidential Information and the Authority Data), including any copies of such information or data, used by the Authority and/or the Suppliers in connection with these Call-Off Terms and Conditions, in either case as more particularly set out in the Security requirements in relevant Order Form and the Baseline Security Requirements;
“CHECK Scheme”	the scheme for penetration testing of data processing systems operated by the National Cyber Security Centre (NCSC);
“ISMS”	the information security management system and processes developed by the Supplier in accordance with Clause 3 of this Schedule 6 as updated from time to time in accordance with this Schedule 6 of these Call-Off Terms and Conditions;
“IT”	information and communications technology;
“NCSC”	means the National Cyber Security Centre;
“Security Policy Framework”	the Security Policy Framework published by the Cabinet Office as updated from time to time including any details notified by the Authority to the Supplier;
“Security Tests”	tests carried out where relevant in accordance with the CHECK Scheme or to an equivalent standard to validate the ISMS and security of all relevant processes, systems, incident response plans, patches to vulnerabilities and mitigations to Breaches of Security;
“Sites”	any premises (including the Premises and Locations, the Supplier’s premises or third party premises): (a) from, to or at which:

	<p>(i) the Services are (or are to be) provided; or</p> <p>(ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or</p> <p>(b) where:</p> <p>(i) any part of the Supplier System is situated; or</p> <p>(ii) any physical interface with the Authority System takes place.</p>
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2 INTRODUCTION

- 2.1 The Parties acknowledge that the purpose of the ISMS and the Information Security Management Plan are to ensure a good organisational approach to security under which the specific requirements of these Call-Off Terms and Conditions will be met.
- 2.2 The Parties shall each appoint a representative to be responsible for security.
- 2.3 The Authority shall clearly articulate its high level security requirements so that the Supplier can ensure that the ISMS, security related activities and any mitigations are driven by these fundamental needs.
- 2.4 All Parties shall provide a reasonable level of access to any members of their personnel for the purposes of designing, implementing and managing security.
- 2.5 The Suppliers shall perform a technical risk assessment on each aspect of the Deliverables to be supplied and be able to demonstrate what controls are in place to address any risks identified. The Suppliers shall use as a minimum Good Industry Practice in the day to day operation of any system holding, transferring or processing Authority Data and any system that could directly or indirectly have an impact on that information, and shall ensure that Authority Data remains under the effective control of the Suppliers at all times.
- 2.6 The Suppliers shall ensure the up-to-date maintenance of a security policy relating to the operation of its own organisation and systems and on request shall supply this document as soon as practicable to the Authority.
- 2.7 The Authority and the Suppliers acknowledge that information security risks are shared between the Parties and that a compromise of either the Suppliers' or the Authority's security provisions in relation to the Supplier System and/or the Authority System represents an unacceptable risk to the Authority requiring immediate communication and co-operation between the Parties.
- 2.8 The Suppliers shall comply with the requirements of the 2017/18 Data Security and Protection Requirements (which may be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/655876/171027_2017-18_Data_Security_Requirements.pdf and as may be updated or amended from time to time) as applicable to the subject matter of the Contract.

3 ISMS

- 3.1 By the date specified in the Implementation Plan the Suppliers shall develop and submit to the Authority for the Authority's approval in accordance with Clause 3.6 of Schedule 6 of these Call-Off Terms and Conditions an ISMS (information security management system) for the purposes of this Contract, which:
- 3.1.1 shall have been tested in accordance with such testing process as shall be stipulated by the Authority; and
 - 3.1.2 shall comply with the requirements of Clause 3.3 to 3.5 of this Schedule 6 of these Call-Off Terms and Conditions.
- 3.2 The Suppliers acknowledge that the Authority places great emphasis on the reliability of the Deliverables and confidentiality, integrity and availability of information and consequently on the security provided by the ISMS and that it shall be responsible for the effective performance of the ISMS.
- 3.3 The ISMS shall:
- 3.3.1 unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Premises and Locations, the Sites, the Supplier System, the Authority System (to the extent that it is under the control of the Supplier) and any IT, information and data (including the Authority Confidential Information and the Authority Data) to the extent used by the Authority or the Supplier in connection with these Call-Off Terms and Conditions;
 - 3.3.2 meet the relevant standards in ISO/IEC 27001 and ISO/IEC 27002 in accordance with Clause 7 of this Schedule 6 of these Call-Off Terms and Conditions; and
 - 3.3.3 at all times provide a level of security which:
 - (a) is in accordance with Law and these Call-Off Terms and Conditions;
 - (b) as a minimum demonstrates Good Industry Practice;
 - (c) complies with the Baseline Security Requirements;
 - (d) addresses issues of incompatibility with the Supplier's own organisational security policies;
 - (e) meets any specific security threats of immediate relevance to the Services and/or Authority Data;
 - (f) complies with the security requirements as set out in the relevant Order Form;
 - (g) complies with the Authority's IT policies as a minimum; and

- (h) is in accordance with the Security Policy Framework;
 - 3.3.4 document the security incident management processes and incident response plans;
 - 3.3.5 document the vulnerability management policy including processes for identification of system vulnerabilities and assessment of the potential impact on the Services of any new threat, vulnerability or exploitation technique of which the Supplier becomes aware, prioritisation of security patches, testing of security patches, application of security patches, a process for Authority approvals of exceptions, and the reporting and audit mechanism detailing the efficacy of the patching policy; and
 - 3.3.6 be certified by (or by a person with the direct delegated authority of) a Suppliers' main board representative, being the Chief Security Officer, Chief Information Officer, Chief Technical Officer or Chief Financial Officer (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Information Security Management Plan).
- 3.4 Subject to Clause 5 (Authority Data and Security Requirements) of Schedule 5 of these Call-Off Terms and Conditions the references to standards, guidance and policies set out in Clause 3.3 of this Schedule 6 of these Call-Off Terms and Conditions shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Suppliers from time to time.
- 3.5 In the event that the Suppliers become aware of any inconsistency in the provisions of the standards, guidance and policies set out in Clause 3.3 of this Schedule 6 of these Call-Off Terms and Conditions, the Suppliers shall immediately notify the Authority representative of such inconsistency and the Authority representative shall, as soon as practicable using his absolute discretion, notify the Suppliers which provision the Suppliers shall comply with. The determination of the Authority representative shall be binding on the Parties.
- 3.6 If the ISMS submitted to the Authority pursuant to Clause 3.1 of this Schedule 6 of these Call-Off Terms and Conditions is approved by the Authority, it shall be adopted by the Suppliers immediately and thereafter operated and maintained in accordance with this of this Schedule 6 of these Call-Off Terms and Conditions. If the ISMS is not approved by the Authority, the Suppliers shall amend it within 10 Business Days of a notice of non-approval from the Authority and re-submit it to the Authority for approval. The Parties shall use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than 15 Business Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the ISMS following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the Authority pursuant to this Clause 3 may be unreasonably withheld or delayed. However any failure to approve the ISMS on the grounds that it does not comply with any of the requirements set out in Clauses 3.3 to 3.5 of this Schedule 6 of these Call-Off Terms and Conditions shall be deemed to be reasonable.

- 3.7 Approval by the Authority of the ISMS pursuant to Clause 3.6 of this Schedule 6 of these Call-Off Terms and Conditions or of any change to the ISMS shall not relieve the Suppliers of its obligations under this Schedule.

4 INFORMATION SECURITY MANAGEMENT PLAN

- 4.1 Within 20 Business Days after the Effective Date, the Supplier shall prepare and submit to the Authority for approval in accordance with Clause 4.3 of this Schedule 6 of these Call-Off Terms and Conditions a fully developed, complete and up-to-date Information Security Management Plan which shall comply with the requirements of Clause 4.2 of this Schedule 6 of these Call-Off Terms and Conditions.

- 4.2 The Information Security Management Plan shall:

- 4.2.1 be based on the initial Information Security Management Plan set out in Annex 5 to Schedule 4 of these Call-Off Terms and Conditions;
- 4.2.2 comply with the Baseline Security Requirements;
- 4.2.3 identify the necessary delegated organisational roles defined for those responsible for ensuring this Schedule 6 of these Call-Off Terms and Conditions is complied with by the Suppliers;
- 4.2.4 detail the process for managing any security risks from subcontractors and third parties authorised by the Authority with access to the Deliverables, processes associated with the delivery of the Deliverables, the Premises and Locations, the Sites, the Supplier System, the Authority System (to extent that it is under the control of the Suppliers) and any IT, Information and data (including the Authority Confidential Information and the Authority Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Deliverables;
- 4.2.5 unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Deliverables and all processes associated with the delivery of the Deliverables, including the Premises and Locations, the Sites, the Supplier System, the Authority System (to the extent that it is under the control of the Supplier) and any IT, Information and data (including the Authority Confidential Information and the Authority Data) to the extent used by the Authority or the Suppliers in connection with these Call-Off Terms and Conditions or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Deliverables;
- 4.2.6 set out the security measures to be implemented and maintained by the Suppliers in relation to all aspects of the Deliverables and all processes associated with the delivery of the Deliverables and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Deliverables comply with the provisions of this Schedule 6 of these Call-Off Terms and Conditions (including the requirements set out in Clause 3.3 of this Schedule 6 of these Call-Off Terms and Conditions);

- 4.2.7 demonstrate that the Supplier Solution has minimised the Authority and Suppliers effort required to comply with this Schedule 6 of these Call-Off Terms and Conditions through consideration of available, appropriate and practicable pan-government accredited services;
 - 4.2.8 set out the plans for transiting all security arrangements and responsibilities from those in place at the Effective Date to those incorporated in the ISMS at the date set out in the Implementation Plan for the Suppliers to meet the full obligations of the security requirements set out in the Specification and this Schedule 6 of these Call-Off Terms and Conditions;
 - 4.2.9 set out the scope of the Authority System that is under the control of the Suppliers;
 - 4.2.10 be structured in accordance with ISO/IEC 27001 and ISO/IEC 27002, cross-referencing if necessary to other Schedules of these Call-Off Terms and Conditions which cover specific areas included within those standards;
 - 4.2.11 be written in plain English in language which is readily comprehensible to the staff of the Suppliers and the Authority engaged in the Deliverables and shall reference only documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule 6 of these Call-Off Terms and Conditions; and
 - 4.2.12 be in accordance with the Security Policy Framework.
- 4.3 If the Information Security Management Plan submitted to the Authority pursuant to Clause 4.1 of Schedule 6 of these Call-Off Terms and Conditions is approved by the Authority, it shall be adopted by the Suppliers immediately and thereafter operated and maintained in accordance with this Schedule 6 of these Call-Off Terms and Conditions. If the Information Security Management Plan is not approved by the Authority, the Suppliers shall amend it within 10 Business Days of a notice of non-approval from the Authority and re-submit it to the Authority for approval. The Parties shall use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than 15 Business Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the Information Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the Authority pursuant to this Clause 4.3 of this Schedule 6 of these Call-Off Terms and Conditions may be unreasonably withheld or delayed. However any failure to approve the Information Security Management Plan on the grounds that it does not comply with the requirements set out in Clause 4.2 of this Schedule 6 of these Call-Off Terms and Conditions shall be deemed to be reasonable.
- 4.4 Approval by the Authority of the Information Security Management Plan pursuant to Clause 4.3 of this Schedule 6 of these Call-Off Terms and Conditions or of any change or amendment to the Information Security Management Plan shall not relieve the Supplier of its obligations under this Schedule 6 of these Call-Off Terms and Conditions.

5 AMENDMENT AND REVISION OF THE ISMS AND SECURITY MANAGEMENT PLAN

5.1 The ISMS and Information Security Management Plan shall be fully reviewed and updated by the Suppliers at least annually to reflect:

5.1.1 emerging changes in Good Industry Practice;

5.1.2 any change or proposed change to the IT Environment, the Deliverables and/or associated processes;

5.1.3 any new perceived or changed security threats; and

5.1.4 any reasonable change in requirement requested by the Authority.

5.2 The Suppliers shall provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Information Security Management Plan at no additional cost to the Authority. The results of the review shall include, without limitation:

5.2.1 suggested improvements to the effectiveness of the ISMS;

5.2.2 updates to the risk assessments;

5.2.3 proposed modifications to respond to events that may impact on the ISMS including the security incident management process, incident response plans and general procedures and controls that affect information security; and

5.2.4 suggested improvements in measuring the effectiveness of controls.

5.3 Subject to Clause 5.4 of this Schedule 6 of these Call-Off Terms and Conditions, any change which the Suppliers proposes to make to the ISMS or Information Security Management Plan (as a result of a review carried out pursuant to Clause 5.1 of this Schedule 6 of these Call-Off Terms and Conditions, an Authority request, a change to the Specification or otherwise) shall be subject to the Change Control Process and shall not be implemented until approved in writing by the Authority.

5.4 The Authority may, where it is reasonable to do so, approve and require changes or amendments to the ISMS or Information Security Management Plan to be implemented on timescales faster than set out in the Change Control Process but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Change Control Process for the purposes of formalising and documenting the relevant change or amendment for the purposes of these Call-Off Terms and Conditions.

6 SECURITY TESTING

6.1 The Suppliers shall conduct relevant Security Tests from time to time (and at least annually across the scope of the ISMS) and additionally after significant architectural changes to the IT Environment or after any change or amendment to the ISMS, (including security incident management processes and incident response plans) or the Information Security Management Plan. Security Tests shall be designed and implemented by the Suppliers so as to minimise the impact on the delivery of the Deliverables and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the

Authority. Subject to compliance by the Suppliers with the foregoing requirements, if any Security Tests adversely affect the Suppliers' ability to deliver the Deliverables so as to meet the KPIs, the Suppliers shall be granted relief against any resultant under-performance for the period of the Security Tests.

- 6.2 The Authority shall be entitled to have a representative to witness the conduct of the Security Tests whether remotely or in person. For the avoidance of doubt this right of the Authority shall not require the Suppliers to conduct any such Security Test at a location or time convenient to such Authority representative. The Suppliers shall provide the Authority with the results of such tests (in a form approved by the Authority in advance) as soon as practicable after completion of each Security Test. Where the representative is not an employee of the Authority, the Suppliers and the representative (or its employer) shall enter into a confidentiality agreement on the same terms of confidentiality and non-use as set out in Schedule 5 of these Call-Off Terms and Conditions.
- 6.3 Without prejudice to any other right of audit or access granted to the Authority pursuant to these Call-Off Terms and Conditions, the Authority and/or its authorised representatives shall be entitled, at any time upon giving reasonable notice to the Suppliers, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Suppliers' compliance with the ISMS and the Information Security Management Plan. The Authority may notify the Suppliers of the results of such tests after completion of each such test. If any such Authority test adversely affects the Suppliers' ability to deliver the Deliverables so as to meet the KPIs, the Suppliers shall be granted relief against any resultant underperformance for the period of the Authority test.
- 6.4 Where any Security Test carried out pursuant to Clauses 6.1 to 6.3 (inclusive) of this Schedule 6 of these Call-Off Terms and Conditions reveals any actual or potential Breach of Security or weaknesses (including un-patched vulnerabilities, poor configuration and/or incorrect system management), the Suppliers shall promptly notify the Authority of any changes to the ISMS and to the Information Security Management Plan (and the implementation thereof) which the Suppliers propose to make in order to correct such failure or weakness. Subject to the Authority's prior written approval, the Suppliers shall implement such changes to the ISMS and the Information Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Information Security Management Plan is to address a non-compliance with the Baseline Security Requirements or security requirements (as set out in the Specification) or the requirements of this Schedule 6 of these Call-Off Terms and Conditions, the change to the ISMS or Information Security Management Plan shall be at no cost to the Authority.
- 6.5 If any repeat Security Test carried out pursuant to Clause 6.4 of this Schedule 6 of these Call-Off Terms and Conditions reveals an actual or potential Breach of Security exploiting the same root cause failure, such circumstance shall constitute a material breach entitling the Authority to terminate the Contract (or at the Authority's election part of the Contract) pursuant to Clause 22.2 of Schedule 2 of these Call-Off Terms and Conditions.

7 ISMS COMPLIANCE

- 7.1 The Authority shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001, the specific security requirement set out in the Specification and the Baseline Security Requirements.
- 7.2 If, on the basis of evidence provided by such audits, it is the Authority's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001, the specific security requirements set out in the Specification and/or the Baseline Security Requirements is not being achieved by the Supplier, then the Authority shall notify the Suppliers of the same and give the Suppliers a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to implement any necessary remedy. If the Suppliers do not become compliant within the required time then the Authority shall have the right to obtain an independent audit against these standards in whole or in part.
- 7.3 If, as a result of any such independent audit as described in Clause 7.2 of this Schedule 6 of these Call-Off Terms and Conditions the Suppliers are found to be non-compliant with the principles and practices of ISO/IEC 27001, any specific security requirements set out in Specification and/or the Baseline Security Requirements then the Suppliers shall, at their own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Authority in obtaining such audit.

8 BREACH OF SECURITY

- 8.1 Either Party shall notify the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any Breach of Security or attempted Breach of Security.
- 8.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in Clause 8.1 of this Schedule 6 of these Call-Off Terms and Conditions, the Suppliers shall:
- 8.2.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by the Authority) necessary to:
- (a) minimise the extent of actual or potential harm caused by any Breach of Security;
 - (b) remedy such Breach of Security to the extent possible and protect the integrity of the IT Environment to the extent within its control against any such Breach of Security or attempted Breach of Security;
 - (c) apply a tested mitigation against any such Breach of Security or attempted Breach of Security and, provided that reasonable

testing has been undertaken by the Supplier, if the mitigation adversely affects the Supplier's ability to deliver the Services so as to meet the Target Performance Levels, the Supplier shall be granted relief against any resultant under-performance for such period as the Authority, acting reasonably, may specify by written notice to the Supplier;

- (d) prevent a further Breach of Security or attempted Breach of Security in the future exploiting the same root cause failure; and
- (e) supply any requested data to the Authority or the Computer Emergency Response Team for UK Government ("GovCertUK") on the Authority's request within 2 Business Days and without charge (where such requests are reasonably related to a possible incident or compromise); and
- (f) as soon as reasonably practicable provide to the Authority full details (using the reporting mechanism defined by the ISMS) of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Authority.

8.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the ISMS with the Baseline Security Requirements or security requirements (as set out in the Specification or the requirements of this Schedule 6 of these Call-Off Terms and Conditions), then any required change to the ISMS shall be at no cost to the Authority.

9 VULNERABILITES AND CORRECTIVE ACTION

9.1 The Authority and the Suppliers acknowledge that from time to time vulnerabilities in the IT Environment will be discovered which unless mitigated will present an unacceptable risk to the Authority's information.

9.2 The severity of threat vulnerabilities for Supplier COTS Software and Third Party COTS Software shall be categorised by the Supplier as 'Critical', 'Important' and 'Other' by aligning these categories to the vulnerability scoring according to the agreed method in the ISMS and using the appropriate vulnerability scoring systems including:

9.2.1 the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS scores as set out by NIST <http://nvd.nist.gov/cvss.cfm>); and

9.2.2 Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.

9.3 The Suppliers shall procure the application of security patches to vulnerabilities within a maximum period from the public release of such patches with those vulnerabilities categorised as 'Critical' within 14 days of release, 'Important' within 30 days of release and all 'Other' within 60 Business Days of release, except where:

- 9.3.1 the Supplier can demonstrate that a vulnerability is not exploitable within the context of any Deliverable (e.g. because it resides in a software component which is not running in the service) provided vulnerabilities which the Suppliers assert cannot be exploited within the context of a Deliverables must be remedied by the Suppliers within the above timescales if the vulnerability becomes exploitable within the context of the Deliverables;
 - 9.3.2 the application of a 'Critical' or 'Important' security patch adversely affects the Suppliers' ability to deliver the Deliverables in which case the Supplier shall be granted an extension to such timescales of 5 days, provided the Suppliers have followed and continue to follow the security patch test plan agreed with the Authority; or
 - 9.3.3 the Authority agrees a different maximum period after a case-by-case consultation with the Suppliers under the processes defined in the ISMS.
- 9.4 The Supplier Solution and Implementation Plan shall include provisions for major version upgrades of all Supplier COTS Software and Third Party COTS Software to be upgraded within 6 months of the release of the latest version, such that it is no more than one major version level below the latest release (normally codified as running software no older than the 'n-1 version') throughout the Term unless:
- 9.4.1 where upgrading such Supplier COTS Software and Third Party COTS Software reduces the level of mitigations for known threats, vulnerabilities or exploitation techniques, provided always that such upgrade is made within 12 months of release of the latest version ; or
 - 9.4.2 is agreed with the Authority in writing.
- 9.5 The Suppliers shall:
- 9.5.1 implement a mechanism for receiving, analysing and acting upon threat information supplied by DHSC, NHS England, the National Health and Social Care Information Centre (known as NHS Digital), GovCertUK, or any other competent Central Government Body as required by the Authority;
 - 9.5.2 ensure that the IT Environment (to the extent that the IT Environment is within the control of the Suppliers) is monitored to facilitate the detection of anomalous behaviour that would be indicative of system compromise;
 - 9.5.3 ensure it is knowledgeable about the latest trends in threat, vulnerability and exploitation that are relevant to the IT Environment by actively monitoring the threat landscape during the Term;
 - 9.5.4 pro-actively scan the IT Environment (to the extent that the IT Environment is within the control of the Suppliers) for vulnerable components and address discovered vulnerabilities through the processes described in the ISMS as developed under Clause 3.3.5 of this Schedule 6 of these Call-Off Terms and Conditions;
 - 9.5.5 from the date specified in the Information Security Management Plan provide a report to the Authority within 5 Business Days of the end of each month

- detailing both patched and outstanding vulnerabilities in the IT Environment (to the extent that the IT Environment is within the control of the Suppliers) and any elapsed time between the public release date of patches and either time of application or for outstanding vulnerabilities the time of issue of such report;
- 9.5.6 propose interim mitigation measures to vulnerabilities in the IT Environment known to be exploitable where a security patch is not immediately available;
 - 9.5.7 remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Deliverables (in order to reduce the attack surface of the Supplier Solution and IT Environment); and
 - 9.5.8 inform the Authority when it becomes aware of any new threat, vulnerability or exploitation technique that has the potential to affect the security of the IT Environment and provide initial indications of possible mitigations.
- 9.6 If the Suppliers are unlikely to be able to mitigate the vulnerability within the timescales under Clause 9 of this Schedule 6 of these Call-Off Terms and Conditions, the Suppliers shall immediately notify the Authority.

ANNEX 1: Baseline Security Requirements

1 Higher Classifications

- 1.1 The Suppliers shall not handle Authority information classified SECRET or TOP SECRET except if there is a specific requirement and in this case prior to receipt of such information the Suppliers shall seek additional specific guidance from the Authority.

2 End User Devices

- 2.1 When Authority Data resides on a mobile, removable or physically uncontrolled device it must be stored encrypted using a product or system component which has been formally assured through a recognised certification process of NCSC to at least foundation grade, for example under the NCSC Commercial Product Assurance scheme (“CPA”).
- 2.2 Devices used to access or manage Authority Data and services must be under the management authority of Authority or Suppliers and have a minimum set of security policy configuration enforced. These devices must be placed into a ‘known good’ state prior to being provisioned into the management authority of the Authority. Unless otherwise agreed with the Authority in writing, all Suppliers devices are expected to meet the set of security requirements set out in the relevant NCSC end user devices platform security guidance set out at <https://www.ncsc.gov.uk/guidance/end-user-device-security> (“NCSC Guidance”)
- 2.3 Where the Guidance highlights shortcomings in a particular platform the Suppliers may wish to use, then these should be discussed with the Authority and a joint decision shall be taken on whether the residual risks are acceptable. Where the Suppliers wish to deviate

from the NCSC Guidance, then this should be agreed in writing on a case by case basis with the Authority.

3 Data Processing, Storage, Management and Destruction

3.1 The Suppliers and Authority recognise the need for the Authority's information to be safeguarded under the UK Data Protection regime or a similar regime. To that end, the Suppliers must be able to state to the Authority the physical locations in which data may be stored, processed and managed from, and what legal and regulatory frameworks Authority information will be subject to at all times.

3.2 The Suppliers shall agree any change in location of data storage, processing and administration with the Authority in advance where the proposed location is outside the UK. Such approval shall not be unreasonably withheld or delayed unless specified otherwise in this Agreement and provided that storage, processing and management of any Authority information is only carried out offshore within:

3.2.1 the European Economic Area (EEA);

3.2.2 in the US if the Supplier and or any relevant subcontractor have signed up to the EU-U.S. Privacy Shield; or

3.2.3 in another country or territory outside the EEA if that country or territory ensures an adequate level of protection by reason of its domestic law or of the international commitments it has entered into which have been defined as adequate by the EU Commission.

3.3 The Suppliers shall:

3.3.1 provide the Authority with all Authority Data on demand in an agreed open format;

3.3.2 have documented processes to guarantee availability of Authority Data in the event of the Supplier ceasing to trade;

3.3.3 securely destroy all media that has held Authority Data at the end of life of that media in line with Good Industry Practice; and

3.3.4 securely erase any or all Authority Data held by the Supplier when requested to do so by the Authority.

3.4 The Suppliers must be able to demonstrate that they can supply a copy of all Authority Data on request or at termination of the Contract, and must be able to securely erase or destroy all data and media that the Authority Data has been stored and processed on.

4 Networking

4.1 The Authority requires that any Authority Data transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device must be encrypted using a product or system component which has been formally assured through a certification process recognised by NCSC to at least foundation grade,

for example under CPA or through the use of pan government accredited encrypted networking services via the Public Sector Network (“PSN”) framework (which makes use of foundation grade certified products).

- 4.2 The Authority requires that the configuration and use of all networking equipment to provide the Deliverables, including those that are located in secure physical locations, are at least compliant with Good Industry Practice.

5 Security Architectures

- 5.1 The Suppliers shall apply the ‘principle of least privilege’ (the practice of limiting systems, processes and user access to the minimum possible level) to the design and configuration of IT systems which will process or store Authority Information.
- 5.2 When designing and configuring the IT Environment (to the extent that the IT Environment is within the control of the Suppliers) the Suppliers shall follow Good Industry Practice and seek guidance from recognised security professionals with the appropriate skills and/or a NCSC certified professional certification as described at <https://www.ncsc.gov.uk/scheme/certified-professional>) for all bespoke or complex components of the Supplier Solution.
- 5.3 The Suppliers shall procure and implement security patches to any vulnerabilities identified in accordance with the timescales specified in the NCSC Cloud Security Principle 5 outlined here - <https://www.ncsc.gov.uk/collection/cloud-security?curPage=/collection/cloud-security/implementing-the-cloud-security-principles>.

6 Personnel Security

- 6.1 Supplier Personnel who have the ability to access Authority Data or systems holding Authority Data shall be subject to pre-employment checks that include, as a minimum: employment history for at least the last three years, identity, unspent criminal convictions and right to work (including nationality and immigration status).
- 6.2 The Suppliers shall promptly following the Effective Date agree with the Authority those Supplier Personnel roles which require specific government clearances including, without limitation, system administrators with privileged access to IT systems which store or process Authority Data.
- 6.3 The Suppliers shall prevent Supplier Personnel who are unable to obtain the required security clearances from accessing systems which store, process, or are used to manage Authority Data except where agreed with the Authority in writing.
- 6.4 All Supplier Personnel that have the ability to access Authority Data or systems holding Authority Data shall undergo regular training on secure information management principles. Unless otherwise agreed with the Authority in writing, this training must be undertaken annually.

- 6.5 Where the Supplier or Sub-Contractors grants increased IT privileges or access rights to Supplier Personnel, those Supplier Personnel shall be granted only those permissions necessary for them to carry out their duties. When staff no longer need elevated privileges or leave the organisation, their access rights shall be revoked within 1 Business Day.

7 Identity, Authentication and Access Control

- 7.1 The Suppliers shall operate an access control regime to ensure all users and administrators of the Supplier Solution are uniquely identified and authenticated when accessing or administering the Deliverables. Applying the 'principle of least privilege', users and administrators shall be allowed access only to those parts of the Supplier Solution they require. The Suppliers shall retain an audit record of accesses.

8 Audit and Monitoring

- 8.1 The Suppliers shall collect audit records which relate to security events in the IT Environment or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Suppliers audit records should (as a minimum) include:
- 8.1.1 Logs to facilitate the identification of the specific asset which makes every outbound request external to the IT Environment (to the extent that the IT Environment is within the control of the Suppliers). To the extent the design of the Supplier Solution and Deliverables allows such logs shall include those from DHCP servers, HTTP/HTTPS proxy servers, firewalls and routers.
 - 8.1.2 Security events generated in the IT Environment (to the extent that the IT Environment is within the control of the Suppliers) and shall include: privileged account logon and logoff events, the start and termination of remote access sessions, security alerts from desktops and server operating systems and security alerts from third party security software.
- 8.2 The Suppliers and the Authority shall work together to establish any additional audit and monitoring requirements for the IT Environment.
- 8.3 The Supplier shall retain audit records collected in compliance with this Clause 8 of this Annex 1 of this Schedule 6 of these Call-Off Terms and Conditions for a period of at least 6 months.

Schedule 7 of these Call-Off Terms and Conditions

Standards

The Suppliers shall comply with the following Standards during the Term to the full extent applicable:

1 GENERAL

- 1.1 Without prejudice to any obligation upon the Suppliers to comply with the Standards throughout the term of this Contract, the Parties shall monitor and notify each other of any new or emergent Standards which could affect the Suppliers' provision, or the Authority's receipt, of the Deliverables.
- 1.2 Where Standards referenced conflict with each other or with Good Industry Practice, then the later Standard or best practice shall be adopted by the Suppliers. Any such alteration to any Standard(s) shall require the prior written agreement of the Authority and shall be implemented within an agreed timescale.
- 1.3 DHSC may require the Suppliers to comply with Supplier Specific Standards, as outlined in the relevant section of the Order Form.

2 CATALOGUE AGREEMENT

- 2.1 As a requirement under the DPS Framework Agreement, the Suppliers are required to be party to the Catalogue Agreement before the Suppliers can enter into any Call-Off Contract. The Suppliers must ensure that the Catalogue Agreement does not expire or terminate during the Term of this Contract.
- 2.2 The Suppliers shall at all times comply with all the provisions of the Catalogue Agreement including compliance with all standards and capabilities listed in the Catalogue Agreement during the Term of this Contract.
- 2.3 The Suppliers shall ensure that at no point during the Term of this Contract they are suspended in accordance with the Catalogue Agreement for any reason.
- 2.4 All changes to standards and capabilities under the Catalogue Agreement shall be dealt with under the relevant change procedures as set out or referred to in the Catalogue Agreement.

3 DPS FRAMEWORK SUSPENSION

- 3.1 Failure to comply with the Standards may result in the suspension of the Suppliers under the DPS Framework Agreement. The DPS Framework Agreement grants the right for DHSC to suspend the Suppliers appointment as a provider of Deliverables if the Suppliers fail to comply with such clauses and Standards detailed above.

Schedule 8 of these Call-Off Terms and Conditions

Software

1 The Software

- 1.1 The Supplier Software and Third Party Software (as applicable) set out in Annex 11 of the Order Form is licensed to the Authority in accordance with Clauses 14 and 15 of Schedule 2 of these Call-Off Terms and Conditions.
- 1.2 The Parties agree that they will update Annex 11 to the Order Form periodically as required to record any Supplier Software or Third Party Software subsequently licensed by the Supplier or third parties for the purposes of the delivery of the Services. The Parties shall follow the Change Control Process set out in Schedule 13 of these Call-Off Terms and Conditions.

2 Supplier Covenants and Warranties

- 2.1 The Suppliers shall ensure that:
 - 2.1.1 the release of any new Software or upgrade to any Software complies with the interface requirements in the Specification and (except in relation to new Software or upgrades which are released to address Malicious Software or to comply with the requirements of Schedule 6 of these Call-Off Terms and Conditions), they shall notify the Authority three (3) months before the release of any new Software or Upgrade; and
 - 2.1.2 all Software including Upgrades, Updates and New Releases used by or on behalf of the Suppliers are currently supported versions of that Software and perform in all material respects in accordance with the Specification.
- 2.2 The Suppliers warrant that:
 - 2.2.1 all components of the Specially Written Software shall:
 - (a) be free from material design and programming errors;
 - (b) perform in all material respects in accordance with the Specification; and
 - (c) not infringe any Intellectual Property Rights.

Schedule 9 of these Call-Off Terms and Conditions

1 Installation and Commissioning Services

- 1.1 The Goods shall be installed and commissioned at the relevant Premises and Locations by the Suppliers as set out in the Specification and the Order Form or as otherwise agreed by the Authority in writing.
- 1.2 The Suppliers shall provide the Installation and Commissioning Services:
- 1.2.1 promptly and in any event within any time limits as may be set out in this Contract;
 - 1.2.2 in accordance with all other provisions of this Contract;
 - 1.2.3 using reasonable skill and care and in accordance with the provisions of the Order Form;
 - 1.2.4 in accordance with any quality assurance standards as set out in the Contract;
 - 1.2.5 in accordance with the Law and with Guidance;
 - 1.2.6 in accordance with Good Industry Practice;
 - 1.2.7 in accordance with the original manufacture's guidelines and recommendations relating to the Goods being installed and commissioned;
 - 1.2.8 in accordance with the Policies;
 - 1.2.9 in a professional and courteous manner; and
 - 1.2.10 using appropriately skilled, trained and experienced Supplier Personnel.
- 1.3 The Suppliers will promptly notify the Authority of any health and safety hazard which arises, or the Suppliers are aware may arise, in connection with the Installation and Commissioning Services and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards.

2 Inspection and Testing

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

- 2.1.2 as part of the Contract Price, the Suppliers shall provide the Authority with all reasonable assistance and/or information requested by the Authority in relation to any such reasonable inspections and testing of the Goods;
 - 2.1.3 if the Authority on inspection and testing is of the view that the Goods have been supplied, installed and commissioned (as appropriate) in conformance with the requirements of this Contract and are ready for use, it shall issue an Authority Confirmation to this effect to the Suppliers;
 - 2.1.4 if the Authority on inspection and testing is not of the view that the Goods have been supplied, installed and commissioned (as appropriate) in conformance with the requirements of this Contract and are ready for use, it shall inform the Suppliers in writing and Clauses 2.3 and 2.4 of this Schedule 9 of these Call-Off Terms and Conditions shall apply; and
 - 2.1.5 if the Authority chooses not to inspect and/or test the Goods, then the Authority shall be deemed to have provided an Authority Confirmation in relation to such Goods on the sixth (6th) Business Day following receipt by the Authority of the written confirmation from the Suppliers in accordance with Clause 2.1.1 of this Schedule 9 of these Call-Off Terms and Conditions that the Goods are ready to use.
- 2.2 The issue by the Authority of any Authority Confirmation shall be a confirmation that the correct Goods appear to have been supplied and reasonable installation and commissioning procedures look to have been followed by the Suppliers in accordance with the requirements and standards of this Contract. It does not imply any acceptance of such Goods or any endorsement of such installation and commissioning procedures. Responsibility for supplying the correct Goods in accordance with the requirements and standards of the Contract and the appropriateness of any installation and commissioning procedures together with responsibility for the operational performance of the Goods during the Term shall remain with the Suppliers notwithstanding any such Authority Confirmation.
- 2.3 Without prejudice to any other rights and remedies of the Authority under this Contract, in relation to any failure by the Suppliers to supply, install or commission the correct Goods in accordance with the requirements and standards of this Contract, the Suppliers shall, at their own expense as part of the Contract Price, forthwith re-supply, re-install and/or re-commission the Goods until such time as Goods in compliance with the requirements of this Contract are delivered, installed, and commissioned to the reasonable satisfaction of the Authority and the Authority has provided an Authority Confirmation to the Suppliers to this effect. The Contract Price payable by the Authority under this Contract may be withheld by the Authority in full or part (to be determined at the Authority's sole discretion) until the correct Goods in accordance with the requirements and standards of this Contract are supplied, installed and commissioned in accordance with the requirements and standards of this Contract to the reasonable satisfaction of the Authority and the Authority has provided its Authority Confirmation to this effect.

- 2.4 In the event of any dispute between the Authority and the Suppliers regarding the issue of an Authority Confirmation, the dispute shall be dealt with in accordance with the Dispute Resolution Procedure.
- 2.5 In the event that the Specification, Call-Off ITT, Order Form and/or Implementation Plan states that Goods shall be installed and commissioned on a phased basis and/or upon request, then the process for the inspection and testing of Goods set out in Clauses 2.1 to 2.4 (inclusive) of this Schedule 9 of these Call-Off Terms and Conditions shall apply to the Goods within each phase and/or instance of supply.
- 2.6 In the event that the Specification, Call-Off ITT and Order Form stipulates a refresh programme and/or that substitute or replacement Goods shall otherwise be installed in accordance with the requirements of this Contract (to include, without limitation, in connection with any Maintenance Services), then, following the installation and commissioning of the substitute or replacement Goods, the process for the inspection and testing of Goods set out in Clauses 2.1 to 2.4 (inclusive) of this Schedule 9 of these Call-Off Terms and Conditions shall apply in relation to the inspection and testing of any substitute or replacement Goods.
- 2.7 Where the Goods include any Supplier Retained Equipment, title in the Supplier Retained Equipment shall remain with the Suppliers at all times throughout the Contract Period. For the Term, from the point it is installed at the Premises and Locations, the Authority shall bear the risk of (i) loss or damage to the Supplier Retained Equipment occurring whilst it is at the Premises and Locations to the extent such loss or damage is due to the negligent acts or omissions of the Authority or its agents, employees, or sub-contractors and/or (ii) other loss or damage to the Supplier Retained Equipment to the extent that such loss or damage results from the use of the Supplier Retained Equipment otherwise than in accordance with (a) the relevant operating manuals; or (b) the Suppliers' reasonable instructions as notified to the Authority in writing in relation to the operation of the Supplier Retained Equipment. The Suppliers shall be solely liable throughout the Term for all other loss or damage to the Supplier Retained Equipment and shall make good such loss or damage as part of the Services.
- 2.8 The Suppliers shall not sell, purport to sell, transfer, mortgage or part with ownership of the Supplier Retained Equipment, use the Supplier Retained Equipment as security for a loan or any other obligation, allow the creation of any charge or lien over the Supplier Retained Equipment or create or allow to be created any right for a third party to seize, acquire or retain the Supplier Retained Equipment during the Term without the prior written agreement of the Authority.
- 2.9 Following the issue of the Authority Confirmation, the Suppliers shall allow the Authority quiet possession of the Supplier Retained Equipment throughout the Term subject to the terms of this Contract. The Authority shall not:
- 2.9.1 modify or alter the Supplier Retained Equipment without the prior consent of the Suppliers; or
 - 2.9.2 sell, purport to sell, mortgage, transfer or part with possession of the Supplier Retained Equipment (other than to a statutory successor), use the Supplier

Retained Equipment as security for a loan or any other obligation, allow the creation of any charge or lien over the Supplier Retained Equipment or create or allow to be created any right for a third party to retain the Supplier Retained Equipment.

3 Relocation of Goods

- 3.1 Upon reasonable written notice from the Authority, the Suppliers shall, as part of the Installation and Commissioning Services, relocate such Goods within the Premises and Locations or to another location and the process for the inspection and testing of Goods set out in Clauses 2.1 to 2.4 (inclusive) of this Schedule 9 of these Call-Off Terms and Conditions shall apply in relation to the inspection and testing of any relocated Goods in order to confirm that the Goods have been installed and commissioned at the new location to the reasonable satisfaction of the Authority and in accordance with the requirements of this Contract.
- 3.2 The Authority shall meet the Suppliers' reasonable charges and expenses incurred in complying with Clause 3.1 of this Schedule 9 of these Call-Off Terms and Conditions provided that such reasonable charges and expenses are approved in writing by the Authority prior to being incurred by the Suppliers.

4 Suppliers' obligation to make good any damage

- 4.1 The Suppliers shall make good at the Suppliers' expense any damage to any property or equipment caused by the installation, commissioning, removal and/or relocation of the Goods by the Suppliers save to the extent that such damage was directly caused by the Suppliers acting in accordance with the Authority's written instructions.

Schedule 10 of these Call-Off Terms and Conditions

Maintenance Services

1 Maintenance Services

- 1.1 From the point set out in the Specification and the Order Form at which Maintenance Services are triggered or as otherwise agreed by the Parties in writing taking into account any warranty period applicable to the Goods, all Goods forming part of the Maintenance Inventory shall be maintained throughout the Term by the Suppliers so as to comply with:
- 1.1.1 any applicable specification set out in this Contract (to include in the Specification, the Call-Off ITT and the Order Form); and
 - 1.1.2 any applicable manufacturers' specifications.
- 1.2 The Suppliers shall provide the Maintenance Services:
- 1.2.1 promptly and in any event within any time limits as may be set out in this Contract;
 - 1.2.2 in accordance with all other provisions of this Contract;
 - 1.2.3 using reasonable skill and care and in accordance with the provisions of the Order Form;
 - 1.2.4 in accordance with any quality assurance standards as set out in the Contract;
 - 1.2.5 in accordance with the Law and with Guidance;
 - 1.2.6 in accordance with Good Industry Practice;
 - 1.2.7 in accordance with the original manufacture's guidelines and recommendations relating to the Goods being maintained;
 - 1.2.8 in accordance with the Policies;
 - 1.2.9 in a professional and courteous manner; and
 - 1.2.10 using appropriately skilled, trained and experienced Supplier Personnel.

2 General maintenance requirements

- 2.1 The Suppliers, in accordance with Good Industry Practice and the original equipment manufacture's guidelines and recommendations, shall:
- 2.1.1 provide effective planned preventive maintenance for all Goods to the extent this requirement is set out in the Specification, the Call-Off ITT and the Order Form and/or as otherwise agreed between the Parties in writing; and
 - 2.1.2 provide appropriate remedial maintenance for all Goods to the extent this requirement is set out in the Specification, the Call-Off ITT and the Order Form and/or as otherwise agreed between the Parties in writing.

3 Service visits

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

4 Provision of information

- 4.1 Without prejudice to any specific record keeping requirements set out in this Contract, including as part of the Specification and the Call-Off ITT, the Suppliers shall:

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

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

4.1.3 provide all required management information to the Authority promptly upon the Authority's written request to demonstrate, to the Authority's reasonable satisfaction, compliance with requirements to provide planned preventative maintenance and, where applicable, remedial maintenance in connection with all Goods listed in the Maintenance Inventory.

- 4.2 Without prejudice to any other audit or information requirements set out as part of this Contract, any records kept by the Suppliers in connection with the Maintenance Services, the Maintenance Inventory and any service visits shall be made available by the Suppliers for inspection by the Authority and/or its authorised representatives on request.

- 4.3 Subject always to the provisions of Clause 8 of this Schedule 10 of these Call-Off Terms and Conditions, the Suppliers shall inform the Authority in writing as soon as they become aware that either of the following circumstances will, or are likely to, arise in connection with any Goods forming part of the Maintenance Inventory:

4.3.1 the Suppliers will no longer be able to maintain the item of Goods as any required third party support will no longer be available (including, without limitation, support from the original equipment manufacturer); or

4.3.2 the Suppliers will no longer be able to obtain from any third party (including, without limitation, the original equipment manufacturer) any required spare parts and/or consumable items required to provide the Maintenance Services in relation to those Goods.

- 4.4 Where the Suppliers provide information to the Authority under Clause 4.3 of this Schedule 10 of these Call-Off Terms and Conditions, they will inform the Authority in writing promptly upon becoming aware that this information has changed or may change.

5 Loan Goods and replacement Goods

5.1 Where the Suppliers are unable to fix any Goods forming part of the Maintenance Inventory as part of the Maintenance Services during a site visit, and the Specification, Call-Off ITT and/or the Order Form provides for substitute Goods to be provided to the Authority in these circumstances on a loan and/or replacement basis, the Suppliers shall:

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

Where the Suppliers loan Goods to the Authority and subsequently replace the loaned Goods, the Suppliers shall comply with the provisions of Clauses 5.1.2 and 5.1.3 of this Schedule 10 of these Call-Off Terms and Conditions in relation to such replacement of the loaned Goods.

5.2 Subject to Clauses 7 and 8 of this Schedule 10 of these Call-Off Terms and Conditions, any Goods added to the Maintenance Inventory in accordance with Clause 5.1.3 of this Schedule 10 of these Call-Off Terms and Conditions will be covered by the Maintenance Services for the remainder of the Term from the point set out in the Specification and the Order Form at which Maintenance Services are triggered for such substitute Goods or as otherwise agreed by the Parties in writing taking into account any warranty period applicable to such substitute Goods. For the avoidance of doubt, this Contract shall apply in full to the supply, installation, and commissioning (as applicable) of such substitute Goods.

6 Additional warranties

6.1 The Suppliers warrant and undertake that:

- 6.1.1 when providing the Maintenance Services (including, without limitation, providing any loan or replacement Goods), they shall comply with all timescales and KPIs set out in the Specification and the Order Form associated with such requirements;
- 6.1.2 any replacement parts, consumable items, replacement Goods and/or loan Goods shall be of satisfactory quality, fit for their intended purpose, installed (where applicable) in accordance with Good Industry Practice and shall comply with the standards and requirements set out in this Contract;
- 6.1.3 they will ensure sufficient stock levels of any replacement parts, consumable items, replacement Goods and/or loan Goods to comply with their obligations

- to provide the Maintenance Services in accordance with the provisions of this Contract;
- 6.1.4 they have and shall maintain a properly documented system of quality controls in respect of the Maintenance Services including, without limitation, covering the supply of any replacement parts, consumable items, replacement Goods and/or loan Goods and shall at all times comply with such quality controls;
 - 6.1.5 any equipment they use in the installation of any replacement parts, consumable items, replacement Goods and/or loan Goods shall comply with all relevant Law and Guidance, be fit for its intended purpose and shall be maintained fully in accordance with the manufacturer's specification;
 - 6.1.6 receipt of any replacement parts, consumable items, replacement Goods and/or loan Goods by or on behalf of the Authority and use of such items or of any other related item or information supplied, or made available, to the Authority will not infringe any third party rights, to include without limitation, any Intellectual Property Rights;
 - 6.1.7 they will comply with all Law and Guidance in so far as it is relevant to the supply of any replacement parts, consumable items, replacement Goods and/or loan Goods to the Authority; and
 - 6.1.8 they will promptly notify the Authority of any health and safety hazard which arises, or the Suppliers are aware may arise, in connection with the Maintenance Services including, without limitation, in connection with the supply of any replacement parts, consumable items, replacement Goods and/or loan Goods and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards.
- 6.2 Where the supply of any replacement parts, consumable items, replacement Goods and/or loan Goods relates to medical devices (as defined under any relevant Law and Guidance), the Suppliers warrant and undertake that they will comply with any such Law and Guidance relating to such activities in relation to such medical devices. In particular, but without limitation, the Suppliers warrant that at the point such replacement parts, consumable items, replacement Goods and/or loan Goods are supplied to the Authority, all such items which are medical devices shall have valid CE marking as required by Law and Guidance and that all relevant marking, authorisation, registration, approval and documentation requirements as required under Law and Guidance relating to the supply, manufacture, assembly, importation, storage, distribution, delivery, or installation of such items shall have been complied with. Without limitation to the foregoing provisions of this Clause 6.2 of this Schedule 10 of these Call-Off Terms and Conditions, the Suppliers shall, upon written request from the Authority, make available to the Authority evidence of such valid CE marking, and evidence of any other authorisations, registrations, approvals or documentation required.
- 6.3 If the Suppliers are in breach of Clause 6.2 of this Schedule 10 of these Call-Off Terms and Conditions, in relation to any items supplied to the Authority, then, without prejudice to any other right or remedy of the Authority, the Authority shall be entitled to reject and/or return such items and the Suppliers shall, subject to Clause 19.2 of Schedule 2 of these

Call-Off Terms and Conditions, indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the Authority as a result of such breach.

- 6.4 The Suppliers agree to use reasonable endeavours to assign to the Authority upon request the benefit of any warranty, guarantee or similar right which it has against any third party manufacturer or supplier of any replacement parts, consumable items and/or replacement Goods in full or part.
- 6.5 The Suppliers further warrant and undertake to the Authority that they will inform the Authority in writing immediately upon becoming aware that any of the warranties set out in this Clause 6 of this Schedule 10 of these Call-Off Terms and Conditions have been breached or there is a risk that any warranties may be breached.

The Authority's rights to remove Goods from the Maintenance Inventory

- 7.1 By giving a minimum of thirty (30) days' written notice to the Suppliers, the Authority may remove any Goods from the Maintenance Inventory and discontinue the Maintenance Services on such Goods in the event that:
 - 7.1.1 it decommissions or replaces the Goods for health and safety reasons and/or for reliability reasons;
 - 7.1.2 it sells, transfers or otherwise disposes of the Goods;
 - 7.1.3 the Goods are lost or stolen; or
 - 7.1.4 the Goods are replaced by the Authority and the replacement Goods are still under warranty.

The Suppliers' rights to remove Goods from the Maintenance Inventory

- 8.1 By giving a minimum of twelve (12) months' written notice to the Authority, the Suppliers may remove Goods from the Maintenance Inventory and discontinue the Maintenance Services on such Goods in the following circumstances:
 - 8.1.1 the Suppliers will no longer be able to maintain the Goods as any required third party support is no longer available (including, without limitation, support from the original equipment manufacturer); and/or
 - 8.1.2 the Suppliers will permanently not be able to obtain from any third party (including, without limitation, the original equipment manufacturer) any required spare parts and/or consumable items required to provide the Maintenance Services in relation to those Goods.
- 8.2 The Parties acknowledge that:
 - 8.2.1 at all times the Suppliers shall be required to provide the Authority with information in accordance with Clauses 4.3 and 4.4 of this Schedule 10 of these Call-Off Terms and Conditions notwithstanding the length of the Term of the Contract or the period of the Term still remaining; and

- 8.2.2 Clause 8.1 of this Schedule 10 shall only apply where the Term of the Contract exceeds twelve (12) months.

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

- 9.1 Following the removal of any Goods from the Maintenance Inventory in accordance with Clauses 7.1 or 8.1 of this Schedule 10 of these Call-Off Terms and Conditions:
- 9.1.1 there shall be a pro-rata adjustment to the Contract Price to account for such removal; and
- 9.1.2 where applicable, the Suppliers shall make a full refund to the Authority in respect of the balance of the Contract Price paid in advance for any period following the removal of such Goods. Such refund shall be paid automatically by the Suppliers to the Authority within thirty (30) days following the effective date of the removal of the relevant Goods from the Maintenance Inventory and may be by credit note where the Suppliers continue to provide ongoing Maintenance Services to the Authority.
- 9.2 If the Parties are unable to agree the pro-rata adjustment to the Contract Price in accordance with Clause 9.1.1 of this Schedule 10 of these Call-Off Terms and Conditions within thirty (30) days of the effective date of the removal of such Goods from the Maintenance Inventory, this failure to agree shall be referred to dispute resolution in accordance with Clause 32 of Schedule 2 of these Call-Off Terms and Conditions.

Additional termination provisions

- 10.1 If the Authority removes any Goods from the Maintenance Inventory in accordance with Clause 7.1 of this Schedule 10 of these Call-Off Terms and Conditions and no Goods will remain part the Maintenance Inventory following such removal, the Authority may terminate the Maintenance Services by giving a minimum of thirty (30) days' written notice to the Suppliers. Such notice may be given by the Authority at the same time as it gives the notice of removal of the last remaining Goods in accordance with the Clause 7.1 of this Schedule 10 of these Call-Off Terms and Conditions or at any time afterwards.
- 10.2 If the Suppliers remove Goods from the Maintenance Inventory in accordance with Clause 8.1 of this Schedule 10 of these Call-Off Terms and Conditions and no Goods will remain part of the Maintenance Inventory following such removal, the Authority may terminate the Maintenance Services by giving a minimum of thirty (30) days' written notice to the Suppliers. Such notice may be given by the Authority at any point after it receives the notice of removal of the last remaining Goods in accordance with Clause 8.1 of this Schedule 10 of these Call-Off Terms and Conditions or at any time afterwards, but shall not take effect before the effective date of the removal of such Goods from the Maintenance Inventory.
- 10.3 Following any termination of the Maintenance Services by the Authority in accordance with Clause 10.1 or Clause 10.2 of this Schedule 10, the Suppliers shall make a full refund

to the Authority in respect of the balance of the Contract Price paid in advance for the Maintenance Services for any period following such termination to the extent such balance has not already been paid to the Authority in accordance with Clause 9.1.2 of this Schedule 10. Such refund shall be paid automatically by the Suppliers to the Authority within thirty (30) days following the effective termination date of this Contract.

Non-performance

- 11.1 The Suppliers acknowledge the critical importance that the Authority places on ensuring that all Goods used by the Authority are properly maintained in a timely manner so as to ensure the safety of its staff, patients and other service users. Therefore, without prejudice to any other provisions of this Contract, where the Suppliers do not provide the Maintenance Services in accordance with any time periods and/or other requirements set out in this Contract (“Non-performed Services”), without prejudice to its other rights and remedies under this Contract, the Authority may elect to: (i) follow the remedial process set out in Clause 22.1 of Schedule 2 of these Call-Off Terms and Conditions; or (ii) the Authority may procure alternative maintenance services from a third party.
- 11.2 The Authority confirms that it will act reasonably at all times when electing to exercise its rights to procure alternative services from a third party under Clause 11.1 of this Schedule 10 of these Call-Off Terms and Conditions. In particular, the Authority will only elect to procure alternative services from a third party where the following circumstances apply:
- 11.2.1 the alternative services are required urgently due to health and safety reasons and/or to keep the relevant Goods operative;
 - 11.2.2 the Suppliers have been notified of the urgency of the requirement and their failure to provide the Maintenance Services in accordance with the requirements of this Contract; and
 - 11.2.3 the Suppliers have been given a reasonable period of time (taking into account the urgency of the requirement) to perform the Non-performed Services themselves. What is a “reasonable period of time” in the particular circumstances shall be determined at the Authority’s sole discretion taking into account its obligation under this Clause 11.2 of this Schedule 10 of these Call-Off Terms and Conditions to act reasonably.
- 11.3 In the event that the Authority elects to procure alternative services from a third party in accordance with Clause 11.1 of this Schedule 10 of these Call-Off Terms and Conditions, the following provisions shall apply:
- 11.3.1 where the Suppliers have been paid the Contract Price in advance for such Non-performed Services, the Suppliers shall (i) refund the Authority the full Contract Price paid for such Non-Performed Services; and (ii) pay to the Authority upon demand any additional charges that the Authority has incurred in connection with any alternative services additional to the Contract Price paid to the Suppliers; and
 - 11.3.2 where the Suppliers have not yet been paid the Contract Price for such Non-performed Services, the Suppliers shall: (i) forfeit the Contract Price for such

Maintenance Services; and (ii) pay to the Authority upon demand any additional charges that the Authority has incurred in connection with any alternative services additional to the Contact Price that would have been paid to the Suppliers had the Suppliers performed the Non-performed Services in accordance with any time periods and/or other requirements set out in the Contract.

Suppliers' obligation to make good any damage

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

Schedule 11 of these Call-Off Terms and Conditions – NOT USED

Schedule 12 of these Call-Off Terms and Conditions

Staff Transfer

1 Definitions

In this Schedule, the following definitions apply:

<p>“Acquired Rights Directive”</p>	<p>the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;</p>
<p>“Former Supplier”</p>	<p>a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub- contractor);</p>
<p>“New Fair Deal”</p>	<p>the revised Fair Deal position set out in the HM Treasury guidance: “Fair Deal for staff pensions: staff transfer from central government” issued in October 2013 including any amendments to that document immediately prior to the Relevant Transfer Date;</p>
<p>“Notified Sub- contractor”</p>	<p>a sub-contractor identified in Annex 10 to the Order Form to whom Transferring Authority Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;</p>
<p>“Replacement Sub- contractor”</p>	<p>a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);</p>
<p>“Relevant Transfer”</p>	<p>a transfer of employment to which the Employment Regulations applies;</p>
<p>“Relevant Transfer Date”</p>	<p>in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;</p>

<p>“Schemes”</p>	<p>the NHS Pension Schemes as governed by rules implemented by statute and as operated by the NHS Business Services Authority or any successor;</p>
<p>“Service Transfer”</p>	<p>any transfer of the Services (or any part of the Services), for whatever reason, from the Suppliers or any sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;</p>
<p>“Service Transfer Date”</p>	<p>the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;</p>

<p>“Staffing Information”</p>	<p>in relation to all persons identified on the Suppliers’ Provisional Supplier Personnel List or Suppliers’ Final Supplier Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including in an anonymised format:</p> <p>(a) their ages, dates of commencement of employment or engagement and gender and place of work;</p> <p>(b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;</p> <p>(c) the identity of the employer or relevant contracting Party;</p> <p>(d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;</p> <p>(e) their wages, salaries, bonuses and profit sharing arrangements as applicable;</p> <p>(f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;</p> <p>(g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);</p> <p>(h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;</p> <p>(i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and</p>
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	(j) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;
“Suppliers’ Final Supplier Personnel List”	a list provided by the Suppliers of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date;
“Suppliers’ Provisional Supplier Personnel List”	a list prepared and updated by the Suppliers of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Suppliers;
“Transferring Authority Employees”	those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date;
“Transferring Former Supplier Employees”	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and
“Transferring Supplier Employees”	those employees of the Suppliers and/or the Suppliers’ sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2 INTERPRETATION

Where a provision in this Schedule imposes an obligation on the Suppliers to provide an indemnity, undertaking or warranty, the Suppliers shall procure that each of its sub- contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the

Authority, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be.

PART A: TRANSFERRING AUTHORITY EMPLOYEES AT A RELEVANT COMMENCEMENT DATE

1 RELEVANT TRANSFERS

- 1.1 The Authority and the Suppliers agree that:
- 1.1.1 the commencement of the performance or provision of the Deliverables or of each relevant part of the Deliverables will be a Relevant Transfer in relation to the Transferring Authority Employees; and
 - 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between the Authority and the Transferring Authority Employees (except in relation to any terms disapplied through operation of regulation 10(1) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Suppliers and/or any Notified Sub-contractor and each such Transferring Authority Employee.
- 1.2 The Authority shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Authority Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- (a) the Authority; and
 - (b) the Suppliers and/or any Notified Sub-contractor (as appropriate).

2 AUTHORITY INDEMNITIES

- 2.1 Subject to Clause 2.2, the Authority shall indemnify the Suppliers and any Notified Sub-contractor against any Employee Liabilities arising from or as a result of:
- 2.1.1 any act or omission by the Authority in respect of any Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee occurring before the Relevant Transfer Date;
 - 2.1.2 the breach or non-observance by the Authority before the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Authority Employees; and/or

- (b) any contractual arrangement;
 - 2.1.3 any claim by any trade union or other body or person representing the Transferring Authority Employees arising from or connected with any failure by the Authority to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;
 - 2.1.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Authority Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Suppliers and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
 - 2.1.5 a failure of the Authority to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Authority Employees arising before the Relevant Transfer Date;
 - 2.1.6 any claim made by or in respect of any person employed or formerly employed by the Authority other than a Transferring Authority Employee for whom it is alleged the Suppliers and/or any Notified Sub-contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
 - 2.1.7 any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Authority in relation to its obligations under regulations 13 and 14 of the Employment Regulations, except to the extent that the liability arises from the failure by the Suppliers or any Sub-contractor to comply with regulations 13 and 14 of the Employment Regulations.
- 2.2 The indemnities in Clause 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Suppliers or any Sub-contractor (whether or not a Notified Sub-contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring Authority Employee before the Relevant Transfer Date on account of substantial detrimental changes to

his/her working conditions proposed by the Suppliers and/or any Sub contractor to occur in the period from (and including) the Relevant Transfer Date; or

2.2.2 arising from the failure by the Suppliers or any Subcontractor to comply with its obligations under the Employment Regulations.

2.3 If any person who is not identified by the Authority as a Transferring Authority Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Authority Employee, that his/her contract of employment has been transferred from the Authority to the Suppliers and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

2.3.1 the Suppliers shall, or shall procure that the Notified Sub-contractor shall, within five (5) Business Days of becoming aware of that fact, give notice in writing to the Authority; and

2.3.2 the Authority may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Business Days of receipt of the notification by the Suppliers and/or any Notified Sub-contractor, or take such other reasonable steps as the Authority considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.4 If an offer referred to in Clause 2.3.2 is accepted, or if the situation has otherwise been resolved by the Authority, the Suppliers shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the fifteen (15) Business Day period specified in Clause 2.3.2:

2.5.1 no such offer of employment has been made;

2.5.2 such offer has been made but not accepted; or

2.5.3 the situation has not otherwise been resolved,

the Suppliers and/or any Notified Sub-contractor may within five (5) Business Days give notice to terminate the employment or alleged employment of such person.

2.6 Subject to the Suppliers and/or any Notified Sub-contractor acting in accordance with the provisions of Clauses 2.3 to 2.5 (inclusive) and in accordance with all applicable proper employment procedures set out in applicable Law, the Authority shall indemnify the Suppliers and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Clause 2.5 provided that the Suppliers take, or procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in Clause 2.6:

2.7.1 shall not apply to:

- (a) any claim for:
 - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, in any case in relation to any alleged act or omission of the Suppliers and/or any Sub-contractor; or
- (b) any claim that the termination of employment was unfair because the Suppliers and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and

2.7.2 shall apply only where the notification referred to in Clause 2.3.1 is made by the Suppliers and/or any Notified Sub-contractor (as appropriate) to the Authority within 6 months of the Effective Date.

2.8 If any such person as is referred to in Clause 2.3 is neither re-employed by the Authority nor dismissed by the Suppliers and/or any Notified Sub-contractor within the time scales set out in Clause 2.5 such person shall be treated as having transferred to the Suppliers and/or any Notified Sub-contractor and the Suppliers shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

3 SUPPLIER INDEMNITIES AND OBLIGATIONS

3.1 Subject to Clause 3.2, the Suppliers shall indemnify the Authority against any Employee Liabilities arising from or as a result of:

3.1.1 any act or omission by the Suppliers or any Sub-contractor in respect of any Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee whether occurring before, on or after the Relevant Transfer Date;

3.1.2 the breach or non-observance by the Suppliers or any Sub-contractor on or after the Relevant Transfer Date of:

- (a) any collective agreement applicable to the Transferring Authority Employees; and/or
- (b) any contractual arrangement;

3.1.3 any claim by any trade union or other body or person representing any Transferring Authority Employees arising from or connected with any failure by

- the Suppliers or any Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 3.1.4 any proposal by the Suppliers or a Sub-contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Authority Employees to their material detriment on or after their transfer to the Suppliers or the relevant Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Authority Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 3.1.5 any statement communicated to or action undertaken by the Suppliers or any Sub-contractor to, or in respect of, any Transferring Authority Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority in writing;
- 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Authority Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Suppliers or a Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7 a failure of the Suppliers or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Authority Employees in respect of the period from (and including) the Relevant Transfer Date;
- 3.1.8 any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Suppliers or any Sub-contractor in relation to their obligations under regulations 13 and 14 of the Employment Regulations, except to the extent that the liability arises from the Authority's failure to comply with its obligations under regulations 13 and 14 of the Employment Regulations; and

- 3.1.9 a failure by the Suppliers or any Sub-Contractor to comply with their obligations under Clause 2.8 above.
- 3.2 The indemnities in Clause 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Authority whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Authority's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Suppliers shall comply, and shall procure that each Sub-contractor shall comply, with all their obligations under the Employment Regulations (including their obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub- contractor shall perform and discharge, all its obligations in respect of the Transferring Authority Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Authority and the Suppliers.

4 INFORMATION

The Suppliers shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority in writing such information as is necessary to enable the Authority to carry out its duties under regulation 13 of the Employment Regulations. The Authority shall promptly provide to the Suppliers and each Notified Sub-contractor in writing such information as is necessary to enable the Suppliers and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Suppliers of employees whose employment begins after the Relevant Transfer Date, and the Suppliers undertake to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Suppliers shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Authority Employee as set down in:
- 5.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public

Sector of January 2000, revised 2007
and 2013; and/or

5.2.2 the New Fair Deal.

Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Clauses 5.1 or 5.2 shall be agreed in accordance with the Change Control Process.

PART B: TRANSFERRING FORMER SUPPLIER EMPLOYEES AT A RELEVANT COMMENCEMENT DATE

1 RELEVANT TRANSFERS

- 1.1 The Authority and the Suppliers agree that:
- 1.1.1 the commencement of the performance or provision of the Deliverables or of any relevant part of the Deliverables will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and
 - 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Suppliers and/or Notified Sub-contractor and each such Transferring Former Supplier Employee.
- 1.2 The Authority shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Suppliers shall make, and the Authority shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

2 FORMER SUPPLIER INDEMNITIES

- 2.1 Subject to Clause 2.2, the Authority shall procure that each Former Supplier shall indemnify the Suppliers and any Notified Sub-contractor against any Employee Liabilities arising from or as a result of:
- 2.1.1 any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;
 - 2.1.2 the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Former Supplier Employees; and/or

- (b) any contractual arrangement;
 - 2.1.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Suppliers and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
 - 2.1.4 a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
 - 2.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Suppliers and/or any Notified Sub-contractor as appropriate may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
 - 2.1.6 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Suppliers or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Clause 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Suppliers or any Sub-contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Suppliers or any Sub-

- contractor to occur in the period from (and including) the Relevant Transfer Date; or
- 2.2.2 arising from the failure by the Suppliers and/or any Sub-contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by the Authority as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Suppliers and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 2.3.1 the Suppliers shall, or shall procure that the Notified Sub-contractor shall, within five (5) Business Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, to the Former Supplier; and
- 2.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Business Days of the notification by the Suppliers and/or the Notified Sub-contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 2.4 If an offer referred to in Clause 2.3.2 is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Authority, the Suppliers shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in Clause 2.3.2:
- 2.5.1 no such offer of employment has been made;
- 2.5.2 such offer has been made but not accepted; or
- 2.5.3 the situation has not otherwise been resolved,
- the Suppliers and/or any Notified Sub-contractor may within five (5) Business Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Suppliers and/or any Notified Sub-contractor acting in accordance with the provisions of Clauses 2.3 to 2.5 (inclusive) and in accordance with all applicable proper employment procedures set out in Law, the Authority shall procure that the Former Supplier indemnifies the Suppliers and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Clause 2.5 provided that the Suppliers take, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Clause 2.6:

2.7.1 shall not apply to:

(a) any claim for:

(A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

(B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Suppliers and/or any Sub-contractor; or

(b) any claim that the termination of employment was unfair because the Suppliers and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and

2.7.2 shall apply only where the notification referred to in Clause 2.3.1 is made by the Suppliers and/or any Notified Sub-contractor (as appropriate) to the Authority and, if applicable, the Former Supplier, within 6 months of the Effective Date.

2.8 If any such person as is described in Clause 2.3 is neither re-employed by the Former Supplier nor dismissed by the Suppliers and/or any Notified Sub-contractor within the time scales set out in Clause 2.5, such person shall be treated as having transferred to the Suppliers or Notified Sub-contractor and the Suppliers shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under the Law.

3 SUPPLIER INDEMNITIES AND OBLIGATIONS

3.1 Subject to Clause 3.2, the Suppliers shall indemnify the Authority and/or the Former Supplier against any Employee Liabilities arising from or as a result of:

3.1.1 any act or omission by the Suppliers or any Sub-contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;

3.1.2 the breach or non-observance by the Suppliers or any Sub-contractor on or after the Relevant Transfer Date of:

(a) any collective agreement applicable to the Transferring Former Supplier Employee; and/or

- (b) any contractual arrangement;
- 3.1.3 any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Suppliers or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 3.1.4 any proposal by the Suppliers or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Suppliers or a Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 3.1.5 any statement communicated to or action undertaken by the Suppliers or a Sub-contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority and/or the Former Supplier in writing;
- 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Suppliers or a Sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7 a failure of the Suppliers or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;

- 3.1.8 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Suppliers or any Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- 3.1.9 a failure by the Suppliers or any Sub-Contractor to comply with their obligations under Clause 2.8 above.
- 3.2 The indemnities in Clause 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Suppliers shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Suppliers and the Former Supplier.

4 INFORMATION

- 4.1 The Suppliers shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and/or at the Authority's direction, the Former Supplier, in writing such information as is necessary to enable the Authority and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Former Supplier shall promptly provide to the Suppliers and each Notified Sub-contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 5.1 The Suppliers shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Former Supplier Employee as set down in:

- 5.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007 and 2013; and/or
 - 5.1.2 the New Fair Deal.
- 5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Clause 5.1 shall be agreed in accordance with the Change Control Process.

6 PROCUREMENT OBLIGATIONS

- 6.1 Notwithstanding any other provisions of this Part B of this Schedule 12 of these Call Off Terms and Conditions, where in this Part B the Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

PART C: NO TRANSFER OF EMPLOYEES AT A RELEVANT COMMENCEMENT DATE

1 PROCEDURE IN THE EVENT OF TRANSFER

- 1.1 The Authority and the Suppliers agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Supplier.
- 1.2 If any employee of the Authority and/or a Former Supplier claims, or it is determined in relation to any employee of the Authority and/or a Former Supplier, that his/her contract of employment has been transferred from the Authority and/or the Former Supplier to the Suppliers and/or any Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
 - 1.2.1 the Suppliers shall, and shall procure that the relevant Sub-contractor shall, within five (5) Business Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Supplier; and
 - 1.2.2 the Authority and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Business Days of the notification by the Suppliers or the Sub-contractor (as appropriate) or take such other reasonable steps as the Authority or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Clause 1.2.2 is accepted or if the situation has otherwise been resolved by the Authority and/or the Former Supplier), the Suppliers shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the fifteen (15) Business Day period specified in Clause 1.2.2:
 - 1.4.1 no such offer of employment has been made;
 - 1.4.2 such offer has been made but not accepted; or
 - 1.4.3 the situation has not otherwise been resolved,

the Suppliers and/or the Sub-contractor may within five (5) Business Days give notice to terminate the employment or alleged employment of such person.

2 INDEMNITIES

- 2.1 Subject to the Suppliers and/or the relevant Sub-contractor acting in accordance with the provisions of Clauses 1.2 to 1.4 (inclusive) and in accordance with all applicable

employment procedures set out in applicable Law and subject also to Clause 2.4, the Authority shall:

- 2.1.1 indemnify the Suppliers and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in Clause 1.2 made pursuant to the provisions of Clause 1.4 provided that the Suppliers take, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
 - 2.1.2 procure that the Former Supplier indemnifies the Suppliers and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Clause 1.2 made pursuant to the provisions of Clause 1.4 provided that the Suppliers take, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.2 If any such person as is described in Clause 1.2 is neither re employed by the Authority and/or the Former Supplier as appropriate nor dismissed by the Suppliers and/or any Sub-contractor within the fifteen (15) Business Day period referred to in Clause 1.4 such person shall be treated as having transferred to the Suppliers and/or the Sub-contractor (as appropriate) and the Suppliers shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.
- 2.3 Where any person remains employed by the Suppliers and/or any Sub-contractor pursuant to Clause 2.2, all Employee Liabilities in relation to such employee shall remain with the Suppliers and/or the Sub-contractor and the Suppliers shall indemnify the Authority and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the Authority and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Suppliers and/or employees of the Sub-contractor.
- 2.4 The indemnities in Clause 2.1:
- 2.4.1 shall not apply to:
 - (a) any claim for:
 - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, in any case in relation to any alleged act or omission of the Suppliers and/or any Sub-contractor; or

- (b) any claim that the termination of employment was unfair because the Suppliers and/or any Sub-contractor neglected to follow a fair dismissal procedure; and

2.4.2 shall apply only where the notification referred to in Clause 1.2.1 is made by the Suppliers and/or any Sub-contractor to the Authority and, if applicable, Former Supplier within six (6) months of the Effective Date.

3 PROCUREMENT OBLIGATIONS

3.1 Where in this Part C the Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

PART D: EMPLOYMENT EXIT PROVISIONS

1 PRE-SERVICE TRANSFER OBLIGATIONS

- 1.1 The Suppliers agree that within twenty (20) Business Days of the earliest of:
- 1.1.1 receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
 - 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of this Contract;
 - 1.1.3 the date which is twelve (12) months before the end of the Term; and
 - 1.1.4 receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any six (6) month period),

they shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Suppliers' Provisional Supplier Personnel List, together with the Staffing Information in relation to the Suppliers' Provisional Supplier Personnel List and they shall provide an updated Suppliers' Provisional Supplier Personnel List at such intervals as are reasonably requested by the Authority.

- 1.2 At least twenty (20) Business Days prior to the Service Transfer Date, the Suppliers shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Sub-contractor:
- 1.2.1 the Suppliers' Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
 - 1.2.2 the Staffing Information in relation to the Suppliers' Final Supplier Personnel List (insofar as such information has not previously been provided).
- 1.3 Where the obligations on the Suppliers under Clause 1.2 are subject to the Data Protection Legislation, the Suppliers shall use their best endeavours to obtain the consent of the Supplier Personnel to the disclosure of the relevant information and utilise any other exemption or provision within the Data Protection Legislation which would allow such disclosure.
- 1.4 The Authority shall be permitted to use and disclose information provided by the Suppliers under Clauses 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor. Before disclosing any information provided by the Suppliers under Clause 1.2 to any such prospective Replacement Supplier and/or Replacement Sub-contractor, the Authority shall enter into a confidentiality agreement with the Replacement Supplier and/or Replacement Sub-contractor requiring it to keep

the information confidential. The agreement shall be on the same terms of confidentiality and non-use as are set out at Schedule 5 of these Call-Off Terms and Conditions.

- 1.5 The Suppliers warrant, for the benefit of the Authority, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Clauses 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.6 If the Suppliers, in the reasonable opinion of the Authority, do not comply with their obligations under Clauses 1.1 and/or 1.2 then:
 - 1.6.1 the Suppliers shall indemnify and keep indemnified the Authority for any additional costs, charges or expenses (including legal expenses) caused by or connected to such failure. For the avoidance of doubt, this shall include but not be limited to, additional costs, charges or expenses (including legal expenses) incurred by the Authority in conducting any tender process for the selection of any Replacement Supplier; and
 - 1.6.2 the Authority may withhold payment under Clause 12 of Schedule 2 of these Call-Off Terms and Conditions.
- 1.7 From the date of the earliest event referred to in Clauses 1.1.1, 1.1.2 and 1.1.3, the Suppliers agree that they shall not, and agree to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Suppliers' Provisional Supplier Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):
 - 1.7.1 replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
 - 1.7.2 make, promise, propose or permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);
 - 1.7.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
 - 1.7.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
 - 1.7.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
 - 1.7.6 terminate or give notice to terminate the employment or contracts of any persons on the Suppliers' Provisional

Supplier Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Suppliers or relevant Sub-contractor or received from any persons listed on the Suppliers' Provisional Supplier Personnel List regardless of when such notice takes effect.

- 1.8 During the Term, the Suppliers shall provide, and shall procure that each Sub-contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:
 - 1.8.1 the numbers of employees engaged in providing the Services;
 - 1.8.2 the percentage of time spent by each employee engaged in providing the Services; and
 - 1.8.3 a description of the nature of the work undertaken by each employee by location.

- 1.9 The Suppliers shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Business Days following the Service Transfer Date, the Suppliers shall provide, and shall procure that each Sub-contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Suppliers' Final Supplier Personnel List who is a Transferring Supplier Employee:
 - 1.9.1 the most recent month's copy pay slip data;
 - 1.9.2 details of cumulative pay for tax and pension purposes;
 - 1.9.3 details of cumulative tax paid;
 - 1.9.4 tax code;
 - 1.9.5 details of any voluntary deductions from pay; and
 - 1.9.6 bank/building society account details for payroll purposes.

2 EMPLOYMENT REGULATIONS EXIT PROVISIONS

- 2.1 The Authority and the Suppliers acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of the termination of this Contract in whole or in part or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Authority and the Suppliers further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Suppliers and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.
- 2.2 The Suppliers shall, and shall procure that each Sub-contractor shall, comply with all their obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all their obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Suppliers and/or the Sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.
- 2.3 Subject to Clause 2.4, the Suppliers shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:
- 2.3.1 any act or omission of the Suppliers or any Sub-contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;
 - 2.3.2 the breach or non-observance by the Suppliers or any Sub-contractor occurring on or before the Service Transfer Date of any collective agreement applicable to the Transferring Supplier Employees;
 - 2.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Suppliers or a Sub-contractor to comply with any legal obligation

- to such trade union, body or person arising on or before the Service Transfer Date;
- 2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - (b) in relation to any employee who is not identified in the Suppliers' Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Suppliers to the Authority and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- 2.3.5 a failure of the Suppliers or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
- 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Suppliers or any Sub-contractor other than a Transferring Supplier Employee identified in the Suppliers' Final Supplier Personnel List for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
- 2.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Suppliers or any Sub-contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnities in Clause 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

- 2.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
 - 2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not identified in the Suppliers' Final Personnel List claims, or it is determined in relation to any person who is not identified in the Suppliers' Final Personnel List, that his/her contract of employment has been transferred from the Suppliers or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
- 2.5.1 the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within five (5) Business Days of becoming aware of that fact, give notice in writing to the Suppliers; and
 - 2.5.2 the Suppliers may offer (or may procure that a Sub-contractor may offer) employment to such person within fifteen (15) Business Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Suppliers or a Sub-contractor, the Authority shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7 If after the fifteen (15) Business Day period specified in Clause 2.5.2 has elapsed:
- 2.7.1 no such offer of employment has been made;
 - 2.7.2 such offer has been made but not accepted; or
 - 2.7.3 the situation has not otherwise been resolved
- the Authority shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within five (5) Business Days give notice to terminate the employment or alleged employment of such person.
- 2.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of Clauses 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Suppliers shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Clause 2.7 provided that the Replacement Supplier

takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.9 The indemnity in Clause 2.8:

2.9.1 shall not apply to:

(a) any claim for:

(A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

(B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor; or

(b) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and

2.9.2 shall apply only where the notification referred to in Clause 2.5.1 is made by the Replacement Supplier and/or Replacement Sub-contractor to the Suppliers within 6 months of the Service Transfer Date .

2.10 If any such person as is described in Clause 2.5 is neither re-employed by the Suppliers or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the timescales set out in Clauses 2.5 to 2.7 (inclusive), such person shall be treated as a Transferring Supplier Employee.

2.11 The Suppliers shall comply, and shall procure that each Sub-contractor shall comply, with all their obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all their obligations in respect of any person identified in the Suppliers' Final Personnel List before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any sums due which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

2.11.1 the Suppliers and/or any Sub-contractor; and

- 2.11.2 the Replacement Supplier and/or the Replacement Sub-contractor.
- 2.12 The Suppliers shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Suppliers and each Sub-contractor in writing such information as is necessary to enable the Suppliers and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13 Subject to Clause 2.14, the Authority shall procure that the Replacement Supplier indemnifies the Suppliers on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:
- 2.13.1 any act or omission of the Replacement Supplier and/or Replacement Sub-contractor in respect of each Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;
 - 2.13.2 the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Supplier Employees identified in the Suppliers' Final Personnel List; and/or
 - (b) any custom or practice in respect of any Transferring Supplier Employees identified in the Suppliers' Final Personnel List which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;
 - 2.13.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Suppliers' Final Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
 - 2.13.4 any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Suppliers' Final Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Suppliers' Final Personnel List who would have been a Transferring Supplier Employee but for their resignation

(or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;

- 2.13.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee identified in the Suppliers' Final Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Suppliers in writing;
 - 2.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Supplier Employee identified in the Suppliers' Final Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Supplier Employee identified in the Suppliers' Final Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Suppliers or Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
 - 2.13.7 a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Suppliers' Final Personnel List in respect of the period from (and including) the Service Transfer Date; and
 - 2.13.8 any claim made by or in respect of a Transferring Supplier Employee identified in the Suppliers' Final Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.
- 2.14 The indemnities in Clause 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Suppliers and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the

failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

Schedule 13 of these Call-Off Terms and Conditions

Change Control Process

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Authority Change Manager”	the person appointed to that position by the Authority from time to time and notified in writing to the Suppliers or, if no person is notified, the Authority’s Contract Manager;
“Change”	a Contract Change or an Operational Change;
“Change Authorisation Note”	a form setting out an agreed Contract Change which will be substantially in the form of Annex 2;
“Change Request”	a written request for a Contract Change which shall be substantially in the form of Annex 1;
“Contract Change”	any changes made in relation to the Contract and/or Deliverables, whether requested by the Suppliers or the Authority, which: <ul style="list-style-type: none">a) has an impact on the business of the Authority;b) requires a change to the Contract;c) has a direct impact on the use of the Deliverables; ord) involves any increase or decrease in the Contract Price or involves the Authority in paying any other costs.
“Change Communication”	any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to this Schedule;
“Fast-track Change”	any Contract Change which the Parties agree to expedite in accordance with Clause 7;
“Impact Assessment”	an assessment of a Change Request in accordance with Clause 4;
“Impact Assessment Estimate”	has the meaning given in Clause 3.3;

“Operational Change”	any change in relation to the Contract and/or the Deliverables, whether requested by the Suppliers or the Authority, which does not: <ul style="list-style-type: none"> a) have an impact on the business of the Authority; b) require a change to the Contract; c) have a direct impact on the use of the Deliverables; or <ul style="list-style-type: none"> d) involve any increase or decrease in the Contract Price or involve the Authority in paying any costs.
“Receiving Party”	the Party which receives a proposed Contract Change; and
“RFOC”	has the meaning given in Clause 8.2.
“Supplier Change Manager”	the person appointed to that position by the Suppliers from time to time and notified in writing to the Authority or, if no person is notified, the Suppliers’ Contract Manager or the Lead Contract Manager (if applicable).

1 GENERAL PRINCIPLES OF CHANGE CONTROL PROCESS

- 1.1 This Schedule sets out the procedure for dealing with Changes.
- 1.2 Operational Changes shall be processed in accordance with Clause 8. If either Party is in doubt about whether a change falls within the definition of an Operational Change, then it must be processed as a Contract Change.
- 1.3 The Parties shall deal with Contract Change as follows:
- 1.3.1 either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Clause 3;
 - 1.3.2 unless this Contract otherwise requires, the Suppliers shall assess and document the potential impact of a proposed Contract Change in accordance with Clause 4 before the Contract Change can be either approved or implemented;
 - 1.3.3 the Authority shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in Clause 5;
 - 1.3.4 the Suppliers shall have the right to reject a Change Request solely in the manner set out in Clause 6;

- 1.3.5 save as otherwise provided in this Contract, no proposed Contract Change shall be implemented by the Suppliers until a Change Authorisation Note has been signed and issued by the Authority in accordance with Clause 5.2; and
- 1.3.6 if a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Clause 7.
- 1.4 To the extent that any Contract Change requires testing and/or a programme for implementation, then the Parties shall follow such procedures as shall be specified by the Authority, and, where appropriate, the Change Authorisation Note relating to such a Contract Change shall specify Milestones and/or a Key Milestone and Milestone Date(s) in respect of such Contract Change for the purposes of such procedures.
- 1.5 Until a Change Authorisation Note has been signed and issued by the Authority in accordance with Clause 5.2, then:
 - 1.5.1 unless the Authority expressly agrees (or requires) otherwise in writing, the Suppliers shall continue to supply or perform the Deliverables in accordance with the existing terms of this Contract as if the proposed Contract Change did not apply; and
 - 1.5.2 any discussions, negotiations or other communications which may take place between the Authority and the Suppliers in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Contract.
- 1.6 The Suppliers shall:
 - 1.6.1 within fifteen (15) Business Days of the Authority's signature and issue of a Change Authorisation Note, deliver to the Authority a copy of this Contract updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and
 - 1.6.2 thereafter provide to the Authority such further copies of the updated Contract as the Authority may from time to time reasonably request.

2 COSTS

- 2.1 Subject to Clause 3.3:
 - 2.1.1 the costs of preparing each Change Request shall be borne by the Party making the Change Request; and
 - 2.1.2 the costs incurred by the Suppliers in undertaking an Impact Assessment shall be borne by the Party making the Change Request provided that the Authority shall not be required to pay any such costs if:
 - (i) such costs are below £10,000 (exclusive of VAT), or such other amount as may be specifically set out in the Order Form;

- (ii) the Suppliers are able to undertake the Impact Assessment by using resources already deployed in the supply or performance of the Deliverables; or
- (iii) such costs exceed those in the accepted Impact Assessment Estimate.

- 2.2 The cost of any Contract Change shall be calculated and charged in accordance with the principles and any day rates or day costs (as applicable) set out in the Order Form. The Suppliers shall be entitled to increase the Contract Price only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and, in any event, any change to the Contract Price resulting from a Contract Change (whether the change will cause an increase or a decrease in the Contract Price) will be strictly proportionate to the increase or decrease in the level of resources required for the supply or performance of the Deliverables as amended by the Contract Change.
- 2.3 All Parties' costs incurred in respect of any use of this Change Control Process as a result of any error or breach of contract by the Suppliers shall be paid for by the Suppliers.

3 CHANGE REQUEST

- 3.1 Either Party may issue a Change Request to the other Party at any time during the Term. A Change Request shall be substantially in the form of Annex 1 and state whether the Party issuing the Change Request considers the proposed Contract Change to be a Fast-track Change or not.
- 3.2 If the Suppliers issue the Change Request, then they shall also provide an Impact Assessment to the Authority as soon as is reasonably practicable but in any event within 15 Business Days of the date of issuing the Change Request.
- 3.3 If the Authority issues the Change Request, then the Suppliers shall provide as soon as reasonably practical and in any event within 15 Business Days of the date of receiving the Change Request an estimate ("Impact Assessment Estimate") of the cost of preparing an Impact Assessment and the timetable for preparing it. The timetable shall provide for the completed Impact Assessment to be received by the Authority within 15 Business Days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by the Authority.
- 3.4 If the Authority accepts an Impact Assessment Estimate then following receipt of notice of such acceptance the Suppliers shall provide the completed Impact Assessment to the Authority as soon as is reasonably practicable and in any event within the period agreed in the Impact Assessment Estimate. If the Suppliers require any clarification in relation to the Change Request before it can deliver the Impact Assessment, then they shall promptly make a request for clarification to the Authority and provided that sufficient information is received by the Authority to fully understand:
- 3.4.1 the nature of the request for clarification; and
 - 3.4.2 the reasonable justification for the request;

the time period to complete the Impact Assessment shall be extended by the time taken by the Authority to provide that clarification. The Authority shall respond to the request for clarification as soon as is reasonably practicable.

4 IMPACT ASSESSMENT

- 4.1 Each Impact Assessment shall be completed in good faith and shall include:
- 4.1.1 details of the proposed Contract Change including the reason for the Contract Change; and
 - 4.1.2 details of the impact of the proposed Contract Change on the Deliverables, including the Ad Hoc Services (if any) and the Suppliers' ability to meet their other obligations under this Contract;
 - 4.1.3 any variation to the terms of this Contract that will be required as a result of that impact, including changes to:
 - (a) the KPIs and/or the Target Performance Levels (if applicable);
 - (b) the format of Authority Data;
 - (c) any Milestones, the Implementation Plan and any other timetable previously agreed by the Parties;
 - (d) other deliverables provided by third party contractors to the Authority;
 - 4.1.4 details of the cost of implementing the proposed Contract Change;
 - 4.1.5 details of the ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Contract Price, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
 - 4.1.6 a timetable for the implementation, together with any proposals for the testing of the Contract Change;
 - 4.1.7 details of how the proposed Contract Change will ensure compliance with any applicable change in Law; and
 - 4.1.8 such other information as the Authority may reasonably request in (or in response to) the Change Request.
- 4.2 If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to Schedule 5 of these Call-Off Terms and Conditions.
- 4.3 Subject to the provisions of Clause 4.4, the Authority shall review the Impact Assessment and respond to the Suppliers in accordance with Clause 5 within 20 Business Days of receiving the Impact Assessment,

- 4.4 If the Authority is the Receiving Party and the Authority reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment, then within 10 Business Days of receiving the Impact Assessment, it shall notify the Suppliers of this fact and detail the further information that it requires. The Suppliers shall then re-issue the relevant Impact Assessment to the Authority within 15 Business Days of receiving such notification. At the Authority's discretion, the Parties may repeat the process described in this Clause 4.4 until the Authority is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.
- 4.5 The calculation of costs for the purposes of Clauses 4.1.4 and 4.1.5 shall:
- 4.5.1 include estimated volumes of each type of resource to be employed and the applicable rate card (as applicable);
 - 4.5.2 include full disclosure of any assumptions underlying such Impact Assessment;
 - 4.5.3 include evidence of the cost of any assets required for the Contract Change; and
 - 4.5.4 include details of any new Sub-contracts necessary to accomplish the Contract Change.

5 AUTHORITY'S RIGHT OF APPROVAL

- 5.1 Within 20 Business Days of receiving the Impact Assessment from the Suppliers or within 15 Business Days of receiving the further information that it may request pursuant to Clause 4.4, the Authority shall evaluate the Change Request and the Impact Assessment and shall do one of the following:
- 5.1.1 Approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Clause 5.2;
 - 5.1.2 in its absolute discretion reject the Contract Change, in which case it shall notify the Suppliers of the rejection. The Authority shall not unreasonably reject any proposed Contract Change to the extent that the Contract Change is reasonable and necessary for the Suppliers or the Deliverables to comply with any changes in Law or the Policies. If the Authority does reject a Contract Change, then it shall explain its reasons in writing to the Suppliers as soon as is reasonably practicable following such rejection; or
 - 5.1.3 in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Suppliers to modify the relevant document accordingly, in which event the Suppliers shall make such modifications within 10 Business Days of such request. Subject to Clause 4.4, on receiving the modified Change Request and/or Impact Assessment, the Authority shall approve or reject the proposed Contract Change within 15 Business Days.
- 5.2 If the Authority approves the proposed Contract Change pursuant to Clause 5.1 and it has not been rejected by the Supplier in accordance with Clause 6, then it shall inform the

Suppliers and the Suppliers shall prepare two copies of a Change Authorisation Note which they shall sign and deliver to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign both copies and return one copy to the Suppliers. On the Authority's signature the Change Authorisation Note shall constitute (or, where the Authority has agreed to or required the implementation of a Contract Change prior to signature of a Change Authorisation Note, shall constitute confirmation of) a binding variation to this Contract.

- 5.3 If the Authority does not sign the Change Authorisation Note within 15 Business Days, then the Suppliers shall have the right to notify the Authority and if the Authority does not sign the Change Authorisation Note within 10 Business Days of such notification, then the Supplier may refer the matter to the Dispute Resolution Procedure.

6 SUPPLIER'S RIGHT OF APPROVAL

- 6.1 Following an Impact Assessment, if:

6.1.1 the Suppliers reasonably believe that any proposed Contract Change which is requested by the Authority would:

- (a) materially and adversely affect the risks to the health and safety of any person; and/or
- (b) require the Deliverables to be supplied or performed in a way that infringes any Law; and/or

6.1.2 the Suppliers demonstrate to the Authority's reasonable satisfaction that the proposed Contract Change is technically impossible to implement and neither the Call-Off ITT, the Specification nor the Order Form state that the Suppliers do have the technical capacity and flexibility required to implement the proposed Contract Change,

then the Suppliers shall be entitled to reject the proposed Contract Change and shall notify the Authority of their reasons for doing so within 10 Business Days after the date on which it is obliged to deliver the Impact Assessment pursuant to Clause 3.3.

7 FAST-TRACK CHANGES

- 7.1 The Parties acknowledge that to ensure operational efficiency there may be circumstances where it is desirable to expedite the processes set out above.

- 7.2 If:

7.2.1 the total number of Contract Changes in relation to which this Fast-track Change procedure has been applied does not exceed 4 in any 12 month period; and

7.2.2 all Parties agree the value of the proposed Contract Change over the remaining Term does not exceed the figure set out in the Order Form and

the proposed Contract Change is not significant (as determined by the Authority acting reasonably),

then the Parties shall confirm to each other in writing that they shall use the process set out in Clauses 3, 4, 5 and 6 but with reduced timescales, such that any period of 20 Business Days is reduced to 15 Business Days, 15 Business Days is reduced to 10 Business Days, any period of 10 Business Days is reduced to 5 Business Days, and any period of 5 Business Days is reduced to 2 Business Days.

- 7.3 The Parties may agree in writing to revise the parameters set out in Clause 7.2 from time to time or that the Fast-track Change procedure shall be used in relation to a particular Contract Change notwithstanding that the total number of Contract Changes to which such procedure is applied will then exceed 4 in a 12 month period.

8 OPERATIONAL CHANGE PROCESS

- 8.1 Any Operational Changes identified by the Suppliers to improve operational efficiency of the supply or performance of the Deliverables may be implemented by the Suppliers without following the Change Control Process for proposed Contract Changes set out in Clauses 3 to 6 (inclusive) provided they do not:
- 8.1.1 have an impact on the business of the Authority;
 - 8.1.2 require a change to this Contract;
 - 8.1.3 have a direct impact on use of the Deliverables; or
 - 8.1.4 involve any increase or decrease in the Contract Price or involve the Authority in paying any additional charges or other costs.
- 8.2 The Authority may request an Operational Change by submitting a written request for Operational Change ("RFOC") to the Supplier Representative.
- 8.3 The RFOC shall include the following details:
- 8.3.1 the proposed Operational Change; and
 - 8.3.2 the time-scale for completion of the Operational Change.
- 8.4 The Suppliers shall inform the Authority of any impact on the Deliverables that may arise from the proposed Operational Change.
- 8.5 The Suppliers shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC, and shall promptly notify the Authority when the Operational Change is completed.

9 COMMUNICATIONS

For any Change Communication to be valid under this Schedule 13, it must be sent to either the Authority Change Manager or the Supplier Change Manager, as applicable. The provisions

of Clause 38 of Schedule 2 of these Call-Off Terms and Conditions shall apply to a Change Communication as if it were a notice.

ANNEX 1: CHANGE REQUEST FORM

CR NO.:	TITLE:	TYPE OF CHANGE:
CONTRACT:		REQUIRED BY DATE:
ACTION:	NAME:	DATE:
RAISED BY:		
AREA(S) IMPACTED (<i>OPTIONAL FIELD</i>):		
ASSIGNED FOR IMPACT ASSESSMENT BY:		
ASSIGNED FOR IMPACT ASSESSMENT TO:		
SUPPLIER REFERENCE NO.:		
FULL DESCRIPTION OF REQUESTED CONTRACT CHANGE (INCLUDING PROPOSED CHANGES TO THE WORDING OF THE CONTRACT):		
DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS:		
REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED CONTRACT CHANGE:		
SIGNATURE OF REQUESTING CHANGE OWNER:		
DATE OF REQUEST:		

ANNEX 2: CHANGE AUTHORISATION NOTE

CR NO.:	TITLE:	DATE RAISED:
CONTRACT:	TYPE OF CHANGE:	REQUIRED BY DATE:
[KEY MILESTONE DATE: <i>[if any]</i>]		
DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND WORDING OF RELATED CHANGES TO THE CONTRACT:		
PROPOSED ADJUSTMENT TO THE CONTRACT PRICE RESULTING FROM THE CONTRACT CHANGE:		
DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE BASIS):		
SIGNED ON BEHALF OF THE AUTHORITY:		SIGNED ON BEHALF OF THE SUPPLIER:
Signature: _____		Signature: _____
Name: _____		Name: _____
Position: _____		Position: _____
Date: _____		Date: _____

Schedule 14 of these Call-Off Terms and Conditions

Acceptance Testing

1 Definitions

1.1 In this Schedule 14 of these Call-Off Terms and Conditions, the following definitions shall apply:

“Component”	any constituent parts of the infrastructure for the Deliverables, whether IT Hardware or Software;
“Material Test Issue”	a Test Issue of Severity Level 1 or Severity Level 2;
“Severity Level”	the level of severity of a Test Issue, the criteria for which are described in Annex 1;
“Test”	any test carried out in accordance with this Schedule 14 and as outlined in the Test Plan, Test Strategy and Test Specifications. “Tests” and “Testing” shall be construed accordingly.
“Test Certificate”	a certificate materially in the form of the document contained in Annex 2 issued by the Authority when a Deliverable has satisfied its relevant Test Success Criteria;
“Test Issue”	any variance or non-conformity of a Deliverable from its requirements (such requirements being set out in the relevant Test Success Criteria);
“Test Issue Threshold”	In relation to the Tests applicable to a Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as set out in the relevant Test Plan;
“Test Issue Management Log”	a log for the recording of Test Issues as described further in Paragraph 9.1;
“Test Plan”	a plan: (a) for the Testing of Deliverables; and (b) setting out other agreed criteria related to the achievement of Milestones, as described further in Paragraph 5;
“Test Reports”	the reports to be produced by the Suppliers setting out the results of Tests;
“Test Specification”	the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in Paragraph 7;
“Test Strategy”	a strategy for the conduct of Testing as described further in Paragraph 4;

“Test Success Criteria”	in relation to a Test, the test success criteria for that Test as referred to in Paragraph 6;
“Test Witness”	any person appointed by the Authority pursuant to Paragraph 10.1; and
“Testing Procedure”	the applicable testing procedures and Test Success Criteria set out in this Schedule 14.

2 Risk

- 2.1 The issue of a Test Certificate, a Milestone Achievement Certificate and/or a conditional Milestone Achievement Certificate shall not:
- 2.1.1 operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Authority's requirements for that Deliverable or Milestone; or
 - 2.1.2 affect the Authority's right subsequently to reject:
 - (a) all of any element of the Deliverable to which a Test Certificate relates; or
 - (b) any Milestone to which the Milestone Achievement Certificate relates.
- 2.2 Notwithstanding the issuing of any Milestone Achievement Certificate, the Suppliers shall remain solely responsible for ensuring that:
- 2.2.1 the Supplier Solution as designed and developed is suitable for the delivery of the Services and meets the Specification;
 - 2.2.2 the Deliverables are implemented in accordance with this Agreement; and
 - 2.2.3 each Target Performance Level is met from the relevant Effective Date.

3 Testing Overview

- 3.1 All Tests conducted by the Suppliers shall be conducted in accordance with the Test Strategy, the Test Plans and the Test Specifications.
- 3.2 The Suppliers shall not submit any Deliverable for Testing:
- 3.2.1 unless the Suppliers are reasonably confident that it will satisfy the relevant Test Success Criteria;
 - 3.2.2 until the Authority has issued a Test Certificate in respect of any prior, dependant Deliverable(s); and
 - 3.2.3 until the Parties have agreed the Test Plan and the Test Specification relating to the relevant Deliverable(s).

- 3.3 The Suppliers shall use reasonable endeavours to submit each Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Deliverable.
- 3.4 Prior to the issue of a Test Certificate, the Authority shall be entitled to review the relevant Test Reports and the Test Issue Management Log.
- 3.5 Any dispute between the Authority and the Suppliers regarding Testing may be referred by either Party to the Dispute Resolution Procedure to be determined by an Expert.

4 Test Strategy

- 4.1 The Suppliers shall develop the final Test Strategy as soon as practicable after the Effective Date but in any case no later than 20 Business Days (or such other period as the Parties may agree in writing) after the Effective Date.
- 4.2 The final Test Strategy shall include:
 - 4.2.1 an overview of how Testing will be conducted in accordance with the Implementation Plan;
 - 4.2.2 the process to be used to capture and record Test results and the categorisation of Test Issues;
 - 4.2.3 the method for mapping the expected Test results to the Test Success Criteria;
 - 4.2.4 the procedure to be followed if a Deliverable fails to satisfy the Test Success Criteria or produces unexpected results, including a procedure for the resolution of Test Issues;
 - 4.2.5 the procedure to be followed to sign off each Test;
 - 4.2.6 the process for the production and maintenance of Test Reports and reporting, including templates for the Test Reports and the Test Issue Management Log, and a sample plan for the resolution of Test Issues;
 - 4.2.7 the names and contact details of the Authority's and the Suppliers' Test representatives;
 - 4.2.8 a high level identification of the resources required for Testing, including facilities, infrastructure, personnel and Authority and/or third party involvement in the conduct of the Tests;
 - 4.2.9 the technical environments required to support the Tests; and
 - 4.2.10 the procedure for managing the configuration of the Test environments.

5 Test Plans

- 5.1 The Suppliers shall develop Test Plans and submit these for the approval of the Authority as soon as practicable but in any case no later than 20 Business Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start date for the relevant Testing (as specified in the Implementation Plan).
- 5.2 Each Test Plan shall include as a minimum:
- 5.2.1 the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being tested and, for each Test, the specific Test Success Criteria to be satisfied;
- 5.2.2 a detailed procedure for the Tests to be carried out, including:
- (a) the timetable for the Tests, including start and end dates;
 - (b) the Testing mechanism;
 - (c) dates and methods by which the Authority can inspect Test results or witness the Tests in order to establish that the Test Success Criteria have been met;
 - (d) the mechanism for ensuring the quality, completeness and relevance of the Tests;
 - (e) the format and an example of Test progress reports and the process with which the Authority accesses daily Test schedules;
 - (f) the process which the Authority will use to review Test Issues and the Suppliers' progress in resolving these in a timely basis;
 - (g) the Test Schedule;
 - (h) the re-Test procedure, the timetable and the resources which would be required for re-Testing; and
- 5.2.3 the process for escalating Test Issues from a re-test situation to the taking of specific remedial action to resolve the Test Issue.
- 5.3 The Authority shall not unreasonably withhold or delay its approval of the Test Plans provided that the Suppliers shall incorporate any reasonable requirements of the Authority in the Test Plans.

6 Test Success Criteria

- 6.1 The Test Success Criteria for all Tests (including those to be Achieved) shall be agreed between the Parties as part of the relevant Test Plan pursuant to Paragraph 5.

7 Test Specification

- 7.1 Following approval of a Test Plan, the Suppliers shall develop the Test Specification for the relevant Deliverables as soon as reasonably practicable and in any event at least 10 Business Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start of the relevant Testing (as specified in the Implementation Plan).

- 7.2 Each Test Specification shall include as a minimum:

7.2.1 the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Authority and the extent to which it is equivalent to live operational data;

7.2.2 a plan to make the resources available for Testing;

7.2.3 Test scripts;

7.2.4 Test pre-requisites and the mechanism for measuring them; and

7.2.5 expected Test results, including:

(a) a mechanism to be used to capture and record Test results; and

(b) a method to process the Test results to establish their content.

8 Testing

- 8.1 Before submitting any Deliverables for Testing the Suppliers shall subject the relevant Deliverables to its own internal quality control measures.

- 8.2 The Suppliers shall manage the progress of Testing in accordance with the relevant Test Plan and shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test Witnesses in accordance with Paragraph 10.

- 8.3 The Suppliers shall notify the Authority at least 10 Business Days (or such other period as the Parties may agree in writing) in advance of the date, time and location of the relevant Tests and the Authority shall ensure that the Test Witnesses attend the Tests, except where the Authority has specified in writing that such attendance is not necessary.

- 8.4 The Authority may raise and close Test Issues during the Test witnessing process.
- 8.5 The Suppliers shall provide to the Authority in relation to each Test:
 - 8.5.1 a draft Test Report not less than 2 Business Days (or such other period as the Parties may agree in writing) prior to the date on which the Test is planned to end; and
 - 8.5.2 the final Test Report within 5 Business Days (or such other period as the Parties may agree in writing) of completion of Testing.
- 8.6 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:
 - 8.6.1 an overview of the Testing conducted;
 - 8.6.2 identification of the relevant Test Success Criteria that have been satisfied;
 - 8.6.3 identification of the relevant Test Success Criteria that have not been satisfied together with the Suppliers' explanation of why those criteria have not been met;
 - 8.6.4 the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;
 - 8.6.5 the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories, in each case grouped by Severity Level in accordance with Paragraph 9.1; and
 - 8.6.6 the specification for any IT Hardware and Software used throughout Testing and any changes that were applied to that IT Hardware and/or Software during Testing.

9 Test Issues

- 9.1 Where a Test Report identifies a Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in Annex 1 and the Test Issue Management Log maintained by the Suppliers shall log Test Issues reflecting the Severity Level allocated to each Test Issue.
- 9.2 The Suppliers shall be responsible for maintaining the Test Issue Management Log and for ensuring that its contents accurately represent the current status of each Test Issue at all relevant times. The Suppliers shall make the Test Issue Management Log available to the Authority upon request.
- 9.3 The Authority shall confirm the classification of any Test Issue unresolved at the end of a Test in consultation with the Suppliers. If the Parties are unable to agree the classification of any unresolved Test Issue, the dispute may be referred by either Party to the Dispute Resolution Procedure to be determined by an Expert.

10 Test Witnessing

- 10.1 The Authority may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Authority, each of whom shall have appropriate skills to fulfil the role of a Test Witness.
- 10.2 The Suppliers shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.
- 10.3 The Test Witnesses:
 - 10.3.1 may review the Test documentation;
 - 10.3.2 may attend and engage in the performance of the Tests on behalf of the Authority to enable the Authority to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the Test should be re-Tested;
 - 10.3.3 shall not be involved in the execution of any Test;
 - 10.3.4 shall be required to verify that the Suppliers conducted the Tests in accordance with the Test Success Criteria and the relevant Test Plan and Test Specification;
 - 10.3.5 may produce and deliver their own, independent reports on Testing, which may be used by the Authority to assess whether the Tests have been Achieved;
 - 10.3.6 may raise Test Issues on the Test Issue Management Log in respect of any Testing; and
 - 10.3.7 may require the Suppliers to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

11 Test Quality Audit

- 11.1 The Authority may perform on-going quality audits in respect of any part of the Testing (each a “**Testing Quality Audit**”) subject to the provisions set out in the agreed Quality Plan.
- 11.2 The focus of the Testing Quality Audits shall be on:
 - 11.2.1 adherence to an agreed methodology;
 - 11.2.2 adherence to the agreed Testing process;
 - 11.2.3 adherence to the Quality Plan;
 - 11.2.4 review of status and key development issues; and
 - 11.2.5 identification of key risk areas.

- 11.3 The Suppliers shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
- 11.4 The Authority will give the Suppliers at least 5 Business Days' written notice of the Authority's intention to undertake a Testing Quality Audit and the Suppliers may request, following receipt of that notice, that any Testing Quality Audit be delayed by a reasonable time period if in the Suppliers' reasonable opinion, the carrying out of a Testing Quality Audit at the time specified by the Authority will materially and adversely impact the Implementation Plan.
- 11.5 A Testing Quality Audit may involve document reviews, interviews with the Supplier Personnel involved in or monitoring the activities being undertaken pursuant to this Schedule, the Authority witnessing Tests and demonstrations of the Deliverables to the Authority. Any Testing Quality Audit shall be limited in duration to a maximum time to be agreed between the Suppliers and the Authority on a case by case basis (such agreement not to be unreasonably withheld or delayed). The Suppliers shall provide all reasonable necessary assistance and access to all relevant documentation required by the Authority to enable it to carry out the Testing Quality Audit.
- 11.6 If the Testing Quality Audit gives the Authority concern in respect of the Testing Procedures or any Test, the Authority:
- 11.6.1 may require the Suppliers to discuss the outcome of the Testing Quality Audit with the Authority, giving the Suppliers the opportunity to provide feedback in relation to specific activities; and
- 11.6.2 may subsequently prepare a written report for the Suppliers detailing its concerns, and the Suppliers shall, within a reasonable timeframe specified by the Authority, respond in writing to the Authority's report.
- 11.7 In the event of an inadequate response to the Authority's report from the Suppliers, the Authority (acting reasonably) may withhold a Test Certificate (and consequently delay the grant of a Milestone Achievement Certificate) until the issues in the report have been addressed to the reasonable satisfaction of the Authority.

12 Outcome of Testing

- 12.1 The Authority shall issue a Test Certificate as soon as reasonably practicable when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.
- 12.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then the Authority shall notify the Suppliers.
- 12.3 Where the Authority has notified the Suppliers that the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then the Authority may (but for the

avoidance of doubt is not required to) issue a Test Certificate conditional upon the remediation of the Test Issues.

- 12.4 Where the Authority has notified the Suppliers that the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then where the Authority considers that there is sufficient time prior to the relevant Milestone Date, the Authority may extend the Test Plan by a period determined by the Authority acting reasonably and the Authority may require the Suppliers to rectify the cause of the Test Issue and re-submit the Deliverables (or the relevant part) to Testing
- 12.5 The Authority shall be entitled, without prejudice to any other rights and remedies that it has under this Agreement, to recover from the Suppliers any reasonable additional costs it may incur as a direct result of further review or re-Testing which is required for the Test Success Criteria for that Deliverable to be satisfied.

13 Issue of Milestone Achievement Certificate

- 13.1 The Authority shall (where applicable to the relevant Milestone) issue a Milestone Achievement Certificate in respect of a given Milestone as soon as is reasonably practicable following:
 - 13.1.1 the issuing by the Authority of Test Certificates and/or conditional Test Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and
 - 13.1.2 performance by the Suppliers to the reasonable satisfaction of the Authority of any other tasks identified in the Implementation Plan as associated with that Milestone (which may include the submission of a Deliverable that is not due to be Tested, such as the production of Documentation).
- 13.2 The grant of a Milestone Achievement Certificate shall entitle the Suppliers to the receipt of the Milestone Payment applicable to achievement of that Milestone.
- 13.3 If a Milestone is not Achieved, the Authority shall promptly issue a report to the Suppliers setting out:
 - 13.3.1 the applicable Test Issues; and
 - 13.3.2 any other reasons for the relevant Milestone not being Achieved.
- 13.4 If there are Test Issues but these do not exceed the Test Issues Threshold, then provided there are no Material Test Issues, the Authority shall issue a Milestone Achievement Certificate.
- 13.5 If there is one or more Material Test Issue(s), the Authority shall refuse to issue a Milestone Achievement Certificate.

- 13.6 If there are Test Issues which exceed the Test Issues Threshold but there are no Material Test Issues, the Authority may at its discretion (without waiving any rights in relation to the other options) choose to issue a Milestone Achievement Certificate conditional on the remediation of the Test Issues in accordance with an agreed plan (“**Rectification Plan**”) provided that:
- 13.6.1 any Rectification Plan shall be agreed before the issue of a conditional Milestone Achievement Certificate unless the Authority agrees otherwise (in which case the Suppliers shall submit a Rectification Plan for approval by the Authority within 10 Business Days of receipt of the Authority’s report pursuant to Paragraph 13.3); and
 - 13.6.2 where the Authority issues a conditional Milestone Achievement Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

ANNEX 1: TEST ISSUES – SEVERITY LEVELS

1. **Severity Level 1 Test Issue:** a Test Issue that causes non-recoverable conditions, e.g. it is not possible to continue using a Component, a Component crashes, there is database or file corruption, or data loss;
2. **Severity Level 2 Test Issue:** a Test Issue for which, as reasonably determined by the Authority, there is no practicable workaround available, and which:
 - 2.1. causes a Component to become unusable;
 - 2.2. causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or
 - 2.3. has an adverse impact on any other Component(s) or any other area of the Services;
3. **Severity Level 3 Test Issue:** a Test Issue which:
 - 3.1. causes a Component to become unusable;
 - 3.2. causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or
 - 3.3. has an impact on any other Component(s) or any other area of the Services;but for which, as reasonably determined by the Authority, there is a practicable workaround available;
4. **Severity Level 4 Test Issue:** a Test Issue which causes incorrect functionality of a Component or process, but for which there is a simple, Component based, workaround, and which has no impact on the current Test, or other areas of the Services; and
5. **Severity Level 5 Test Issue:** a Test Issue that causes a minor problem, for which no workaround is required, and which has no impact on the current Test, or other areas of the Services.

ANNEX 2: TEST CERTIFICATE

To: [**NAME OF SUPPLIER**]
FROM: [**NAME OF AUTHORITY**]

[**Date**]

Dear Sirs,

TEST CERTIFICATE

Deliverables: [*insert description of Deliverables*]

We refer to the agreement (the “**Agreement**”) relating to the provision of the Services between the [*name of Authority*] (the “**Authority**”) and [*name of Supplier*] (the “**Supplier**”) dated [*date*].

Capitalised terms used in this certificate have the meanings given to them in Schedule 3 (*Definitions*) or Schedule 14 (*Testing Procedures*) of the Agreement.

[We confirm that the Deliverables listed above have been tested successfully in accordance with the Test Plan relevant to those Deliverables.]

OR

[This Test Certificate is issued pursuant to Paragraph 12.1 of Schedule 14 (*Testing Procedures*) of the Agreement on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

**delete as appropriate*

Yours faithfully,

[**Name**]

[**Position**]

acting on behalf of [*name of Authority*]

ANNEX 3: MILESTONE ACHIEVEMENT CERTIFICATE

To: **[NAME OF SUPPLIER]**
FROM: **[NAME OF AUTHORITY]**

[Date]

Dear Sirs,

MILESTONE ACHIEVEMENT CERTIFICATE

Milestone: **[insert description of Milestone]**

We refer to the agreement (the “**Agreement**”) relating to the provision of the Services between the **[name of Authority]** (the “**Authority**”) and **[name of Supplier]** (the “**Supplier**”) dated **[date]**.

Capitalised terms used in this certificate have the meanings given to them in Schedule 3 (*Definitions*) or Schedule 14 (*Testing Procedures*) of the Agreement.

[We confirm that all the Deliverables relating to Milestone **[number]** have been tested successfully in accordance with the Test Plan relevant to this Milestone [or that a conditional Test Certificate has been issued in respect of those Deliverables that have not satisfied the relevant Test Success Criteria.]]*

OR

[This Milestone Achievement Certificate is granted pursuant to Paragraph 13.1 of Schedule 14 (*Testing Procedures*) of the Agreement on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

[You may now issue an invoice in respect of the Milestone Payment associated with this Milestone in accordance with the provisions of Schedule 7.1 (*Charges and Invoicing*)]*

**delete as appropriate*

Yours faithfully,

[Name]
[Position]

acting on behalf of **[Authority]**