

HEALTH SYSTEMS SUPPORT FRAMEWORK

DYNAMIC PURCHASING SYSTEM FRAMEWORK AGREEMENT

August 2022 Edition

DYNAMIC PURCHASING SYSTEM FRAMEWORK AGREEMENT

The Authority	Secretary of State for Health and Social Care acting as part of the Crown through the Department of Health and Social Care of 39 Victoria Street, London, SW1V 0EU
The Suppliers
Date	DATE
Service Category	Digital Social Care Records

This DPS Framework Agreement is made on the date set out above and is subject to and incorporates the terms set out in the schedules and appendix listed below (“**Schedules**”). The Authority and the Suppliers undertake to comply with the provisions of the Schedules in the performance of this DPS Framework Agreement.

The Definitions in Schedule 3 apply to the use of all capitalised terms in this DPS Framework Agreement.

Schedules

Schedule 1A	Key Provisions
Schedule 1B	Commercial Schedule
Schedules 2 - 7	The Dynamic Purchasing System Terms and Conditions August 2022 edition as provided to the Suppliers on 21 st January 2023 before execution of this DPS Framework Agreement comprising: Schedule 2 - General Terms and Conditions Schedule 3 - Definitions and Interpretations Schedule 4 - DPS Framework ITT Schedule 5 - Ordering Procedure Schedule 6 - Information Governance Provisions Schedule 7 - Guarantee
Appendix A	The Dynamic Purchasing System Call-Off Terms and Conditions August 2022 edition as provided to the Suppliers on 2 March 2023 before execution of this DPS Framework Agreement.

Without prejudice to Clause 32.7.2 of Schedule 2 of this DPS Framework Agreement (together with any variation in writing signed by an authorised representative of each Party and any document

referred to (explicitly or by implication) in this DPS Framework Agreement or any variation to this DPS Framework Agreement) contains the entire understanding between the Suppliers and the Authority relating to the operation of this DPS Framework Agreement 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 DPS Framework Agreement. Nothing in this DPS Framework Agreement seeks to exclude a 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 DPS Framework Agreement shall form part of this DPS Framework Agreement.

Signed by the authorised representative of the AUTHORITY

Name:	Alice Ainsworth	Signature:	
Position:	Digital Social Care Programme SRO/Department Health and Social Care		

Signed by the authorised representative of each of the SUPPLIERS

Name:	Signature
Position:		

Dynamic Purchasing System Framework Agreement Terms and Conditions (August 2022 edition)

Schedule 1A: Key Provisions

1 Application of the Key Provisions

- 1.1 The standard Key Provisions at Clauses 1 to 9 of this Schedule 1A shall apply to this DPS Framework Agreement.
- 1.2 The Parties shall pro-actively manage risks attributed to them under the terms of this DPS Framework Agreement.

2 Term

- 2.1 The Term of this DPS Framework Agreement shall be from the Commencement Date until the expiry of the DPS, unless it is terminated earlier in accordance with the terms of this DPS Framework Agreement or otherwise by operation of Law.

3 Contract Managers

- 3.1 The Contract Managers and Lead Contract Manager (if applicable) at the commencement of this DPS Framework Agreement are:

3.1.1 for the Authority:

Peter Skinner Programme Director, Digital Social Care Programme

3.1.2 for the Suppliers:

NAME, TITLE

4 Names and addresses for notices

- 4.1 Notices served under this DPS Framework Agreement are to be delivered to:

4.1.1 for the Authority:

Peter Skinner Programme Director, Digital Social Care Programme, Quarry House, Leeds, LS27UE

4.1.2 for the Suppliers:

NAME, TITLE, ADDRESS

5 Management levels for escalation and dispute resolution

- 5.1 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	Senior Responsible Officer for the DPS Framework Agreement	Senior Responsible Manager (or equivalent)
3	Director, Digital Social Care Programme	Director (or equivalent)

6 Order of precedence

6.1 Should there be a conflict between any parts of this DPS Framework Agreement the order of priority for construction purposes shall be:

- 6.1.1 the "Agreement" pages at pages 2 and 3 of this DPS Framework Agreement;
- 6.1.2 Schedule 1A: Key Provisions;
- 6.1.3 Schedule 4: DPS Framework ITT (but only in respect of the Authority's requirements);
- 6.1.4 Schedule 2: General Terms and Conditions;
- 6.1.5 Schedule 1B: Commercial Schedule;
- 6.1.6 Schedule 6: Information Governance Provisions;
- 6.1.7 Schedule 3: Definitions and Interpretations;
- 6.1.8 the order in which all subsequent schedules, if any, appear; and
- 6.1.9 any other documentation forming part of the DPS Framework Agreement in the date order in which such documentation was created with the more recent documentation taking precedence over older documentation to the extent only of any conflict.

7 Participating Authorities

7.1 This DPS Framework Agreement will be accessible to the UK public sector bodies in England, Scotland, Wales and Northern Ireland (including any future successor organisation(s) to the functions exercised by any such organisation(s)) listed in Clause 7.2

of this Schedule 1A below. Non-Contracting Authorities will also be permitted to access this DPS Framework Agreement.

7.2 This DPS Framework Agreement may be accessed by the public sector bodies listed below to the extent that they are engaged in the management and/or support of the health, care and/or wellbeing of populations within the UK or for which they are responsible:

7.2.1 The National Health Service Commissioning Board (known as NHS England);

7.2.2 any other 'Health service body' as defined at section 9 of the National Health Service Act 2006 (herein referred to as "**NHS Bodies**" and "**NHS Body**" in this DPS Framework Agreement), including but not limited to:

7.2.2.1 a Clinical Commissioning Group;

7.2.2.2 an NHS Trust;

7.2.2.3 a Special Health Authority;

7.2.2.4 The Care Quality Commission;

7.2.2.5 The Secretary of State;

7.2.2.6 a Local Health Board;

7.2.2.7 a Health Board or Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978;

7.2.2.8 a Health and Social Services Board constituted under the Health and Personal Social Services (Northern Ireland) Order 1972 (SI 1972/1265 (NI14));

7.2.2.9 the Common Services Agency for the Scottish Health Service;

7.2.2.10 the Wales Centre for Health;

7.2.2.11 the Scottish Dental Practice Board;

7.2.2.12 the Welsh Ministers;

7.2.2.13 the Scottish Ministers,

7.2.2.14 Healthcare Improvement Scotland;

7.2.2.15 the Northern Ireland Central Services Agency for the Health and Social Services established under the Health and Personal Social Services (Northern Ireland) Order 1972;

7.2.2.16 a special health and social services agency established under the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990 (SI 1990/247 (NI3));

7.2.2.17 a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991 (SI 1991/194 (NI1));

- 7.2.2.18 the Department of Health, Social Services and Public Safety (a body of the Northern Ireland Executive)
- 7.2.3 NHS Foundation Trusts;
- 7.2.4 Academic Health Science Networks;
- 7.2.5 National Institute for Health and Care Excellence, known as NICE;
- 7.2.6 The Health and Social Care Information Centre, known as NHS Digital;
- 7.2.7 NHS Improvement (the operational name of Monitor and the National Health Service Trust Development Authority);
- 7.2.8 Health Education England and Local Education and Training Boards (LETBs);
- 7.2.9 NHS Health Research Authority;
- 7.2.10 The Department of Health and Social Care;
- 7.2.11 National Institute of Health Research;
- 7.2.12 Executive agencies of the Department of Health and Social Care including but not limited to Public Health England, the Medicines and Healthcare Products Regulatory Agency;
- 7.2.13 Arms-Length Bodies and executive non-departmental public bodies of the Department of Health and Social Care not otherwise listed above including but not limited to NHS Blood and Transplant, NHS Business Services Authority, NHS Litigation Authority (known as NHS Resolution), the Human Fertilisation and Embryology Authority, and the Human Tissue Authority;
- 7.2.14 Ministry of Defence including its executive agencies and executive non-departmental public bodies;
- 7.2.15 Department for Business, Energy & Industrial Strategy and its executive non-departmental public bodies, including but not limited to the Biotechnology and Biological Sciences Research Council (BBSRC), the Economic and Social Research Council (ESRC), the Medical Research Council (MRC), the Engineering and Physical Sciences Research Council (EPSRC), the Natural Environment Research Council (NERC), UK Research and Innovation.
- 7.2.16 Office for National Statistics;
- 7.2.17 Office for Life Sciences;
- 7.2.18 NHS Scotland, its Regional NHS Boards, Special NHS Boards and public bodies as listed at: <http://www.scot.nhs.uk/organisations/>
- 7.2.19 Health organisations of Northern Ireland as listed at: <http://online.hscni.net/other-hsc-organisations/>
- 7.2.20 all Local Authorities of England and Wales, as defined under section 1 the Local Government Act 2000 including Health and Well Being Boards established by any Local Authority;

- 7.2.21 All Scottish Local Authorities which can be found listed at:
<https://www.mygov.scot/organisations/#scottish-local-authority>
- 7.2.22 All Northern Ireland Social Care organisations listed at:
<http://online.hscni.net/socialservices/>
- 7.2.23 All Universities in the UK as listed at:
 - a. <https://www.gov.uk/check-a-university-is-officially-recognised/recognised-bodies>
- 7.2.24 All police forces as listed at:
 - b. <https://www.police.uk/forces/>
- 7.2.25 All UK police and crime commissioners;
- 7.2.26 All fire and rescue authorities as listed at:
 - c. <http://www.cfoa.org.uk/12072>
- 7.2.27 The Ministry of Justice and its executive agencies including, but not limited to, Her Majesty's Prison and Probation Service;
- 7.2.28 The Scottish Prison Service (SPS), an agency of the Scottish Government;
- 7.2.29 Registered Providers of Social Housing within the meaning of the Housing and Regeneration Act 2008.
- 7.2.30 All Combined Authorities established by order of the Secretary of State pursuant to section 103 Local Democracy, Economic Development and Construction Act 2009, as amended.
- 7.2.31 This DPS Framework Agreement may also be accessed by non-Contracting Authorities. These could include for example:
 - 7.2.31.1 General Practices in the UK;
 - 7.2.31.2 Providers of community health services;
 - 7.2.31.3 Care home providers;
 - 7.2.31.4 Domiciliary care providers;
 - 7.2.31.5 Other providers of social care services in the UK;
 - 7.2.31.6 Other providers of clinical services in the UK; and
 - 7.2.31.7 Organisations that fulfil the conditions of Regulation 12 (1) of the Public Contracts Regulations (commonly known as a Teckal Company) where the controlling Contracting Authority or Authorities are one or more of the Contracting Authorities listed above (and/or a legal person controlled by one or more of the Contracting Authorities listed above).

7.3 This DPS Framework Agreement shall be accessible to the above named organisations listed in Clause 7.2 of this Schedule 1A whether procuring themselves, or on behalf of other such named organisations, or procuring together as members of any joint procurement.

8 Obligations and liabilities of Suppliers

8.1 Each of the Suppliers (where more than one Supplier is a Party to this DPS Framework Agreement) 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 DPS Framework Agreement. The Suppliers shall in addition act at all times in good faith towards other suppliers who have entered into a framework agreement in the same form as this DPS Framework Agreement and shall cooperate with such suppliers, and shall act fairly and reasonably in the exercise of their rights and the performance of their obligations arising under this DPS Framework Agreement.

8.2 Without limitation to the generality of Clause 8.1 of this Schedule 1A, and subject always to Clause 2 of Schedule 6 of this DPS Framework Agreement, the Suppliers shall share data and information with each Supplier forming part of the Suppliers, where doing so would or would be likely to:

8.2.1 result in an increase in the efficiency with which the Deliverables are provided by the Suppliers; and/or

8.2.2 result in an increase in the efficiency with which this DPS Framework Agreement is managed and administered by the Authority; and/or

8.2.3 result in an increase in the quality and/or timeliness of the Deliverables provided by the Suppliers.

8.3 Notwithstanding the above provisions of Clauses 8.1 and 8.2 of this Schedule 1 A, the Suppliers (where more than one Supplier is a Party to this DPS Framework Agreement) shall be jointly and severally liable for:

8.3.1 the performance and discharge of each and every obligation of each and every Supplier under this DPS Framework Agreement;

8.3.2 the performance and discharge of each and every obligation of the Suppliers under this DPS Framework Agreement;

8.3.3 any other liability of any Supplier otherwise arising under this DPS Framework Agreement; and

8.3.4 any other liability of the Suppliers otherwise arising under this DPS Framework Agreement.

9 Provisional Award

9.1 Where stipulated in the Award Letter this DPS Framework Agreement is a Provisional Award in respect of any specified Service Category and/or Service Line until provision of

evidence satisfactory to the Authority that the Suppliers have discharged any condition precedent contained in an Award Letter including, for the avoidance of doubt, the execution of a Guarantee.

- 9.2 The Authority may, at its sole discretion and at any time, agree to waive compliance with a condition precedent specified in an Award Letter by giving the Suppliers notice in writing specifying the date on which the DPS Framework Agreement ceases to be a Provisional Award in respect of any specified Service Category.
- 9.3 Where the DPS Framework Agreement is a Provisional Award in respect of any Service Category in accordance with Clause 9.1 of this Schedule 1A of the DPS Framework Agreement, the Suppliers shall use all reasonable endeavours to satisfy any condition precedent specified in an Award Letter as soon as is possible. In the event that any condition precedent specified in an Award Letter is not satisfied within 6 (six) Months after the Commencement Date then, unless such condition precedent is waived by the Authority in accordance with Clause 9.2 of this Schedule 1A of the DPS Framework Agreement:
- 9.3.1 This DPS Framework Agreement shall, subject to Clause 9.5 of this Schedule 1A of the DPS Framework Agreement, automatically terminate; and
- 9.3.2 neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.
- 9.4 The Suppliers shall consult with the Authority in relation to the steps they take to satisfy any condition precedent specified in an Award Letter and shall keep the Authority fully informed of their progress in satisfying any such condition precedent and of any circumstances which are likely to result in any such condition precedent not being satisfied by the date set out in Clause 9.3 of this Schedule 1A of the DPS Framework Agreement.
- 9.5 The Authority may in its absolute discretion extend the period in which any condition precedent specified in an Award Letter must be satisfied for the purposes of Clause 9.3 of this Schedule 1A of the DPS Framework Agreement by such period as it determines in its absolute discretion. The Suppliers shall use all reasonable endeavours to satisfy any condition precedent specified in an Award Letter as soon as is possible during any such extended period. In the event that any condition precedent specified in an Award Letter is not satisfied within such extended period then, unless such condition precedent is waived by the Authority in accordance with Clause 9.2 of this Schedule 1A of the DPS Framework Agreement:
- 9.5.1 this DPS Framework Agreement shall automatically terminate; and
- 9.5.2 neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.
- 9.6 For so long as the DPS Framework Agreement is a Provisional Award the Suppliers may not participate in any Competition in respect of or involving a relevant Service Line and shall not enter into any Call-Off Contract in respect of or involving a relevant Service Line.

**Dynamic Purchasing System Framework Agreement Terms and Conditions (August 2022
edition)**

Schedule 1B

Commercial Schedule

Dynamic Purchasing System Framework Agreement Terms and Conditions (August 2022 edition)

Schedule 2

General Terms and Conditions

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1 Suppliers' Appointment

- 1.1 The Authority appoints the Suppliers as a potential provider of the Deliverables and the Suppliers shall be eligible to be considered for the award of Orders during the Term.
- 1.2 In consideration of the Authority agreeing to appoint the Suppliers to this DPS Framework Agreement in accordance with Clause 1.1 of this Schedule 2 and the mutual exchange of promises and obligations under this DPS Framework Agreement, the Suppliers undertake, where Orders are placed with the Suppliers, to provide the Deliverables:
 - 1.2.1 of the type specified in the DPS Framework ITT and as more particularly specified in the course of each Competition;
 - 1.2.2 at the Contract Price calculated in accordance with the Commercial Schedule as further refined by the Call-Off ITT and as tendered by the Suppliers in the course of each Competition; and
 - 1.2.3 in such quantities and to such extent and at such times and at such locations as may be specified in an Order.
- 1.3 The Suppliers agree that save to the extent modified by the terms of a completed Order Form, the Call-Off Terms and Conditions shall apply to all Deliverables provided by the Suppliers to a Participating Authority pursuant to a Call-Off Contract awarded under this DPS Framework Agreement.
- 1.4 Without prejudice to Clause 1.3 of this Schedule 2, the Suppliers agree that they will not in their dealings with any Participating Authority in relation to this DPS Framework Agreement and/ or any Call-Off Contract seek to impose or rely on any contractual terms which in any way vary or contradict the terms of any Call-Off Contract.
- 1.5 The Suppliers shall comply fully with their obligations set out in this DPS Framework Agreement, the DPS Framework ITT, the Call-Off Terms and Conditions and any other provisions of Call-Off Contracts entered into under and in accordance with this DPS Framework Agreement (to include, without limitation, the KPIs and all obligations in relation to the quality, performance characteristics, supply, delivery and installation and training in relation to any Deliverables).
- 1.6 If there are any quality, performance and/or safety related reports, notices, alerts or other communications issued by the Suppliers or any regulatory or other body in relation to any Deliverables, the Suppliers shall promptly provide the Authority with a copy of any such reports, notices, alerts or other communications.
- 1.7 Upon receipt of any such reports, notices, alerts or other communications pursuant to Clause 1.6 of this Schedule 2, 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.

- 1.8 The Parties shall in relation to this DPS Framework Agreement and each and every Call-Off 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 the Deliverables and the administration of each and every Call-Off Contract.

2 Authority Commitments

- 2.1 The Suppliers acknowledge that:
- 2.1.1 there is no obligation on the Authority or on any other Participating Authority to purchase any Deliverables from the Suppliers during the Term;
 - 2.1.2 that this DPS Framework Agreement is a multi-operator framework and that Call-Off Contracts will only be awarded based upon the outcome of a Competition;
 - 2.1.3 no undertaking or any form of statement, promise, representation or obligation has been made or given by the Authority and/or any other Participating Authority in respect of the total quantities or volumes or value of the Deliverables to be ordered by them pursuant to Call-Off Contracts awarded pursuant to this DPS Framework Agreement and that the Suppliers have not been provided with or offered any form of exclusivity in relation to Orders for Deliverables and the Suppliers acknowledge and agree that they have not entered into this DPS Framework Agreement on the basis of any such undertaking, statement, promise, representation or obligation;
 - 2.1.4 in entering this DPS Framework Agreement, no form of exclusivity has been granted to the Suppliers by the Authority and/or any other Participating Authority; and
 - 2.1.5 the Authority and/or other Participating Authorities are at all times entitled to enter into other contracts and agreements (including framework agreements) with other suppliers for the provision of any or all deliverables which are the same as or similar to the Deliverables.

3 Ordering Procedure

- 3.1 Any Participating Authority may enter into one or more Call-Off Contracts by placing an Order in accordance with the Ordering Procedure. The Suppliers shall comply with the relevant provisions of the Ordering Procedure.
- 3.2 A Participating Authority may run a Competition and issue a Call-Off ITT on its own behalf (in respect of its own requirements) and/or on behalf of other Participating Authorities (in respect of such other Participating Authorities' requirements). In addition, Participating Authorities may collaborate to jointly conduct a Competition and award a Call-Off Contract to a supplier under which such Participating Authorities contract either jointly or separately.
- 3.3 For each Call-Off Contract, Participating Authorities may define their requirements under a Service Category. When defining their requirements for a Call-Off Contract, a Participating

Authority may define their requirements to include Deliverables falling within some or all of the Service Lines contained within a Service Category.

- 3.4 In the event that any Participating Authority makes an approach to the Suppliers with an enquiry, request, tender, competition and/or market engagement exercise relating to the supply of deliverables which are the same as or similar to the Deliverables (“**Equivalent Deliverables**”) and which:
- 3.4.1 have a value of, or in excess of, £50,000; and
 - 3.4.2 are not being procured using another framework agreement;
- d. the Suppliers shall promptly and in any event within ten (10) Business Days of the request of the Participating Authority, and before any legally binding commitment for the supply of Equivalent Deliverables is made, inform such Participating Authority of the existence of this DPS Framework Agreement.
- 3.5 In the event that any Participating Authority makes an approach to the Suppliers with an enquiry, request, tender, competition and/or market engagement exercise relating to the supply of deliverables which are outside the Service Categories of this DPS Framework Agreement, the Suppliers shall promptly inform such Participating Authority of the existence of the NHSX buyer guidance and vendor List.

4 Assistance

- 4.1 Upon the written request of any Participating Authority, the Suppliers shall provide such Participating Authority with any reasonable and proportionate information that they hold about the deliverables they are capable of supplying under Call-Off Contracts awarded pursuant to this DPS Framework Agreement including, without limitation, other related services and/or goods, and the compatibility and interoperability of any goods and/or services with other goods and/or services to enable the Participating Authority to complete any necessary due diligence before purchasing such deliverables, or any connected or replacement deliverables.
- 4.2 The Suppliers acknowledge that the Authority has a number of rights under the Call-Off Terms and Conditions exercisable by virtue of the Contracts (Rights of Third Parties) Act 1999. Where the Authority seeks to exercise any such right arising under any Call-Off Contract, the Suppliers shall, on each such occasion that any such right arises:
- 4.2.1 provide all reasonable assistance to the Authority in the exercise of such right; and
 - 4.2.2 shall not seek to challenge the existence or application of any such right.
- 4.3 Breach of Clause 4.2 of this Schedule 2 by the Suppliers shall be a material breach not capable of remedy for the purposes of Clause 16.3 of this Schedule 2.

5 Suppliers’ Performance

- 5.1 The Suppliers shall perform all Call-Off Contracts entered into under this DPS Framework Agreement by the Authority and/or any other Participating Authority in accordance with:

- 5.1.1 the requirements of this DPS Framework Agreement;
- 5.1.2 the provisions of the respective Call-Off Contracts;
- 5.1.3 the provisions of the Catalogue Agreement;
- 5.1.4 all Policies provided to the Suppliers or to which access is given to Suppliers by the Authority pursuant to Clause 7.1 of this Schedule 2; and
- 5.1.5 all policies provided to the Suppliers or to which access is given to Suppliers by any relevant Participating Authority pursuant to Clause 10.2 of Schedule 2 of the Call-Off Terms and Conditions of the relevant Call-Off Contract.

6 Business Continuity

- 6.1 Throughout the Term, the Suppliers will ensure that their Business Continuity Plan(s) provide(s) for continuity during a Business Continuity Event. The Suppliers confirm and agree that such Business Continuity Plan(s) detail(s) and will continue throughout the Term to detail robust arrangements that are reasonable and proportionate to:
 - 6.1.1 the criticality of this DPS Framework Agreement to the Participating Authorities; and
 - 6.1.2 the size and scope of the Suppliers' business operations.
- 6.2 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 at such other intervals as may be agreed between the Parties taking into account the criticality of this DPS Framework Agreement to Participating Authorities 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.
- 6.3 The Suppliers shall promptly provide to the Authority, 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 6.2 of this Schedule 2 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).
- 6.4 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:

- 6.4.1 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
- 6.4.2 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;
 - e. 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.
- 6.5 The Authority may suggest reasonable and proportionate amendments to the Suppliers regarding the Business Continuity Plan(s) at any time. Where the Suppliers, acting reasonably, deem such suggestions made by the Authority to be relevant and appropriate, the Suppliers will incorporate into the Business Continuity Plan(s) all such suggestions made by the Authority in respect of such Business Continuity Plan(s). Should the Suppliers not incorporate any suggestion made by the Authority into such Business Continuity Plan(s) they will explain the reasons for not doing so to the Authority.
- 6.6 Should a Business Continuity Event occur, the Suppliers shall implement and comply with their Business Continuity Plan(s) and provide regular written reports to the Authority on such implementation.
- 6.7 During and following a Business Continuity Event, the Suppliers shall use reasonable endeavours to continue to fulfil their obligations under this DPS Framework Agreement in accordance with this DPS Framework Agreement.
- 6.8 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.

7 The Authority's Obligations

- 7.1 The Authority shall provide reasonable cooperation to the Suppliers and shall, as appropriate, provide copies of or give the Suppliers access to such of the Policies that are relevant to the Suppliers complying with their obligations under this DPS Framework Agreement.
- 7.2 The Authority shall comply with the Authority's Obligations, if any.

8 Contract Management

- 8.1 Each Party shall appoint and retain a Contract Manager who shall be the primary point of contact for the other Party in relation to matters arising from this DPS Framework Agreement. Where more than one Supplier is a party to this DPS Framework Agreement, each Supplier shall appoint a Contract Manager to represent 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 all the other Parties 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 this DPS Framework Agreement. The Suppliers confirm and agree that they will work closely and cooperate fully with the Authority's Contract Manager.

- 8.2 Each Party shall ensure that its representatives (to include, without limitation, its Contract Manager(s) or Lead Contract Manager (where applicable)) attend review meetings on a regular basis to review the performance of the Suppliers under this DPS Framework Agreement and to discuss matters arising generally under this DPS Framework Agreement. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day to day operation of the DPS Framework Agreement. The first such meeting shall take place on a date to be agreed on or around the end of the first month after the Commencement Date. Subsequent meetings shall take place at Quarterly intervals or as may otherwise be required by the Authority.
- 8.3 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 to the Authority regarding the Suppliers' provision of the Deliverables and the operation of this DPS Framework Agreement. Unless otherwise agreed by the Parties in writing, such contract management report shall contain, as a minimum:
- 8.3.1 details of the performance of the Suppliers under this DPS Framework Agreement and any Call-Off Contracts (including as assessed against the KPIs under the Call-Off Contracts), since the last such written contract management report;
 - 8.3.2 details of any complaints by Participating Authorities in relation to the provision of the Deliverables, the nature of any such complaints and the way in which the Suppliers have responded to such complaints since the last such written contract management report;
 - 8.3.3 a status report in relation to the implementation of any current Remedial Proposal by either Party; and
 - 8.3.4 such other information as reasonably required by the Authority.
- 8.4 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 to, and resolved in accordance with, the dispute resolution process set out in Clause 5 of the Key Provisions and Clause 22 of this Schedule 2.

8.5 The Suppliers shall provide such management information relating to the operation of this DPS Framework Agreement and/or any Call-Off Contract to which the Suppliers are a party as the Authority may request from time to time within ten (10) Business Days of the date of the request, and in any event the Suppliers shall supply the information set out at Clause 8.5.1 of this Schedule 2 in respect of each Call-Off Contract within five (5) Business Days of the Commencement Date (as defined in the Call-Off Terms and Conditions) of that Call-Off Contract and the Suppliers shall supply the information set out at Clauses 8.5.1 to 8.5.7 (inclusive) within ten (10) Business Days of the end of each Quarter (or each 3 Month period following the expiry or termination of the DPS Framework Agreement as applicable):

8.5.1 information relating to each Call-Off Contract entered into such information to include as a minimum:

8.5.1.1 the identity of the parties to such Call-Off Contract;

8.5.1.2 the Effective Date of such Call-Off Contract (as defined in the Call-Off Terms and Conditions);

8.5.1.3 the term of such Call-Off Contract;

8.5.1.4 the Contract Price of such Call-Off Contract;

8.5.1.5 the portion of the Suppliers' Call-Off ITT Response related to their price offer in relation to that Call-Off Contract;

8.5.1.6 the Services Commencement Date, the Supply of Goods Commencement Date and the Deliverables Commencement Date (as applicable) (as defined in the Call-Off Terms and Conditions) of such Call-Off Contract;

8.5.1.7 the amount anticipated to be paid to the Suppliers by the Participating Authority or Participating Authorities that are party to that Call-Off Contract in respect of the Deliverables delivered in the first Contract Year of that Call-Off Contract;

8.5.1.8 the specification for such Call-Off Contract;

8.5.1.9 a copy of the Call-Off Contract;

8.5.2 information detailing all amounts paid to the Suppliers by any Participating Authority in the preceding Quarter (or the relevant 3 Month period following the expiry or termination of the DPS Framework Agreement as applicable) pursuant to the terms of any Call-Off Contract, with such information split by Call-Off Contract;

8.5.3 information detailing the sum of all Service Credits (as defined in the Call-Off Terms and Conditions) repaid by the Suppliers to any Participating Authority and/or deducted from the amount payable by any Participating Authority under a Call-Off Contract in the preceding Quarter (or the relevant 3 Month period following

- the expiry or termination of the DPS Framework Agreement as applicable) pursuant to the terms of any Call-Off Contract;
- 8.5.4 information relating to the sum of all Service Credits (as defined in the Call-Off Terms and Conditions) repaid by the Suppliers to any Participating Authority and/or deducted from the amount payable by any Participating Authority under a Call-Off Contract in the preceding twelve (12) Months pursuant to the terms of any Call-Off Contract;
- 8.5.5 information relating to any:
- 8.5.5.1 reference to the disputes procedure under any Call-Off Contract;
 - 8.5.5.2 written complaint received by the Suppliers in relation to the Deliverables under a Call-Off Contract;
 - 8.5.5.3 any breach notice (as defined under the Call-Off Contract) received by the Suppliers in relation to the Deliverables under a Call-Off Contract;
 - 8.5.5.4 any notice of termination served on the Suppliers under a Call-Off Contract;
 - 8.5.5.5 in the preceding Quarter (or the relevant 3 Month period following the expiry or termination of the DPS Framework Agreement as applicable); and
- 8.5.6 details of each Call-Off Contract that has reached the Deliverables Commencement Date in the preceding Quarter (or the relevant 3 Month period following the expiry or termination of the DPS Framework Agreement as applicable); and
- 8.5.7 details of each Call-Off Contract that has reached the end of its first Contract Year in the preceding Quarter (or the relevant 3 Month period following the expiry or termination of the DPS Framework Agreement as applicable).
- 8.6 The Suppliers shall supply such information to the Authority as is required under this Clause 8 of this Schedule 2 (“**Management Information**”) in such form as may be specified by the Authority and, where requested to do so, the Suppliers shall also provide such Management Information to any Contracting Authority (if any) whose role it is to analyse such management information (to include, without limitation, for the purposes of analysing public sector expenditure and planning future procurement activities) (“**Third Party Body**”). The Suppliers confirm and agree that the Authority may itself provide the Third Party Body with Management Information relating to the Deliverables ordered and any payments made under this DPS Framework Agreement or any Call-Off Contracts and any other information relevant to the operation of this DPS Framework Agreement and any Call-Off Contract provided that, where such Management Information is subject to any obligations of confidence under this DPS Framework Agreement, the Authority shall inform the Third Party Body of the confidential nature of that information.

- 8.7 Upon receipt of Management Information supplied by the Suppliers to the Authority and/or the Third Party Body, or by the Authority to the Third Party Body, the Parties hereby consent to the Third Party Body and the Authority:
- 8.7.1 storing and analysing the Management Information and producing statistics;
 - 8.7.2 subject to Clause 8.8 of this Schedule 2 , sharing the Management Information or any statistics produced using the Management Information with any other Contracting Authority and/or Participating Authority where necessary and/or expedient in relation to the operation of this DPS Framework Agreement and/or any Call-Off Contract and/or any Competition; and
 - 8.7.3 publishing such Management Information, as 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.
- 8.8 If the Third Party Body and/or the Authority shares the Management Information or any other information produced under Clause 8.7 of this Schedule 2 with any Contracting Authority and/or Participating Authority pursuant to Clause 8.7.2 of this Schedule 2, any Contracting Authority and/or Participating Authority receiving the Management Information shall, where such Management Information is subject to obligations of confidence under this DPS Framework Agreement and such Management Information is provided directly by the Authority or the Third Party Body to such Contracting Authority and/or Participating Authority, be informed of the confidential nature of that information by the Authority or the Third Party Body (as applicable) and shall be required by the Authority or the Third Party Body (as applicable) to only use the information for the purpose for which it has been shared and not to disclose it to any third party (unless required to do so by Law).
- 8.9 The Authority may make such changes as are reasonably necessary to the type of Management Information which the Suppliers are required to supply and shall give the Suppliers at least one (1) month's written notice of any changes.
- 8.10 The Authority shall apply a unique reference number to each Call-Off Contract notified to it by the Suppliers and where it does so the Authority shall:
- 8.10.1 supply such unique reference number to the Suppliers; and
 - 8.10.2 where such a unique reference number is applied to a Call-Off Contract the Suppliers shall utilise such unique reference number on all information and returns of whatever nature supplied to the Authority under this DPS Framework Agreement (including when providing any Management Information).
- 8.11 Suppliers shall be under an obligation to inform the Authority of each and every Call-Off Contract entered into (including for the avoidance of doubt any below threshold requirement as set out in Clause 11 of Schedule 5 of this Framework) so that the Authority can apply a unique reference number as set out in clause 8.10 above.
- 8.12 The Authority may at any time (but not on more than 1 occasion within each Quarter) require the Suppliers or any Supplier (where the Suppliers comprise more than one Supplier) to promptly reconfirm their current status, position or data (as applicable) in relation to

information submitted by such Supplier or Suppliers in response to the DPS Framework ITT.

- 8.13 The Authority may at any time at the Authority's own expense commission a report from Experian, and/or any other reputable credit reference agency, as to the credit status of a Supplier or the Suppliers.
- 8.14 Where any information supplied to the Authority by a Supplier or the Suppliers pursuant to Clause 8.12 of this Schedule 2 and/or in a report provided to the Authority by a credit reference agency pursuant to clause 8.13 of this Schedule 2 would, had it been submitted as part of the Suppliers' response to the DPS Framework ITT, have led to that Supplier or Suppliers:
- 8.14.1 failing to be appointed to this DPS Framework Agreement in respect of any Service Category, or at all; or
 - 8.14.2 being awarded a conditional or provisional appointment to any Service Category;
 - 8.14.3 then the Authority shall be entitled to treat such fact as a material breach of this DPS Framework Agreement capable of remedy for the purposes of Clauses 15.2 and 15.3 of this Schedule 2; and/or as grounds for Suspension pursuant to Clause 17.2 of this Schedule 2.
- 8.15 Where a report provided to the Authority by a credit reference agency pursuant to Clause 8.13 of this Schedule 2 indicates that the credit status of a Supplier or the Suppliers is high risk, or poor, then the Authority shall be entitled to treat that report as grounds for Suspension pursuant to Clause 17.2 of this Schedule 2.
- 8.16 The Suppliers must each submit to the Authority, an Economic Financial Standing Assessment ("**EFSA**") document on an annual basis for each year during the Term of this DPS Framework Agreement for review by the Authority. The first EFSA shall be submitted as part of the Suppliers' response to the DPS Framework ITT and then each subsequent EFSA on the anniversary of the Commencement Date during the Term. The EFSA submitted will be reviewed by the Authority and a pass/fail outcome applied. The Authority reserves the right by notice in writing to the Suppliers to suspend the Suppliers' appointment to this DPS Framework Agreement in the event that an EFSA is not submitted to the Authority or is submitted late in accordance with the requirements of this Clause 8.16. Such suspension shall continue for so long as the Suppliers are in default of a requirement of this Clause 8.16 of this Schedule 2.
- 8.17 In the event that an EFSA submitted by a Suppliers does not pass the Authority's review as outlined in Clause 8.16 of this Schedule 2 above, the Authority reserves the right by notice in writing to the Suppliers to suspend the Supplier's appointment to this DPS Framework Agreement. Such suspension shall continue until the Suppliers submit an EFSA to the Authority that passes the Authority's review as outlined in Clause 8.16 of this Schedule 2.
- 8.18 For the avoidance of doubt if the Suppliers are suspended from this DPS Framework Agreement pursuant to either Clause 8.16 or 8.17 of this Schedule 2 then the Suppliers may not participate in any Competition in respect of or involving a relevant Service Line and

shall not enter into any Call-Off Contract in respect of or involving a relevant Service Line during the period of any such suspension.

- 8.19 The Suppliers are as a condition of the award of this DPS Framework Agreement required to enter into the Catalogue Agreement and ensure that the Catalogue Agreement does not expire or terminate during the Term of this DPS Framework Agreement. In the event that the Catalogue Agreement expires or is terminated during the Term of this DPS Framework Agreement, the Authority reserves the rights by notice in writing to the Suppliers to suspend the Supplier's appointment to this DPS Framework Agreement.
- 8.20 The Suppliers shall at all times comply with all the provisions of the Catalogue Agreement during the Term of this DPS Framework, including compliance with all standards and capabilities listed in the Catalogue Agreement. In the event that the Suppliers are suspended in accordance with the Catalogue Agreement for any reason, the Authority reserves the right by notice in writing to the Suppliers to suspend the Suppliers' appointment to this DPS Framework Agreement.
- 8.21 For the avoidance of doubt, where the Suppliers:
- 8.21.1 have not entered into the Catalogue Agreement,
 - 8.21.2 have been suspended in accordance with the Catalogue Agreement; or
 - 8.21.3 are no longer a party to the Catalogue Agreement (whether as a result of expiry or termination),
2. then the Suppliers may not participate in any Competition in respect of or involving a relevant Service Line and shall not enter into any Call-Off Contract in respect of or involving a relevant Service Line until they can demonstrate to the satisfaction of the Authority that they have entered into the Catalogue Agreement and are not subject to suspension from the Catalogue Agreement.

9 Price and Payment

- 9.1 The Contract Price for all Call-Off Contracts shall be calculated based upon the rates, prices and/or unit costs as set out in the Commercial Schedule as varied in accordance with Clause 9.9 of this Schedule 2 (if applicable) and as further refined or tendered by the Suppliers in the course of each Competition and the payment provisions for all Call-Off Contracts shall be as set out in the Call-Off Terms and Conditions.
- 9.2 Without prejudice to any other right of the Authority arising under this DPS Framework Agreement in respect of the same circumstances, where any payment or sum of money due from the Suppliers to the Authority is not paid in full by the due date, interest on such outstanding sums shall be payable in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 9.3 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 DPS Framework Agreement or any Call-Off Contract (whether such liability is liquidated or unliquidated) against any liability of the Authority to the Suppliers under this DPS Framework Agreement

or any Call-Off Contract. Any exercise by the Authority of its rights under this Clause 9.3 of this Schedule 2 shall not limit or affect any other rights or remedies available to the Authority under this DPS Framework Agreement or otherwise.

- 9.4 All amounts due under this DPS Framework Agreement 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).
- 9.5 Save as provided for by Clause 24.9 of this Schedule 2, where any payments are to be made under this DPS Framework Agreement by either Party in addition to any payments to be made by Participating Authorities under any Call-Off Contracts, the details of such payments and the invoicing arrangements shall be set out in the Commercial Schedule.
- 9.6 The Suppliers' rates and prices as set out in the Commercial Schedule as varied in accordance with Clause 9.9 (if applicable) are the maximum rates and prices that the Suppliers shall charge under any Call-Off Contract for the provision of the Deliverables on a Business Day. The Suppliers' unit costs as set out in the Commercial Schedule as varied in accordance with Clause 9.9 (if applicable) are the maximum unit prices that the Suppliers shall charge under any Call-Off Contract for the provision of the Deliverables. For the avoidance of doubt, the Suppliers shall not be prevented from offering rates, prices and/or unit costs that are lower than the Suppliers' rates, prices and/or unit costs set out in the Commercial Schedule to any Participating Authority under any Competition in response to any Call-Off ITT.
- 9.7 If the Suppliers offer and/or charge rates, prices and/or unit costs that are higher than those set out in the Commercial Schedule (as varied in accordance with Clause 9.9 if applicable) to any Participating Authority under any Call-Off Contract then that conduct shall be a material breach of this DPS Framework Agreement capable of remedy for the purposes of Clause 15.2 of this Schedule 2.
- 9.8 Save as permitted under Clause 9.9 of this Schedule 2, the Suppliers' rates, prices and unit costs as set out in the Commercial Schedule will remain fixed.
- 9.9 The Suppliers may adjust the rates, prices and unit costs as set out in the Commercial Schedule 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.
- 9.10 Pending determination of any proposed adjustment to the rates, prices and unit costs as set out in the Commercial Schedule then those rates, prices and unit costs in force shall continue to apply.

10 Warranties

- 10.1 The Suppliers warrant, represent and undertake that:

- 10.1.1 they will comply with the terms of all Call-Off Contracts entered into by Participating Authorities under this DPS Framework Agreement;
- 10.1.2 without prejudice to any other requirement of this DPS Framework Agreement, they will promptly respond to all reasonable requests for information regarding this DPS Framework Agreement, the Deliverables and any Call-Off Contracts at the frequency and in the format that the Authority may reasonably require;
- 10.1.3 all information, statements, warranties and representations contained in their response to the DPS Framework ITT and (unless otherwise agreed) any other document produced or supplied by the Suppliers which resulted in the award of this DPS Framework Agreement to the Suppliers for the Deliverables is true, accurate, and not misleading save as may have been specifically disclosed in writing to the Authority prior to the execution of this DPS Framework Agreement and that they will promptly advise the Authority of any fact, matter or circumstance of which they may become aware which would render any such information, statements, warranties or representations to be false or misleading, and all warranties and representations contained in their response to the DPS Framework ITT and (unless otherwise agreed) any other document produced or supplied by the Suppliers which resulted in the award of this DPS Framework Agreement to the Suppliers for the Deliverables shall be deemed to be repeated by the Suppliers in this DPS Framework Agreement with reference to the circumstances existing at the Commencement Date;
- 10.1.4 they have and shall maintain all relevant rights, consents (including, where their procedures require, the consent of any parent company), authorisations, licences and accreditations required to enter into and comply with their obligations under this DPS Framework Agreement;
- 10.1.5 they have the right and authority to enter into this DPS Framework Agreement and that they have the capability and capacity to fulfil their obligations under this DPS Framework Agreement;
- 10.1.6 they are fully empowered by the terms of their constitutional documents to enter into and to carry out their obligations under this DPS Framework Agreement and the documents referred to in this DPS Framework Agreement;
- 10.1.7 all necessary actions to authorise the execution of and performance of their obligations under this DPS Framework Agreement have been taken before such execution;
- 10.1.8 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 10.1.8 of this Schedule 2 “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);

- 10.1.9 no proceedings or other steps have been taken and not discharged (nor, to the best of the Suppliers' knowledge, are threatened) for the winding up of any Supplier or for its dissolution, or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Suppliers' assets and/or revenue;
 - 10.1.10 there are no agreements existing to which the Suppliers are a party which prevent the Suppliers from entering into or complying with this DPS Framework Agreement;
 - 10.1.11 they have and will continue to have the capacity, funding and cash flow to meet all of their obligations under this DPS Framework Agreement and will promptly notify the Authority if during the Term this ceases to be the case;
 - 10.1.12 they have satisfied themselves as to the nature and extent of the risks assumed by them under this DPS Framework Agreement and have gathered all information necessary to perform their obligations under this DPS Framework Agreement and all other obligations assumed by them;
 - 10.1.13 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;
 - 10.1.14 they shall notify the Authority immediately if they become aware of any actual or suspected incidents of slavery or human trafficking in their supply chains; and
 - 10.1.15 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 10.1.15 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 10.1.15 of this Schedule 2.
- 10.2 Each time that a Participating Authority enters into a Call-Off Contract with the Suppliers the warranties, representations and undertakings in Clause 10 of this Schedule 2 shall be deemed to be repeated by the Suppliers with reference to the circumstances existing at the time that they are deemed to be repeated.
- 10.3 The Suppliers warrant that all information, data and other records and documents (if any) required by the Authority as set out in the DPS Framework ITT shall be submitted to the Authority in the format and in accordance with any timescales set out in the DPS Framework ITT.

- 10.4 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 Clause 10 of this Schedule 2 have been breached or there is a material risk that any warranties may be breached.
- 10.5 The Suppliers acknowledge and agree that:
- 10.5.1 The warranties, representations and undertakings contained within this DPS Framework Agreement are material and are designed to induce the Authority into entering into this DPS Framework Agreement and to induce the Authority and each and every other Participating Authority to enter into Call-Off Contracts with the Suppliers;
 - 10.5.2 The Authority has been so induced into entering into this DPS Framework Agreement and in doing so has relied upon the warranties, representations and undertakings contained within this DPS Framework Agreement; and
 - 10.5.3 Each Participating Authority will (amongst other things) on each and every occasion that it enters into a Call-Off Contract with the Suppliers be induced into doing so by, and in being so induced shall rely upon, the warranties representations and undertakings contained within this DPS Framework Agreement.
- 10.6 Any warranties provided under this DPS Framework Agreement are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.
- 10.7 For the avoidance of doubt, it is agreed that neither the Authority nor any other Participating Authority shall be entitled to obtain damages or otherwise obtain reimbursement more than once in respect of the same loss, liability or damage caused by the same breach of any of the warranties which appear (or are deemed to appear) in both this DPS Framework Agreement and any relevant Call-Off Contract.
- 10.8 Where:
- 10.8.1 under a Call-Off Contract the Suppliers breach any warranty set out (or deemed or implied to be set out) in that Call-Off Contract; and
 - 10.8.2 the Participating Authority under the relevant Call-Off Contract is the Authority; and
 - 10.8.3 the same warranty is set out (or is deemed or implied to be set out) in this DPS Framework Agreement;
 - 10.8.4 then the terms of the Call-Off Contract governing the breach of that warranty and the liability of the Parties shall prevail over the terms of this DPS Framework Agreement.

11 Statutory Compliance

- 11.1 The Suppliers shall comply with all Law and Guidance relevant to their obligations under this DPS Framework Agreement and any Call-Off Contracts.

11.2 Without limitation to Clause 11.1 of this Schedule 2, the Suppliers shall be responsible for obtaining and maintaining throughout the term of this DPS Framework Agreement and any Call-Off Contracts any statutory licences, authorisations, consents or permits required in connection with their performance of their obligations under this DPS Framework Agreement and any Call-Off Contracts.

12 Independence of Participating Authorities

12.1 The Suppliers acknowledge that each Participating Authority is independently responsible for the conduct of its award of Call-Off Contracts under this DPS Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:

12.1.1 the conduct of Participating Authorities other than the Authority in relation to the operation of this DPS Framework Agreement (for the avoidance of doubt, including but not limited to the conduct of any Competitions and/or associated procedures leading to the award or otherwise of any Call-Off Contracts); or

12.1.2 the performance or non-performance of any Participating Authorities other than the Authority under any Call-Off Contracts between the Suppliers and such other Participating Authorities entered into under this DPS Framework Agreement.

13 Limitation of Liability

13.1 Nothing in this DPS Framework Agreement shall exclude or restrict the liability of any Party:

13.1.1 for death or personal injury resulting from its negligence;

13.1.2 for fraud or fraudulent misrepresentation;

13.1.3 in any other circumstances where liability may not be limited or excluded under any applicable Law;

13.1.4 pursuant to Clause 26.3 of this Schedule 2;

13.1.5 pursuant to Clause 27.4.1 or Clause 27.4.2 of this Schedule 2; or

13.1.6 pursuant to Clause 2.27 of Schedule 6.

13.2 Subject to Clause 13.1, 13.3 and 13.7 of this Schedule 2, the total liability of each Party to the other under or in connection with this DPS Framework Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to five hundred thousand GBP (£500,000).

13.3 Subject to Clause 13.4, there shall be no right to claim losses, damages and/or other costs and expenses under or in connection with this DPS Framework Agreement 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.

- 13.4 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 DPS Framework Agreement 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.
- 13.5 NOT USED
- 13.6 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 that Party is entitled to bring a claim against another pursuant to this DPS Framework Agreement, 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 DPS Framework Agreement.
- 13.7 The liability of the Suppliers and any Participating Authorities under any Call-Off Contracts entered into pursuant to this DPS Framework Agreement shall be as set out in the Call-Off Terms and Conditions forming part of such Call-Off Contracts and shall not be limited in any way by the operation of this Clause 13 of this Schedule 2.
- 13.8 In relation to all third party claims against the Authority, which are the subject of any indemnity given by the Suppliers under this DPS Framework Agreement, the Authority shall:
- 13.8.1 notify the Suppliers of any such claims as soon as reasonably practicable; and
- 13.8.2 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:
- 13.8.2.1 relating to any legal, regulatory, governance, information governance, or confidentiality obligations on the Authority; and/or
- 13.8.2.2 relating to the Authority's membership of any indemnity and/or risk pooling arrangements.
3. 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).
- 13.9 Where the Authority is restricted from transferring any claim to the Suppliers in accordance with Clause 13.8 of this Schedule 2 above, the Authority shall in relation to any such claim:
- 13.9.1 notify the Suppliers about the claim in writing;
- 13.9.2 consult with the Suppliers about its conduct;
- 13.9.3 where the Authority chooses to defend the claim, following consultation with the Suppliers, defend such claim diligently and, where appropriate, using competent counsel; and

13.9.4 where the Authority is considering settling the claim, consult with the Suppliers about whether to settle it and the terms of any such settlement.

14 Insurance

- 14.1 Unless otherwise confirmed in writing by the Authority, as a minimum level of protection, each of the Suppliers shall put in place and/or maintain in force at its own cost with a reputable commercial insurer, insurance arrangements in respect of employer's liability, public liability 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 schemes administered by the NHS Litigation Authority set out at Clause 14.2 of this Schedule 2 below.
- 14.2 Provided that each Supplier maintains all indemnity arrangements required by Law, a Supplier may, if it is an NHS Body or if it is an NHS Foundation Trust, maintain membership of the each of the following risk pooling statutory schemes administered by the NHS Litigation Authority in order to meet the requirements of Clause 14.1 of this Schedule 2:
- 14.2.1 the Property Expenses Scheme; and
- 14.2.2 the Liabilities to Third Parties Scheme.
- 14.3 Maintaining indemnity cover and/or policies of insurance and/or membership of the risk pooling statutory schemes administered by the NHS Litigation Authority shall not relieve the Suppliers of any liabilities under this DPS Framework Agreement. It shall be the responsibility of the Suppliers to determine if the amount of indemnity cover and/or policies of insurance and/or membership of the risk pooling statutory schemes will be adequate to enable them to satisfy their potential liabilities under this DPS Framework Agreement. 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 are insufficient to cover the settlement of any claim.
- 14.4 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 insurance cover and/or membership of the risk pooling statutory schemes administered by the NHS Litigation Authority (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.
- 14.5 Any excesses or deductibles under the indemnity cover, policies of insurance and/or risk pooling statutory schemes referred to in this Clause 14 of this Schedule 2 shall be the sole and exclusive responsibility of the Suppliers.
- 14.6 The Suppliers shall within ten (10) Business Days of written demand from the Authority provide evidence to the Authority, in a form deemed satisfactory in the reasonable opinion of the Authority, that the insurance and/or indemnity arrangements and/or membership of

the risk pooling statutory schemes administered by the NHS Litigation Authority taken out by the Suppliers pursuant to this Clause 14 of this Schedule 2 are fully maintained and that where applicable, any premiums on them and/or contributions in respect of them (if any) are fully paid.

- 14.7 Upon the expiry or earlier termination of this DPS Framework Agreement, the Suppliers shall ensure that any ongoing liability they have or may have arising out of this DPS Framework Agreement shall continue to be the subject of appropriate insurance and/or indemnity arrangements and/or membership of the risk pooling statutory schemes administered by the NHS Litigation Authority, in accordance with this DPS Framework Agreement, for the period of six (6) years from termination or expiry of this DPS Framework Agreement.

15 Term and Termination

- 15.1 This DPS Framework Agreement shall commence on the Commencement Date and shall, unless terminated earlier in accordance with the terms of this DPS Framework Agreement or the general law, continue until the end of the Term.
- 15.2 In the case of a breach of any of the terms of this DPS Framework Agreement by either Party that is capable of remedy (including any failure to pay any sums due under this DPS Framework Agreement), the non-breaching Party may, without prejudice to its other rights and remedies under this DPS Framework Agreement, 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 DPS Framework Agreement in accordance with Clause 15.3.2 of this Schedule 2. 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:
- 15.2.1 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;
 - 15.2.2 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
 - 15.2.3 remedy the default or breach notwithstanding the implementation of such Remedial Proposal in accordance with the agreed timescales for implementation,

4. shall be deemed, for the purposes of Clause 15.3.2 of this Schedule 2, a material breach of this DPS Framework Agreement by the Party in breach that has not been remedied in accordance with an agreed Remedial Proposal.
- 15.3 Either Party may terminate this DPS Framework Agreement forthwith by notice in writing to the other Party if the other Party commits a material breach of any of the terms of this DPS Framework Agreement which is:
- 15.3.1 not capable of remedy; or
- 15.3.2 in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal.
- 15.4 The Authority may terminate this DPS Framework Agreement forthwith by notice in writing to the Suppliers if:
- 15.4.1 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 DPS Framework Agreement, ceases or threatens to cease carrying on its business; suspends making payments on any of its debts or announces an intention to do so; is, or is deemed for the purposes of any Law to be, unable to pay its debts as they fall due or insolvent; enters into or proposes any composition, assignment or arrangement with its creditors generally; takes any step or suffers any step to be taken in relation to its winding-up, dissolution, administration (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) otherwise than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation; has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed (in each case, whether out of court or otherwise) in respect of it or any of its assets; has any security over any of its assets enforced; or any analogous procedure or step is taken in any jurisdiction;
- 15.4.2 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 DPS Framework Agreement or the reputation of the Authority or would, if permitted to take effect, constitute a material variation to the provisions of this DPS Framework Agreement or of any Call-Off Contract for the purposes of the Public Contracts Regulations and any applicable provisions of Law;
- 15.4.3 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 DPS Framework Agreement in breach of Clause 30.1 of this Schedule 2;

- 15.4.4 without prejudice to Clause 15.3.1 of Schedule 2 of this DPS Framework Agreement but otherwise subject to Clause 15.6 of Schedule 2, in the event that:
- 15.4.4.1 the Suppliers breach any provision or provisions of Schedule 6 that relate to Personal Data where the Personal Data in respect of which the breach occurs is Special Categories of Personal Data and/or Criminal Offence Data; and/or
 - 15.4.4.2 the Suppliers breach any provision or provisions of Schedule 6 that relate to Confidential Information, where such confidential information relates to any patient or service user of NHS (funded) services and/or social services funded by a local authority;
- 15.4.5 a Participating Authority terminates or is entitled to terminate any Call-Off Contract for breach by the Suppliers (or any one of the Suppliers if the Suppliers comprise more than one organisation) pursuant to any of the provisions of the relevant Call-Off Contract;
- 15.4.6 the Suppliers fail to pay any sum or sums due to the Authority under this DPS Framework Agreement (which sums are not in dispute) which, either on its own or in aggregate, exceed(s) Seventy-five Thousand Pounds GBP £75,000 and such failure continues for twenty (20) Business Days from receipt by the Suppliers of a notice of non-payment from the Authority;
- 15.4.7 the sum of all Service Credits (as defined by the Call-Off Terms and Conditions) accrued by the Suppliers under all Call-Off Contracts to which the Suppliers are a party (whether such Service Credits have been credited or paid to a Participating Authority or remain uncredited or unpaid) exceeds 10% of the total sum in any twelve (12) Month period (such sum to be assessed on a rolling 12 Month basis) of all amounts paid or payable by all Participating Authorities to the Suppliers pursuant to the terms of any and all Call-Off Contracts to which the Suppliers are a party in respect of the same twelve (12) Month period;
- 15.4.8 the Suppliers commit a material or persistent breach of their obligations at Clause 30.9 of this Schedule 2;
- 15.4.9 pursuant to and in accordance with any termination rights set out in Clauses 23.8, 27.2, 27.4.1 and 31.3.1 of this Schedule 2 or as otherwise set out in this DPS Framework Agreement;
- 15.4.10 the DPS Framework Agreement has been substantially amended to the extent that the Public Contracts Regulations require a new procurement procedure;
- 15.4.11 the Authority has become aware that any of the Suppliers could have been excluded under the provisions of Regulation 57(1) or (2) or (8) of the Public Contracts Regulations from the procurement procedure leading to the award of this DPS Framework Agreement or could if re-evaluated be so be excluded (subject always to the requirements of Regulation 57 of the Public Contracts Regulations governing such exclusions);

- 15.4.12 the DPS Framework Agreement should not have been awarded to any of the Suppliers in view of a serious infringement of obligations under European law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU;
- 15.4.13 there has been a failure by any of the Suppliers and/or one of its/their sub-contractor(s) 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(s) and the Supplier(s) shall comply with such request as an alternative to the Authority terminating this DPS Framework Agreement under this Clause 15.4.13;
- 15.4.14 the Suppliers have, in the reasonable opinion of the Authority acted in a way likely to bring the National Health Service and/or the Authority into disrepute;
- 15.4.15 the Suppliers have in the reasonable opinion of the Authority acted in a way so as to cause a serious risk to the health or safety of persons, property or the environment;
- 15.4.16 Subject to Clause 15.5, the Suppliers breach any provision or provisions of the Data Protection Legislation whether related to this DPS Framework Agreement, a Call-Off Contract or otherwise;
- 15.4.17 Subject to Clause 15.5, the Suppliers breach any provision or provisions of Schedule 6 and the Authority is required to report such breach to the Information Commissioner and/or to the relevant Data Subjects; and/or
- 15.4.18 Subject to Clause 15.5, the Information Commissioner takes regulatory action against:
 - 15.4.18.1 the Authority; and/or
 - 15.4.18.2 the Suppliers
 - i. in respect of any act or omission of the Suppliers pursuant to this DPS Framework Agreement.
- 15.5 Any right of termination set out in Clause 15.4 above that is expressed to be subject to this Clause 15.5 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.
- 15.6 Subject to Clause 15.7 of Schedule 2 of this DPS Framework Agreement, the Suppliers may terminate this Contract (or part of the Contract) on no less than 6 months written notice if:

- 15.6.1 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
 - 15.6.2 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.
- 15.7 Where the Suppliers wish to exercise their right at Clause 15.6 of Schedule 2 of this DPS Framework Agreement, the Suppliers must first before service of any notice Clause 15.6 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:
- 15.7.1 such violation of Law, rule, regulation or professional standard exists; or
 - 15.7.2 such professional conflict of interest exists; and
 - 15.7.3 such violation or conflict of interest (as applicable) can only be effectively mitigated by the termination of the Contract.

16 Consequences of Expiry or Earlier Termination of this DPS Framework Agreement

- 16.1 Upon expiry or earlier termination of this DPS Framework Agreement, the Authority and the Suppliers agree that all Call-Off Contracts entered into under this DPS Framework Agreement will continue in full force and effect unless otherwise terminated under the terms and conditions of such Call-Off Contracts.
- 16.2 The Suppliers shall cooperate fully with the Authority and, 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 this DPS Framework Agreement. This cooperation shall extend to providing access to all information relevant to the operation of this DPS Framework Agreement, 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 of the Authority or any Participating Authority. To the extent that the Suppliers are required by this Clause 16.2 of Schedule 2 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 6. The Suppliers shall only be obliged to provide Confidential Information where a confidentiality agreement has been entered into by replacement suppliers and the Suppliers.
- 16.3 The expiry or earlier termination of this DPS Framework Agreement for whatever reason shall not affect any rights or obligations of either Party which accrued prior to such expiry or earlier termination.

- 16.4 The expiry or earlier termination of this DPS Framework Agreement shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.
- 16.5 Without prejudice or limitation to Clauses 16.3 and 16.4 of this Schedule 2, the Parties agree that the provisions of Clauses 22, shall survive the expiry or termination of this DPS Framework Agreement for any reason.
- 16.6 Without prejudice or limitation to Clauses 16.3 and 16.4 of this Schedule 2 , the Parties agree that the provisions of Clause 8 of this Schedule 2 and all obligations upon the Suppliers to provide Management Information under this Framework Agreement shall survive the expiry or termination of this Framework Agreement for any reason

17 Suspension of Suppliers' Appointment

- 17.1 Without prejudice to the Authority's rights to terminate this DPS Framework Agreement, if a right for the Authority to terminate this DPS Framework Agreement arises in accordance with Clause 15 of this Schedule 2 (irrespective of whether the circumstances leading to such right are capable of remedy and irrespective of whether such right is exercised by the Authority) the Authority may suspend the Suppliers' or any Supplier's (where the Suppliers comprise more than one Supplier) appointment to the DPS Framework Agreement by service of a notice notifying the Suppliers of such Suspension.
- 17.2 Where the circumstances set out in Clauses 8.14, 8.15, 8.16, 8.17, 8.19 or 8.20 of this Schedule 2 apply, or where it is established to the reasonable satisfaction of the Authority that circumstances have arisen which place the Suppliers, or a Supplier, in breach of the warranty given in clause 10.1.11 of this Schedule 2, the Authority may suspend the Suppliers' or any Supplier's (where the Suppliers comprise more than one Supplier) appointment to the DPS Framework Agreement by service of a notice notifying the Suppliers of such Suspension.
- 17.3 Where Suppliers have been appointed to provide Deliverables pursuant to a Call-Off Contract awarded under this DPS Framework Agreement and they fail to comply with the standards listed in Schedule 7 of the Call-Off Terms and Conditions, then the Authority may suspend the Suppliers' or any Supplier's (where the Suppliers comprise more than one Supplier) appointment as a provider of Deliverables under this DPS Framework Agreement by service of a notice notifying the Suppliers of such Suspension.
- 17.4 Where the Suppliers or any Supplier (where the Suppliers comprise more than one Supplier) have received a notice of Suspension in accordance with Clause 17.1, 17.2 or 17.3 of this Schedule 2 then such Supplier or the Suppliers:
- 17.4.1 may not participate in any Competition during the period of such Suspension;
 - 17.4.2 shall withdraw from any Competition in which they are participating at the date of the notice of Suspension;
 - 17.4.3 shall not enter into any Call-Off Contract during the period of such Suspension;
- and

- 17.4.4 may not receive new Orders under this DPS Framework Agreement during the period of such Suspension.
- 17.5 Where the Suppliers or any Supplier (where the Suppliers comprise more than one Supplier) have received a notice of Suspension in accordance with Clause 17.1 of this Schedule 2, the Suppliers' or any Supplier's (where the Suppliers comprise more than one Supplier) appointment to the Framework shall be suspended for the period set out in the notice or such other period notified to the Suppliers by the Authority in writing from time to time provided that such Suspension shall be lifted where:
- 17.5.1 the circumstances leading to the Authority's right to terminate this DPS Framework Agreement have been remedied;
- 17.5.2 the Authority has satisfied itself that the risk and/or impact of the circumstances giving rise to the Authority's right to terminate this DPS Framework Agreement no longer requires such Suspension; or
- 17.5.3 the Authority exercises its rights to terminate this DPS Framework Agreement in accordance with Clause 15 of this Schedule 2.
- 17.6 Where the Suppliers or any Supplier (where the Suppliers comprise more than one Supplier) have received a notice of Suspension in accordance with Clause 17.2 of this Schedule 2, the Suspension shall be lifted where the circumstances set out in Clauses 8.14, 8.15, 8.16, 8.17, 8.19 or 8.20 of this Schedule 2 that gave rise to the right to suspend under Clause 17.2 of this Schedule 2 have been remedied.
- 17.7 Any Suspension of a Supplier pursuant to Clauses 17.1, 17.2 or 17.3 of this Schedule 2 shall continue until such time as the relevant circumstances have ceased to apply and any failure by the Supplier to provide the relevant services in accordance with its contractual obligations has been rectified to the reasonable satisfaction of the Authority (taking into account the views of the relevant Contracting Authority), at which point the Suspension of the Supplier shall end.
- 17.8 Where the Authority serves a notice of Suspension on the Suppliers or any Supplier (where the Suppliers comprise more than one Supplier) it shall be entitled to notify each relevant Participating Authority of such Suspension.
- 17.9 Where the Authority notifies one or more Participating Authorities pursuant to Clause 17.8 of this Schedule 2 above of a Suspension it must also notify each such Participating Authority of the lifting of any such Suspension following the date that the relevant Suspension is lifted.
- 17.10 The rights of Suspension set out in this Clause 17 are without prejudice to any other right of suspension set out in this DPS Framework Agreement.

18 Complaints

- 18.1 The Suppliers shall notify the Authority in writing of each and every written complaint made by any of the Participating Authorities relating to the Suppliers' non-compliance with any of their obligations under any Call-Off Contract. Such written notification must be made in

relation to each complaint by the Suppliers within five (5) Business Days of the Suppliers becoming aware of such a complaint.

- 18.2 In relation to any such complaint, without prejudice to any rights and remedies that the Participating Authority may have under the relevant Call-Off Contract and/or the Authority may have under this DPS Framework Agreement, 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.
- 18.3 Within five (5) Business Days of a written request by the Authority, the Suppliers shall provide further reasonable details of any such complaint to the Authority, including details of the steps being taken to progress its resolution and, following its resolution, details of how and when the complaint was resolved.

19 Sustainable development

- 19.1 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 DPS Framework ITT. Without prejudice to the generality of the foregoing, the Suppliers shall:
- 19.1.1 comply with all Policies and/or procedures and requirements set out in the DPS Framework ITT in relation to any stated environmental, social, and labour requirements, characteristics and impacts of the Deliverables and the Suppliers' supply chain;
 - 19.1.2 maintain relevant policy statements documenting the Suppliers' significant labour, social and environmental attributes and/or approaches as relevant to the Deliverables being provided and as proportionate to the nature and scale of the Suppliers' business operations; and
 - 19.1.3 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 19.1.2 of this Schedule 2.
- 19.2 The Suppliers shall meet reasonable requests by the Authority for information evidencing the Suppliers' compliance with the provisions of Clause 19 of this Schedule 2.

20 Electronic information re Deliverables

- 20.1 Where requested by the Authority, the Suppliers shall provide the Authority with such information as it reasonably requires for inclusion in the Authority's guidance and/or information supplied to suppliers under framework agreements awarded under the same process as this DPS Framework Agreement and/or to Participating Authorities from time to time ("Deliverables Information") in such manner and upon such media as agreed between the Suppliers and the Authority from time to time for the sole use of the Authority.

- 20.2 The Suppliers warrant that the Deliverables Information shall be complete and accurate as at the date upon which it is delivered to the Authority and that the Deliverables Information shall not contain any data or statement which gives rise to any liability on the part of the Authority following publication of the same in accordance with Clause 20 of this Schedule 2.
- 20.3 If the Deliverables 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 Deliverables Information.
- 20.4 The Suppliers grant the Authority a perpetual, non-exclusive, royalty free licence to use the Deliverables Information and any Intellectual Property Rights in the Deliverables Information for the purpose of illustrating the range of Deliverables accessible to Participating Authorities under the DPS Framework Agreement from time to time.
- 20.5 The Authority may reproduce for its sole use the Deliverables 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.
- 20.6 For the avoidance of doubt the Suppliers shall have no right to compel the Authority to exhibit the Deliverables Information in any format or publication save that the Suppliers may specify restrictions on how the Suppliers' branding and/or logo are exhibited.
- 20.7 For the avoidance of doubt the provisions of this Clause 20 do not restrict or limit the ability of the Suppliers to themselves promote their ability to provide the Deliverables under Call-Off Contracts awarded under this DPS Framework Agreement.

21 Change Management

- 21.1 The Suppliers acknowledge to the Authority that the requirements for the Deliverables that may be called-off under this DPS Framework Agreement may change during the Term and the Suppliers shall not unreasonably withhold or delay their consent to any reasonable variation or addition to the DPS Framework Agreement, as may be requested by the Authority from time to time.
- 21.2 Any variation to this DPS Framework Agreement shall only be binding once it has been agreed in writing and signed by an authorised representative of all Parties.

22 Dispute Resolution

- 22.1 During any dispute, including a dispute as to the validity of this DPS Framework Agreement, it is agreed that the Suppliers shall continue their performance of the provisions of the DPS Framework Agreement (unless the Authority requests in writing that the Suppliers do not do so).
- 22.2 Subject to Clause 31.3.3 of this Schedule 2, in the case of a dispute arising out of or in connection with this DPS Framework Agreement between the Suppliers and the Authority, 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 Clause 22.3 of this Schedule 2 as the first stage in the Dispute Resolution Procedure.

- 22.3 If any dispute arises out of the DPS Framework Agreement 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 5 of the Key Provisions. Respective representatives at each level, as set out in Clause 5 of the Key Provisions, shall have five (5) Business Days at each level during which they will use their reasonable endeavours to resolve the dispute before escalating the matter to the next level until all levels have been exhausted. Level 1 will commence on the date of service of the dispute notice. The final level of the escalation process shall be deemed exhausted on the expiry of five (5) Business Days following escalation to that level unless otherwise agreed by the Parties in writing.
- 22.4 If the procedure set out in Clause 22.3 of this Schedule 2 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.
- 22.5 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 22.3 of this Schedule 2, the mediator shall be nominated and confirmed by the Centre for Effective Dispute Resolution, London.
- 22.6 A Party shall not nominate or confirm a mediator until the process set out in Clause 22.3 of this Schedule 2 has been exhausted.
- 22.7 The mediation shall commence within twenty eight (28) days of the confirmation of the mediator in accordance with Clause 22.5 of this Schedule 2 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 Authority and the Suppliers.
- 22.8 Notwithstanding the other provisions of this Clause 22 of this Schedule 2, the Parties agree that where indicated in this DPS Framework Agreement, 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 this DPS Framework Agreement 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 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).
- 22.9 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 22.8 of this Schedule 2.
- 22.10 Within 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).
- 22.11 In any event, the Expert shall provide to all Parties his written decision on the dispute and/or determination, within 28 days of appointment (or such other period as the Parties may agree after the reference, or 42 days from the date of reference if the Party which referred the dispute agrees).
- 22.12 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 reached his determination.
- 22.13 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 DPS Framework Agreement.
- 22.14 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.
- 22.15 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.
- 22.16 The determination of the Expert, except in the case of manifest error, is to be final and binding on the Parties to this DPS Framework Agreement.
- 22.17 Nothing in this DPS Framework Agreement shall prevent:
- 22.17.1 the Authority taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the provision of the Deliverables; or
- 22.17.2 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 or the security of Confidential Information, pending attempted resolution of the relevant dispute in accordance with the Dispute Resolution Procedure.
- 22.18 Clause 22 of this Schedule 2 shall survive the expiry of or earlier termination of this DPS Framework Agreement for any reason.

23 Force Majeure

- 23.1 Subject to Clause 23.2 of this Schedule 2, a Party shall not be liable to another Party for any failure to perform all or any of its obligations under this DPS Framework Agreement 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.
- 23.2 A Supplier and/or the Suppliers shall only be entitled to rely on a Force Majeure Event and the relief set out in Clause 23 of this Schedule 2 and will only not be considered to be in default or liable for breach of any obligations under this DPS Framework Agreement if:
- 23.2.1 the relevant Supplier has fulfilled its obligations pursuant to Clause 6 of this Schedule 2;
- 23.2.2 the Force Majeure Event does not arise directly or indirectly as a result of any wilful or negligent act or default of the relevant Supplier and/or the Suppliers; and
- 23.2.3 the relevant Supplier and the Suppliers have complied with the procedural requirements set out in Clause 23 of this Schedule 2 below.
- 23.3 Where a Party is (or claims to be) affected by a Force Majeure Event it shall use reasonable endeavours to mitigate the consequences of such a Force Majeure Event upon the performance of its obligations under this DPS Framework Agreement and to resume the performance of its obligations affected by the Force Majeure Event as soon as practicable.
- 23.4 Where the Force Majeure Event affects a Supplier's ability to perform part of its obligations under the DPS Framework Agreement that Supplier shall fulfil all such contractual obligations that are not so affected and shall not be relieved from its liability to do so.
- 23.5 If a Party is prevented or delayed in the performance of its obligations under this DPS Framework Agreement by a Force Majeure Event, that Party shall as soon as reasonably practicable serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.
- 23.6 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.
- 23.7 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.
- 23.8 If any Supplier and/or the Suppliers are prevented from the performance of its obligations as a result of a Force Majeure Event, the Authority may at any time if the Force Majeure Event subsists for thirty (30) days or more, terminate this DPS Framework Agreement in full or in part on service of written notice on the Suppliers.

- 23.9 Following such termination in accordance with Clause 23.8 of this Schedule 2 and subject to Clause 23.10 of this Schedule 2, each Party shall not have any liability to any other.
- 23.10 Any rights and liabilities of each Party which accrued prior to such termination in accordance with Clause 23.8 of this Schedule 2 shall continue in full force and effect unless otherwise specified in this DPS Framework Agreement.

24 Records retention and right of audit

- 24.1 Subject to any statutory requirement and Clause 24.2 of this Schedule 2, 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 DPS Framework Agreement.
- 24.2 Where any records could be relevant to a claim for personal injury such records shall be kept secure and maintained by the Suppliers for the longer of:
- 24.2.1 ten (10) years; or
- 24.2.2 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.
- 24.3 The Authority shall have the right to audit the Suppliers' compliance with this DPS Framework Agreement. 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 4 of this DPS Framework Agreement in respect of the Suppliers' Confidential Information) during normal business hours no more than twice in any twelve (12) month period (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 their obligations under this DPS Framework Agreement 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.
- 24.4 Should the Suppliers subcontract any of their obligations under this DPS Framework Agreement, 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, 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 DPS Framework Agreement 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.

- 24.5 Without limitation to the generality of Clause 24.3 of this Schedule 2, the Suppliers shall grant to the Authority or its authorised representative(s), such access to those records as they may reasonably require in order to check the Suppliers' compliance with this DPS Framework Agreement for the purposes of:
- 24.5.1 the examination and certification of the Authority's accounts; or
 - 24.5.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economic efficiency and effectiveness with which the Authority has used its resources.
- 24.6 The Comptroller and Auditor General may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Suppliers and may require the Suppliers to provide such oral and/or written explanations as they consider necessary. Clause 24 of this Schedule 2 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.
- 24.7 The Suppliers shall all provide reasonable cooperation to the Authority, its representatives and any regulatory body in relation to any audit, review, investigation or enquiry carried out in relation to the subject matter of this DPS Framework Agreement.
- 24.8 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 DPS Framework Agreement.
- 24.9 If an audit reveals that a Supplier and/or the Suppliers have:
- 24.9.1 been in receipt of any income under a Call-Off Contract that it is not entitled to under that Call-Off Contract of greater than £10,000; and/or
 - 24.9.2 it has underpaid any amount that it is obliged to pay to a Participating Authority under a Call-Off Contract of greater than £5,000;
5. then the Suppliers shall reimburse the Authority for its costs in conducting the relevant audit and shall pay the amount so received or underpaid (as applicable) to the relevant Participating Authority within ten (10) Business Days.
- 24.10 In all circumstances other than as set out in Clause 24.9 of this Schedule 2, each Party shall bear its own respective costs and expenses incurred in respect of compliance with its obligations under this Clause 24.
- 24.11 This Clause 24 of Schedule 2 of this DPS Framework Agreement shall be subject to any confidentiality obligations of the Suppliers to any clients imposed by Law or an applicable regulator.

25 Participating Authority Satisfaction Monitoring

- 25.1 The Authority may from time to time (but not on more than one occasion in any twelve (12) Month period) undertake (or procure the undertaking of) a Participating Authority

satisfaction survey, ("**Participating Authority Satisfaction Survey**") the purpose of which shall include (but not be limited to):

- 25.1.1 assessing the level of satisfaction among the Participating Authorities with the supply of the Deliverables by the Suppliers (including the way in which the relevant Deliverables are provided, performed and delivered) and, in particular, the level of satisfaction as to the quality, efficiency and effectiveness of the supply of the Deliverables;
 - 25.1.2 monitoring the Suppliers' compliance with the requirements of this DPS Framework Agreement and of relevant Call -Off Contracts;
 - 25.1.3 such other assessment(s) as the Authority may deem appropriate for monitoring Participating Authority satisfaction; and
- 25.2 The Authority and any other Participating Authorities shall be entitled, but not obliged, to disclose (to any Contracting Authority) the results of the Participating Authority Satisfaction Survey and to use such results to inform decisions under or in relation to this DPS Framework Agreement and any Call-Off Contracts.

26 Authority Branding

- 26.1 The Suppliers shall not do anything, or cause anything to be done, which may damage the reputation of the Authority or bring the Authority into disrepute.
- 26.2 The Suppliers shall not use the Authority's logo in connection with:
- 26.2.1 this DPS Framework Agreement;
 - 26.2.2 any Call-Off Contract;
 - 26.2.3 the provision of the Deliverables; or
 - 26.2.4 for any other purpose;
6. without the prior written permission of the Authority.
- 26.3 The Supplier shall at all times during the Term on written demand indemnify the Authority and keep the Authority indemnified against all losses, incurred by, awarded against or agreed to be paid by the Authority arising out of any claim or infringement or alleged infringement (including the defence of such infringement or alleged infringement) resulting from the Supplier's use of the Authority's logo save to the extent that such losses relate to the infringement by the Authority's logo of any third party's intellectual property rights.

27 Conflicts of Interest and the Prevention of Fraud

- 27.1 The Suppliers shall take appropriate steps to ensure that neither the Suppliers nor any Staff 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 DPS Framework Agreement or any Call-Off Contract. The Suppliers will disclose to the Authority

full particulars of any such conflict of interest which may arise, or which may reasonably be foreseen as arising.

- 27.2 The Authority reserves the right to terminate this DPS Framework Agreement 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 DPS Framework Agreement or any Call-Off Contract. The actions of the Authority pursuant to this Clause 27.2 of this Schedule 2 shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the Authority under this DPS Framework Agreement or otherwise.
- 27.3 The Suppliers shall take all reasonable steps to prevent Fraud by Staff and the Suppliers (including their owners, members and directors). The Suppliers shall notify the Authority immediately if they have reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 27.4 If the Suppliers or their Staff or any other person referred to in Clause 27.3 commits Fraud (whether in relation to this DPS Framework Agreement or any Call-Off Contract or otherwise), the Authority may:
- 27.4.1 terminate this DPS Framework Agreement with immediate effect by giving the Supplier notice in writing, and recover from the Suppliers:
 - 27.4.1.1 the amount of any loss, liability cost and/or expense suffered by the Authority resulting from such termination;
 - 27.4.1.2 without limitation to the generality of Clause 27.4.1.1 above any cost and/or expense reasonably incurred by the Authority of making other arrangements for the supply of the relevant Deliverables following such termination including without limitation conducting or supporting the conduct of any Competition to reprocure the affected Deliverables; and
 - 27.4.1.3 without limitation to the generality of Clause 27.4.1.1 above any other additional loss, liability, cost and/or expense incurred by the Authority in relation to this DPS Framework Agreement and/or any Call-Off Contract throughout the remainder of the Term (or where applicable in relation to any Call-Off Contract, the term of such Call-Off Contract) resulting from such termination; and
 - 27.4.2 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 27 of this Schedule 2.

28 Equality and Human Rights

- 28.1 The Suppliers shall:

- 28.1.1 ensure that (a) they do not, whether as employer or as a provider of 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 provider of the Deliverables and any associated services or supplies as set out in the Equality Legislation and take reasonable endeavours to ensure that their Staff do not unlawfully discriminate within the meaning of the Equality Legislation;
 - 28.1.2 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
 - 28.1.3 the Suppliers shall impose on all of their subcontractors and suppliers, obligations substantially similar to those imposed on the Suppliers by Clause 28 of this Schedule 2.
- 28.2 The Suppliers shall meet reasonable requests by the Authority for information evidencing the Suppliers' compliance with the provisions of Clause 28 of this Schedule 2.

29 Notices

- 29.1 Subject to Clause 22.7 of this Schedule 2, any notice required to be given by either Party under this DPS Framework Agreement shall be in writing identifying this DPS Framework Agreement and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the Key Provisions or to such other person as one Party may notify to the other Party in writing from time to time.
- 29.2 A notice shall be treated as having been received:
- 29.2.1 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
 - 29.2.2 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
 - 29.2.3 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.

30 Assignment, Novation and Subcontracting

- 30.1 Subject to the remaining provisions of this Clause 30 of this Schedule 2 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 DPS Framework Agreement 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 DPS Framework Agreement or under any Call-Off Contract, every act or omission of the subcontractor shall for the purposes of this DPS Framework Agreement 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.
- 30.2 Where a subcontractor has been identified in the Suppliers' response to the DPS Framework ITT then consent from the Authority to such subcontracting by the Suppliers shall be deemed to have been given for the purposes of Clause 30.1 of this Schedule 2.
- 30.3 For the purposes of Clause 30.1 of this Schedule 2 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 DPS Framework Agreement in circumstances that include, but are not limited to where any proposed subcontractor 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 sub-contracting 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 to the total Deliverables under any Call-Off Contract.
- 30.4 Any authority given by the Authority for the Suppliers to subcontract any of their obligations under this DPS Framework Agreement and/or under any Call-Off 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 DPS Framework Agreement and/or any Call-Off Contract (as applicable).
- 30.5 Where the Authority considers that the grounds for exclusion under Regulation 57 of the Public Contracts Regulations apply to any sub-contractor, then:
- 30.5.1 if the Authority finds there are compulsory grounds for exclusion, the Suppliers that are party (or are to be a party) to the relevant subcontract shall ensure, or shall procure, that such sub-contractor is replaced or not appointed; or
- 30.5.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Suppliers that are party (or are to be a party) to the relevant subcontract to ensure, or to procure, that such sub-contractor is replaced or not appointed and the Suppliers shall comply with such a requirement.

- 30.6 The Authority shall upon written request have the right to review any sub-contract entered into by the Suppliers in respect of the provision of the Deliverables and the Suppliers shall provide a certified copy of any sub-contract 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 sub-contracts.
- 30.7 The Authority may require the Suppliers to terminate any subcontract under any Call-Off Contract where it considers that:
- 30.7.1 the subcontractor may prejudice the provision of the Deliverables under that Call-Off Contract or may be acting contrary to the best interests of the Authority and/or the relevant Participating Authority; and/or
 - 30.7.2 the subcontractor under that Call-Off Contract is reasonably considered by the Authority to be unreliable and/or has not provided Deliverables to a reasonable standard to its other customers; and/or
 - 30.7.3 the subcontractor under that Call-Off Contract employs unfit persons;
7. provided that such right shall not be exercised unreasonably, frivolously or vexatiously.
- 30.8 In the event that the Authority exercises its right pursuant to Clause 30.7 of this Schedule 2, the Suppliers shall use all reasonable endeavours to maintain the provision of the Deliverables under that Call-Off Contract.
- 30.9 The Suppliers shall ensure that in respect of each subcontractor under each Call-Off Contract that they shall:
- 30.9.1 pay all undisputed sums due from them to any such subcontractor within thirty (30) days of verifying that the invoice is valid and undisputed. Where the Participating 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 its reasonable endeavours to pay its relevant subcontractor within a comparable timeframe from verifying that an invoice is valid and undisputed; and
 - 30.9.2 act at all times in good faith towards such subcontractors, exercising the Suppliers' rights under the relevant subcontract reasonably and performing the Suppliers' obligations under the relevant subcontract at all times.
- 30.10 The Authority may at any time transfer, assign, novate, subcontract or otherwise dispose of its rights and obligations under this DPS Framework Agreement or any part of this DPS Framework Agreement and the Suppliers warrant that they will carry out all such reasonable further acts required to effect such transfer, assignment, novation, subcontracting or disposal.
- 30.11 If the Authority novates this DPS Framework Agreement then the Authority shall ensure that the novation agreement secures that the party assuming the position of the Authority shall not further transfer, assign, novate, subcontract or otherwise dispose of its rights and

obligations under this DPS Framework Agreement or any part of this DPS Framework Agreement without the prior written consent of NHS England.

30.12 The Authority may not transfer, assign or novate this DPS Framework Agreement or any part of this DPS Framework Agreement pursuant to Clause 30.10 of this Schedule 2 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 any or all of their obligations pursuant to this DPS Framework Agreement 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:

30.12.1 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

30.12.2 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.

31 Prohibited Acts

31.1 The Suppliers warrant, and represent that:

31.1.1 they have not committed any offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010 or done any of the following ("**Prohibited Acts**"):

31.1.1.1 offered, given or agreed to give any officer or employee, agent, servant or representative of the Authority or any other public body any gift or consideration of any kind which could act 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 DPS Framework Agreement or any other agreement with the Authority or any Call-Off Contract or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the Authority or any Call-Off Contract; or

31.1.1.2 in connection with this DPS Framework Agreement or any other agreement with the Authority or any Call-Off 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

31.1.1.3 defrauded or attempted to defraud or conspired to defraud the Authority or any other public body; and

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

31.2 The Suppliers warrant, represent and undertake to the Authority that in entering into this DPS Framework Agreement they have not breached the warranties contained within Clause 31.1 above. Each time that a Call-Off Contract is entered into the warranties within Clause

31.1 above shall be deemed to be repeated by the Suppliers with reference to the circumstances existing at the time that the warranties are deemed to be repeated.

31.3 If the Suppliers or their Staff (or anyone acting on their respective behalves) have done or do any of the Prohibited Acts or have committed or commit 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:

31.3.1 the Authority shall be entitled:

31.3.1.1 to terminate this DPS Framework Agreement and recover from the Suppliers the amount of any loss, liability, cost and/or expense resulting from the termination;

31.3.1.2 to recover from the Suppliers the amount or value of any gift, consideration or commission concerned; and

31.3.1.3 to recover from the Suppliers any other loss, liability, cost and/or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;

31.3.2 any termination under Clause 31.3.1 of this Schedule 2 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Authority; and

31.3.3 notwithstanding Clause 22 of this Schedule 2, any dispute relating to:

31.3.3.1 the interpretation of Clause 32 of this Schedule 2; or

31.3.3.2 the amount or value of any gift, consideration or commission,

8. shall be determined by the Authority, acting reasonably, and the decision shall be final and conclusive.

32 General

32.1 Each of the Parties is independent of the other and nothing contained in this DPS Framework Agreement 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 DPS Framework Agreement.

32.2 Failure or delay by either Party to exercise an option or right conferred by this DPS Framework Agreement shall not of itself constitute a waiver of such option or right.

32.3 The delay or failure by either Party to insist upon the strict performance of any provision, term or condition of this DPS Framework Agreement 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.

- 32.4 Any provision of this DPS Framework Agreement 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 DPS Framework Agreement and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.
- 32.5 If a provision of this DPS Framework Agreement that is fundamental to the accomplishment of the purpose of this DPS Framework Agreement is held to any extent to be invalid, the Authority and the Suppliers shall negotiate in good faith immediately to remedy such invalidity.
- 32.6 Subject to Clause 32.7 of this Schedule 2 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 DPS Framework Agreement and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty.
- 32.7 The waiver contained at Clause 32.6 of this Schedule 2 above shall not apply if the representation, undertaking and/ or warranty relied upon:
- 32.7.1 is set out in this DPS Framework Agreement;
 - 32.7.2 is contained in the Suppliers' response to the DPS Framework ITT; and/or
 - 32.7.3 was made fraudulently.
- 32.8 Each Party shall bear its own expenses in relation to the preparation and execution of this DPS Framework Agreement including all costs, legal fees and other expenses so incurred.
- 32.9 The rights and remedies provided in this DPS Framework Agreement are cumulative and not exclusive of any rights or remedies provided by general Law, or by any other contract or document. In this Clause 32.9 of this Schedule 2, right includes any power, privilege, remedy, or proprietary or security interest.
- 32.10 Save as provided for by Clause 32.11 of this Schedule 2, a person who is not a Party to this DPS Framework Agreement shall:
- 32.10.1 have no right to enforce any terms of this DPS Framework Agreement that confer a benefit on such person;
 - 32.10.2 not be entitled to object to or be required to consent to any amendment to the provisions of this DPS Framework Agreement.
- 32.11 Each and every Participating Authority may, with the Authority's prior written consent, enforce any term of this DPS Framework Agreement which is for the benefit of any Participating Authority in connection with a breach of any such Clause or term. Any such term is intended to be enforceable by the Authority and by any relevant Participating Authority pursuant to the Contracts (Rights of Third Parties) Act 1999. However, for the

avoidance of doubt no Participating Authority need be consulted or need approve any amendment or modification to this DPS Framework Agreement.

- 32.12 Each Party undertakes at the request of another, and at the cost of the requesting Party, to do all acts and execute all documents which may be necessary to give effect to the meaning and intention of this DPS Framework Agreement.
- 32.13 Without prejudice to Clause 32.7.2 of this Schedule 2 this DPS Framework Agreement (together with any variation in writing signed by an authorised representative of each Party and any document referred to (explicitly or by implication) in this DPS Framework Agreement or any variation to this DPS Framework Agreement) contains the entire understanding between the Suppliers and the Authority relating to the operation of this DPS Framework Agreement 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 DPS Framework Agreement. Nothing in this DPS Framework Agreement seeks to exclude a 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 DPS Framework Agreement shall form part of this DPS Framework Agreement.
- 32.14 This DPS Framework Agreement, 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 and Wales.
- 32.15 Subject to Clause 22 of this Schedule 2, the Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this DPS Framework Agreement or its subject matter.
- 32.16 All written and oral communications and all written material referred to under this DPS Framework Agreement must be produced or conducted in the English language.
- 32.17 This DPS Framework Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, each of which so executed and delivered shall be an original, but all the counterparts will together constitute one and the same agreement.
- 32.18 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 Agreement, then delivery by the Authority for the purposes of Clause 32.17 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.
- 32.19 Each Party may execute this DPS Framework Agreement:
- 32.19.1 under hand, by their authorised signatory signing the DPS Framework Agreement in the appropriate place in the body of this DPS Framework Agreement; or
- 32.19.2 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 DPS Framework Agreement.

- 32.20 Delivery of an executed counterpart of this DPS Framework Agreement (but for the avoidance of doubt not just a signature page) for the purposes of Clause 32.17 of this Schedule 2 shall be by any method permitted for notices under this DPS Framework Agreement at Clause 29.1 of this Schedule 2. If delivery of an executed counterpart is by email the executed counterpart shall be transmitted in PDF, JPEG, or by an alternative format if agreed between the Parties. Delivery shall occur at the time of receipt as determined by applying the provisions of Clause 29.2 of this Schedule 2.
- 32.21 If delivery by email is adopted then, without prejudice to the validity of the DPS Framework Agreement, each Party shall provide the other Party with the originals of such counterparts as soon as reasonably possible thereafter. Where more than one Supplier is a Party to this DPS Framework Agreement, 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.
- 32.22 In relation to all third party claims against the Authority, which are the subject of any indemnity given by the Suppliers under this DPS Framework Agreement, the Authority shall:
- 32.22.1 notify the Suppliers of any such claims as soon as reasonably practicable; and
- 32.22.2 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:
- 32.22.2.1 relating to any legal, regulatory, governance, information governance, or confidentiality obligations on the Authority; and/or
- 32.22.2.2 relating to the Authority's membership of any indemnity and/or risk pooling arrangements.
9. Such transfer shall be subject to the Parties agreeing appropriate terms for the 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).
- 32.23 Where the Authority is restricted from transferring any claim to the Suppliers in accordance with Clause 32.22 above, the Authority shall in relation to any such claim:
- 32.23.1 notify the Suppliers about the claim in writing;
- 32.23.2 consult with the Suppliers about its conduct;
- 32.23.3 where the Authority chooses to defend the claim, following consultation with the Suppliers, defend such claim diligently and, where appropriate, using competent counsel; and
- 32.23.4 where the Authority is considering settling the claim, consult with the Suppliers about whether to settle it and the terms of any such settlement.

**Dynamic Purchasing System Framework Agreement Terms and
Conditions (August 2022 edition)**

Schedule 3

Definitions and Interpretations

1 Definitions

1.1 In this DPS Framework Agreement the following words shall have the following meanings unless the context requires otherwise, other than in relation to the Call-Off Terms and Conditions at Appendix A of this DPS Framework Agreement. The definitions and Interpretations that apply to the Call-Off Terms and Conditions are as set out at Appendix A of this DPS Framework Agreement.

“Accredited”	means in respect of a Service Line that the Award Letter confirms that the Suppliers have passed all mandatory requirements in the DPS Framework ITT in respect of that Service Line. Each Service Line for which the Suppliers are accredited is set out at Schedule 1;
“Authority”	means the Secretary of State for Health and Social Care acting as part of the Crown through the Department of Health and Social Care of 39 Victoria Street, London, SW1V 0EU;
“Authority’s Obligations”	means the Authority’s further obligations, if any, referred to in the DPS Framework ITT;
“Authority Data”	(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 Controller and which are: (ii) supplied to the Suppliers by or on behalf of the Authority; and/or (iii) which the Suppliers are required to generate, process, store or transmit pursuant to this DPS Framework Agreement;
“Authority System”	means the Authority’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority in connection with this DPS Framework Agreement which is owned by the Authority or licensed to it by a third party;
“Award Criteria”	means the award criteria to be applied by Participating Authorities when assessing Tenders as specified and refined in accordance with Schedule 4, which expression shall include the high level quality and price criteria set out at Clause 7 of Schedule 4 and each of the

	specific quality and price criteria set out at Clauses 8 and 9 of Schedule 4 respectively;
“Award Letter”	means the award letter issued to the Suppliers by the Authority notifying the Suppliers of the outcome of the procurement process for the award of this DPS Framework Agreement;
“Baseline Security Requirements”	means the Authority’s baseline security requirements, the current copy of which is contained in Annex 1 of Schedule 6 of the Call-Off Terms and Conditions, as updated from time to time by the Authority and notified to the Suppliers;
“Breach Notice”	has the meaning given under Clause 15.2 of Schedule 2 of this DPS Framework Agreement;
“Business Continuity Event”	means any event or issue that could impact on the operations of the Suppliers and their ability to fulfil their obligations under this DPS Framework Agreement including but not limited to an influenza pandemic and any Force Majeure Event;
“Business Continuity Plan”	means the Suppliers’ business continuity plan(s) which includes their plans for continuity 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;
“Call-Off Contract”	means any contract entered into under this DPS Framework Agreement with the Suppliers by any Participating Authority on the terms set out in the relevant completed Order Form and in the Call-Off Terms and Conditions;
“Call-Off ITT”	means the Call-Off ITT issued by a Participating Authority to invite responses to any Competition conducted under and in accordance with this DPS Framework Agreement;
“Call-Off Rules”	means the call-off rules set out at Schedule 4 of this DPS Framework Agreement;
“Call-Off Terms and Conditions”	Means the Framework Call-Off Terms and Conditions for Call-Off Contracts as set out at Schedule 5 of this DPS Framework Agreement;
“Catalogue Agreement”	The Digital Care Services Catalogue Agreement that each Supplier shall be required to enter into between a Supplier and the Health and Social Care Information Centre (known as NHS Digital);
“Codes of Practice”	shall have the meaning given to it in Clause 1.4 of Schedule 6;
“Commencement Date”	Means the date inserted on page 2 of this DPS Framework Agreement;

“Commercial Schedule”	means the document set out within Schedule 1B;
“Competition”	means a competition conducted by any Participating Authority in accordance with the provisions of Schedule 2 and of Schedule 4;
“Confidential Information”	means information, data and material of any nature, which any Party may receive or obtain in connection with the conclusion and/or operation of the DPS Framework Agreement and/or in connection with any Call-Off Contract including any Competition 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;
“Contracting Authority”	means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than the Authority;
“Contract Manager”	means for the Authority and for the Suppliers the individuals specified in the Key Provisions or such other person notified by a Party to the other Party from time to time in accordance with Clause 8.1 of Schedule 2;
“Contract Price”	means the price exclusive of VAT that is payable to the Suppliers by a Participating Authority under any Call-Off Contract for the full and proper performance by the Suppliers of their obligations under such Call-Off Contracts (as calculated in accordance with the provisions of the Commercial Schedule as further refined or tendered by the Suppliers in the course of each Competition) and as confirmed in the relevant Order Form relating to the particular Call-Off Contract;
“Contract Year”	means in respect of any Call-Off Contract each period of 12 Months with the first such year commencing upon the Initial Deliverables Commencement Date and each subsequent year commencing upon an anniversary of the Initial Deliverables Commencement Date;
“Controller”	has the meaning set out in the Data Protection Legislation;
“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 DPS Framework Agreement 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, the Department of Health and Social Care, 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 DPS Framework Agreement or Personal Data that the Suppliers have responsibility for under this DPS Framework Agreement including without limitation actual or potential loss, destruction, corruption or inaccessibility of Personal Data including any Personal Data Breach;
“Data Processing Form”	has the meaning set out in paragraph 2.2 of Schedule 6;
“Data Protection Impact Assessment”	means an assessment by the Authority 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”	shall have the same meaning as set out in the Data Protection Legislation;
“Data Subject”	shall have the same meaning as set out in the Data Protection Legislation;
“Data Subject Access Request”	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;
“Deliverables”	means the Services, and/or ad hoc services (as defined in the Call-Off Terms and Conditions) and/or Goods and/or any other requirement whatsoever (including without limitation any item,

	feature, material, outcome or output) that fall within the Service Category and which the Suppliers may be required to provide to Participating Authorities under Call-Off Contracts awarded under this DPS Framework Agreement, details of such Deliverables being set out in the DPS Framework ITT and any Order;
“Deliverables Commencement Date”	means the first date upon which any portion of the Deliverables is to be provided;
“Discloser”	has the meaning given under Clause 1.1 of Schedule 6;
“Dispute Resolution Procedure”	means the process for resolving disputes as set out in Clause 22 of Schedule 2;
“DPA 2018”	means the Data Protection Act 2018;
“DPS Framework Agreement”	means this DPS framework agreement and all schedules (and annexes to schedules) and appendices attached to this agreement;
“DPS Framework ITT”	means the documents set out in Schedule 4 being the DPS framework ITT for the Service Category;
“Environmental Regulations”	shall have the meaning given to the term in Clause 1.4 of Schedule 6;
“Equivalent Deliverables”	has the meaning given in Clause 3.4 of Schedule 2;
“Equality Legislation”	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;
“European Data Protection Board”	shall have the meaning set out in the Data Protection Legislation;
“EU GDPR”	means the General Data Protection Regulation (Regulation (EU) 2016/679) as it has effect in EU law;
“Expert”	means an expert appointed pursuant to Clause 22 of Schedule 2 in order to determine disputes reserved for expert determination pursuant to this DPS Framework Agreement and/or disputes that the Parties otherwise agree shall be determined by an expert;
“Extra Key Provisions”	means any extra key provisions set out in a completed Order Form. An extra key provision may be:

	<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 relevant Call-Off 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 6;
“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 a Party’s ability to perform its obligations under this DPS Framework Agreement; (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 their 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; (g) compliance with any local law or governmental order, rule, regulation or direction that could not have been reasonably foreseen; (h) industrial action which affects the ability of the Suppliers to provide the Deliverables, but which is not confined to the workforce of the Suppliers or the workforce of any subcontractor of the Suppliers; and (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;
“Fraud”	means any offence under any Law in respect of:

	<p>fraud in relation to this DPS Framework Agreement and/or any Call-Off Contract; or</p> <p>defrauding or attempting to defraud or conspiring to defraud the government, parliament, the Authority or any Contracting Authority;</p>
<p>“Good Practice”</p> <p>Industry</p>	<p>means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider engaged in the provision of Deliverables similar to the Deliverables under the same or similar circumstances as those applicable to this DPS Framework Agreement, including in accordance with any codes of practice published by relevant trade associations;</p>
<p>“Goods”</p>	<p>means any and all goods, including without limitation the Equipment and Consumables, included within the Deliverables;</p>
<p>“Guarantee”</p>	<p>the deed of guarantee in favour of the Authority entered into by the Guarantor on or about the Commencement Date (which is in the form set out in Schedule 7 of this DPS Framework Agreement), or any guarantee acceptable to the Authority that replaces it from time to time;</p>
<p>“Guarantor”</p>	<p>the legal entity entering into the Guarantee, or a guarantee substantially in the same form as the Guarantee in favour of the Authority, as guarantor;</p>
<p>“Guidance”</p>	<p>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 the Department of Health & Social Care, NHS England and NHS Improvement, NHS Digital, NHSX, the Medicines and Healthcare Products Regulatory Agency, the European Medicine Agency, the Care Quality Commission and/or any other regulator or competent body;</p>
<p>“Information Commissioner”</p>	<p>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;</p>
<p>“Initial Deliverables Commencement Date”</p>	<p>means in respect of each Call-Off Contract the first date on which all or part of the Deliverables are provided pursuant to that Call-Off Contract;</p>

<p>“Intellectual Property Rights”; “Intellectual Property”;</p>	<p>means:</p> <p>(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> <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>
<p>“IT Environment”</p>	<p>means the Authority System and the Supplier System;</p>
<p>“Key Provisions”</p>	<p>means the key provisions set out in Schedule 1A;</p>
<p>“KPI”</p>	<p>means the key performance indicators as set out in each Call-Off Contract;</p>
<p>“Law”</p>	<p>means any and all applicable legal requirements from time to time including, without limitation:</p> <p>(a) any applicable statute or proclamation or any delegated or subordinate legislation or regulation;</p> <p>(b) any applicable European Union directive, regulation, decision or law;</p> <p>(c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;</p> <p>(d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;</p> <p>(e) requirements set by any regulatory body;</p> <p>(f) any applicable code of practice, and</p> <p>(g) any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above),</p> <p>in each case as applicable in England from time to time;</p>
<p>“Lead Contract Manager”</p>	<p>means for the Suppliers the individual specified in the Key Provisions or such other person notified by the Suppliers to the Authority from time to time in accordance with Clause 8.1 of Schedule 2 being one of the Contract Managers with authority to represent all of the organisations comprising the Suppliers;</p>
<p>“LED”</p>	<p>means the Law Enforcement Directive (<i>Directive (EU) 2016/680</i>);</p>

“Management Information”	has the meaning given under Clause 8.6 of Schedule 2;
“Month”	means a calendar month;
“NHS”	means the National Health Service;
“NHS Bodies”; “NHS Body”	shall have the meaning given to it under Clause 7.2.2 of Schedule 1A;
“NHS Constitution”	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 and sets out the rights, pledges and responsibilities for patients, the public and staff;
“NHS Contract”	shall have the meaning given to it in section 9 of the National Health Service Act 2006;
“NHS England”	The National Health Service Commissioning Board, which has adopted the name and is known as NHS England;
“Non Principal Suppliers”	means all those suppliers who are not a Principal Supplier;
“Order Form”	means the template order form on which Orders are to be placed, in the form set out in Schedule 4 of the Call-Off Terms and Conditions;
“Ordering Procedure”	means the procedure enabling Participating Authorities to call-off Deliverables and enter into Call-Off Contracts under this DPS Framework Agreement, as set out in Schedule 5 of this DPS Framework Agreement;
“Orders”	means orders for Deliverables placed under this DPS Framework Agreement by Participating Authorities and “Order” shall be construed accordingly;
“Participating Authority”	means a Contracting Authority entitled to place Orders under this DPS Framework Agreement including the Authority and any other Contracting Authority as set out in Clause 7 of the Key Provisions and “Participating Authorities” means more than one Participating Authority;
“Participating Authority Satisfaction Survey”	has the meaning given under Clause 25.1 of Schedule 2;
“Party”	means the Authority or the Suppliers as appropriate and Parties means both the Authority and each and every Supplier;

“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;
“Principal Supplier”	means a supplier indicated in a completed Order Form as a Principal Supplier who shall be first recourse for the Authority for the enforcement of liabilities owed to the Authority arising under or in connection with this DPS Framework Agreement as described in Clause 4 of Schedule 5 of this DPS Framework Agreement;
“Principal Suppliers”	means more than one Principal Supplier;
“Process”	has the meaning given to it under the Data Protection Legislation and, for the purposes of this DPS Framework Agreement, 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;
“Processor Personnel”	all directors, officers, employees, agents, consultants and contractors of the Suppliers and/or of any sub-contractor who are either partially or fully assigned to or engaged in the performance of the Processor’s obligations under this DPS Framework Agreement;
“Prohibited Acts”	has the meaning given under Clause 31 of Schedule 2;
“Protective Measures”	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring the ongoing confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident and regularly testing, assessing and evaluating the effectiveness of those measures adopted by it;
“Provisional Award”	means that in respect of any Service Category specified in an Award Letter the Suppliers’ participation in and rights under the DPS Framework Agreement shall be restricted as set out in Clause 9 of Schedule 1A of the DPS Framework Agreement;
“Public Contracts Regulations”	means the Public Contracts Regulations 2015 (SI 2015/102);
“Quarter”	each consecutive three Month period commencing on 1 st March 1 st June, 1 st September, or 1 st December save that the first such period during the Term shall start on the Commencement 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 DPS Framework Agreement;
“Recipient”	has the meaning given under Clause 1.1 of Schedule 6;
“Regulations”	means the Public Contracts Regulations and any successor regulations to the extent applicable;
“Regulatory Supervisory Body” or	<p>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:</p> <ul style="list-style-type: none"> (i) CQC; (ii) NHS England and NHS Improvement; (iii) the Department of Health and Social Care; (iv) National Institute for Health and Care Excellence; (v) Healthwatch England and Local Healthwatch; (vi) Public Health England; (vii) the General Pharmaceutical Council; (vii) the Healthcare Safety Investigation Branch (ix) Information Commissioner (x) European Data Protection Board;
“Remedial Proposal”	has the meaning given under Clause 15.2 of Schedule 2;
“Run-Off Period”	means the period from a New Framework Date until the expiry of the Term;
“S251 Authorisation”	means an authorisation pursuant to s.251 of the National Health Service Act 2006 (as amended) or broadly similar Law;
“Special Categories of Personal Data”	shall have the meaning set out in the Data Protection Legislation;
“Services”	means any services forming part of the Deliverables;
“Service Category”	<p>means a service category, as described in the DPS Framework ITT, that is a group of Service Lines that are included within the framework competition set out in the DPS Framework ITT;</p> <p>“Service Categories” shall be construed accordingly;</p>
“Service Line”	<p>means a service line, as described in the DPS Framework ITT, that falls within one of the service categories that are included within the framework competition set out in the DPS Framework ITT.</p> <p>“Service Lines” shall be construed accordingly save that it shall be immaterial that one or more Service Lines fall within different Service Categories;</p>

“Staff”	means all persons employed or engaged by the Suppliers to perform their obligations under this DPS Framework Agreement and/or any Call-Off Contract including any subcontractors and persons employed or engaged by such subcontractors;
“Statement Requirements” of	means a description issued by a Participating Authority detailing its requirements issued in accordance with Schedule 5;
“Sub-processor”	any third party appointed to process Personal Data on behalf of a Processor in relation to a Contract;
“Supplier Personnel”	all directors, officers, employees, agents, consultants and contractors of the Suppliers and/or of any sub-contractor who are either partially or fully assigned to or engaged in the performance of the Suppliers’ obligations under this DPS Framework Agreement;
“Supplier System”	means the information and communications technology system used by the Suppliers in connection with this DPS Framework Agreement (but excluding the Authority System);
“Suppliers”	means the suppliers named on the first page of the DPS Framework Agreement, and “Supplier” shall mean one of such suppliers where more than one organisation is a party to this DPS Framework Agreement;
“Suspension”	means the suspension of the Suppliers’ appointment to the DPS Framework Agreement, in the circumstances set out in Clauses 17.1 to 17.3 (inclusive) of Schedule 2 and with the consequences set out in Clause 17.4 of Schedule 2 and for the duration determined by Clauses 17.5 to 17.7 (inclusive) of Schedule 2;
“Tender”	means the documents submitted by suppliers (including the Suppliers if applicable) in response to a Participating Authority’s invitation to specified suppliers to supply it with Deliverables in accordance with Clause 1.1.3 of Schedule 5 of this DPS Framework Agreement, and “Tenders” shall be construed accordingly;
“Term”	means the term as set out in the Key Provisions;
“Third Party Body”	has the meaning given under Clause 8.6 of Schedule 2 of this DPS Framework Agreement;
“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; and
“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. Subject to any contrary provisions in this DPS Framework Agreement references to any legal entity shall include any body (or bodies) that takes over responsibility for the functions of such entity.

- 1.3 References in this DPS Framework Agreement to a “Schedule”, “Appendix”, “Paragraph” or to a “Clause” are to schedules, appendices, paragraphs and clauses of this DPS Framework Agreement (save for any schedule, appendix, paragraph or clause that specifically refers to the Call-Off Terms and Conditions, where references to that schedule, appendix, paragraph or clause shall be to the schedule, appendix, paragraph or clause of the Call-Off Terms and Conditions).
- 1.4 References in this DPS Framework Agreement to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.
- 1.5 Unless set out in the Commercial Schedule as a chargeable item and subject to Clause 33.8 of Schedule 2, the Suppliers shall bear the cost of complying with their obligations under this DPS Framework Agreement.
- 1.6 The headings are for convenience only and shall not affect the interpretation of this DPS Framework Agreement.
- 1.7 Words denoting the singular shall include the plural and vice versa.
- 1.8 Where a term of this DPS Framework Agreement 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.
- 1.9 Where a document is required under this DPS Framework Agreement, the Parties may agree in writing that this shall be in electronic format only.
- 1.10 References in this DPS Framework Agreement 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.

**Dynamic Purchasing System Framework Agreement Terms and Conditions (August 2022
edition)**

Schedule 4

DPS Framework ITT

TO INSERT NEW ITT

**Dynamic Purchasing System Framework Agreement Terms and Conditions (August
2022 edition)**

Schedule 5

1. Ordering Procedure

1 Ordering Procedure

- 1.1 If a Participating Authority wishes to place an Order for any Deliverables through this DPS Framework Agreement, that Participating Authority shall:
- 1.1.1 develop a Statement of Requirements setting out its requirements for the available Deliverables;
 - 1.1.2 supplement and refine the Call-Off Terms and Conditions only to the extent:
 - 1.1.2.1 anticipated within the Call-Off Terms and Conditions as indicated by references to potential Extra Key Provisions and/or as indicated in the blank Order Form at Schedule 4 of the Call-Off Terms and Conditions and/or as otherwise indicated;
 - 1.1.2.2 permitted by and in accordance with the requirements of the Regulations and the Law;
 - 1.1.3 invite tenders from all the suppliers who have entered into a framework agreement in the same form as the DPS Framework Agreement and have been appointed to any of the relevant Lots that the Statement of Requirements falls under by conducting a Competition for the delivery of the relevant Statement of Requirements and in particular:
 - 1.1.3.1 consult in writing and invite the suppliers referred to in this Clause 1.1.3 to submit a Tender within a specified time limit by issuing a Call-Off ITT;
 - 1.1.3.2 conduct the Competition in accordance with the Call-Off Rules and this Schedule 5;
 - 1.1.3.3 specify in a Call-Off ITT for that Competition the pricing information requested from the suppliers;
 - 1.1.3.4 set out in a Call-Off ITT for that Competition a time limit for the receipt by it of Tenders which takes into account factors such as the complexity of the subject matter of the intended Call-Off Contract and the time needed to submit a Tender; and
 - 1.1.3.5 keep each Tender received confidential until the expiry of the time limit for the receipt by it of the Tenders;
 - 1.1.4 apply the Award Criteria to all compliant Tenders submitted through the Competition; and

- 1.1.5 subject to Clause 1.4 to 1.5 of this Schedule 5, place an Order with the highest scoring suppliers using the Order Form.
- 1.2 The Suppliers shall comply with Clause 9.6 of Schedule 2 and shall ensure that any prices submitted in relation to a Competition held pursuant to this Schedule 5 shall, where applicable, be based on the Commercial Schedule and take into account any discount to which any Participating Body may be entitled pursuant to the Suppliers' response to the DPS Framework ITT.
- 1.3 The Suppliers agree that all Tenders submitted by the Suppliers in relation to Competitions held pursuant to Clause 1 of this Schedule 5 shall remain open for acceptance for ninety (90) days (or such other period specified in the relevant Call-Off ITT issued by the relevant Participating Authority in accordance with Clause 1 of this Schedule 5).
- 1.4 Notwithstanding the fact that a Participating Authority has followed the procedure set out in Clause 1 of this Schedule 5 when conducting any Competition, the relevant Participating Authority may postpone, delay or end any such procedure without placing an Order for Deliverables or awarding a Call-Off Contract. Nothing in this DPS Framework Agreement shall oblige any Participating Authority to place any Order for any Deliverables.
- 1.5 Before placing an Order, a Participating Authority may conduct a standstill period between announcing the results of any Competition and the execution of the relevant Call-Off Contract but is not required to do so by the Regulations. For the avoidance of doubt where a standstill period is conducted in respect of any Competition that standstill may but need not be conducted in a way that is compliant with the Regulations.
- 1.6 Following the execution of any Call-Off Contract a Participating Authority:
- 1.6.1 may publish a contract award notice as described in the Regulations but is not required to do so by the Regulations; and/or
- 1.6.2 may publish information concerning the Call-Off Contract on Contracts Finder or any successor of Contracts Finder.

2 Statement of Requirements

- 2.1 Each Call-Off ITT shall contain a Statement of Requirements detailing the requirements of the relevant Participating Authority seeking to conclude a Call-Off Contract under the DPS Framework Agreement. This shall be set out at Annex 1 to the draft Order Form.
- 2.2 Where the Contracting Authority seeking to conclude a Call-Off Contract under the DPS Framework Agreement is doing so on its own behalf and on behalf of other Participating Authorities the Statement of Requirements and/or Call-Off ITT for that

Competition shall state the Participating Authorities on whose behalf the Call-Off ITT is issued.

3 Call-Off ITT

3.1 Each Call-Off ITT must contain as a minimum:

- 3.1.1 a Statement of Requirements;
- 3.1.2 the process to be adopted for the Competition, including timescales for the process;
- 3.1.3 the Award Criteria applicable to the relevant Competition, with the weighting of each of the Award Criteria stated;
- 3.1.4 the basis upon which the price offer of the Suppliers in response to the Call-Off ITT will be evaluated; and
- 3.1.5 any further assessment to be carried out.

4 Call-Off Rules

- 4.1 Unless permitted under Clause 4.2 of this Schedule 5, a Participating Authority must conduct a Competition in accordance with this Schedule 5 before awarding any Call-Off Contract.
- 4.2 A direct award of a Call-Off Contract may be made without a Competition in the specific cases and circumstances where the Call-Off Contract could be awarded using the “negotiated procedure without prior publication” under Regulation 32 of the Public Contracts Regulations provided that all relevant requirements and conditions of Regulation 32 of the Public Contracts Regulations are satisfied;
- 4.3 A Participating Authority may run a Competition and issue a Call-Off ITT on its own behalf (in respect of its own requirements) and/or on behalf of other Participating Authorities (in respect of such other Participating Authorities' requirements)
- 4.4 Nothing in this DPS Framework Agreement shall prevent a Participating Authority in engaging in preliminary market consultations before commencing a procurement process as permitted under Regulation 40 of the Public Contracts Regulations.
- 4.5 If a Participating Authority engages in preliminary market consultations, they shall ensure that all consultations are carried out in accordance with the Public Contracts Regulations and in particular will ensure that the consultations do not have the effect of distorting competition and do not result in the violation of the principles of non-discrimination and transparency.
- 4.6 Participating Authorities shall, when running a Competition, issue a Call-Off ITT to each supplier appointed to the DPS Framework and who have been Accredited to all the Service Levels within which the Deliverables included within the Statement of Requirements fall.

- 4.7 The Suppliers may conduct a Competition to award a Call-Off Contract by issue of a Call-Off ITT under this DPS Framework Agreement either:
- 4.7.1 on its own behalf (provided that it is a Participating Authority); or
 - 4.7.2 on behalf of one or more Participating Authorities.
- 4.8 Where the Suppliers respond to a Call-Off ITT, and the Suppliers comprise more than one Supplier co-bidding together, then the response to the Call-Off ITT must be submitted for and on behalf of each and every one of the Suppliers and in the event of the Suppliers being successful each and every one of the Suppliers shall enter in to the Call-Off Contract by execution of the relevant Order Form. Subject to the Clauses of this Schedule 5 all suppliers will be jointly and severally liable for each and every obligation and liability under the relevant Call-Off Contract.
- 4.9 Where the Statement of Requirements is called off, Suppliers may submit a bid with another supplier or suppliers also awarded a place on the DPS Framework where in combination the Suppliers and such supplier(s) are capable of performing the Deliverables included within that Statement of Requirements. When submitting any such bid the Suppliers and such supplier(s) shall do so as co-bidders, specifying which Deliverables each of the suppliers are bidding to perform (which will be set out in the "Supplier Matrix" at Annex 1 paragraph 1.2 of the relevant completed Order Form). Subject to Clauses 4.13, 4.14 and 4.16 of this Schedule 5 all such suppliers will be jointly and severally liable for each and every obligation and liability under the relevant Call-Off Contract.
- 4.10 For the avoidance of doubt any Supplier co-bidding in a joint bid with other Suppliers must have been Accredited for the relevant Service Lines for which they are specified to provide Deliverables in the relevant bid submitted.
- 4.11 For the avoidance of doubt where the Suppliers submit a bid with another supplier or suppliers also awarded a place on the DPS Framework Agreement (where in combination the Suppliers and such supplier(s) are Accredited to all the relevant Service Lines relevant for the relevant Statement of Requirements) each Supplier forming the Suppliers (where the Suppliers comprise more than one Supplier) must be a signatory of and enter into the relevant Call-Off Contract.
- 4.12 Where a Supplier is required to enter into a Call-Off Contract solely on the basis that that Supplier was part of a group of bidders that bid together and were successful in the Framework competition and jointly entered into the DPS Framework Agreement, but that Supplier is not listed in the Supplier Matrix for that Call-Off Contract 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 4.8 of this Schedule 5 under that Call-Off Contract.
- 4.13 Where the Suppliers submit a bid under a Competition on the basis that (and the Order Form indicates that) one or more of the Suppliers is a Principal Supplier, then that Call-Off Contract shall provide that before enforcing a liability of the Suppliers or any

Supplier that arises under or in connection with that Call-Off Contract and that is owed to the relevant Participating Authority and/or the Authority (as applicable) against the Non Principal Suppliers the relevant Participating 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).

- 4.14 Where more than one of the Suppliers is a Principal Supplier then those Principal Suppliers shall, as set out in Clause 9.5 of Schedule 1 of the Call-Off Terms and Conditions, be jointly and severally liable for any liability of any Supplier and/or the Suppliers otherwise arising under or in connection with the Contract owed to the relevant Participating Authority and/or the Authority; and
- 4.15 Subject to Clause 4.16 of this Schedule 5 the Participating Authority may set out in the relevant Order Form that the provisions of Clause 9.5 of Schedule 1 of the Call-Off Terms and Conditions are to be varied. Any such variation shall be enacted through the inclusion of appropriate Extra Key Provisions in the relevant Order Form. Such Extra Key Provisions could, at the election of the Authority (made, subject to Clause 9.10 of Schedule 1 of the 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 in Clause 9.5 of Schedule 1 of the Call-Off Terms and Conditions with provisions that establish that where there are 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 under the relevant Call-Off Contract that such Non Principal Supplier is responsible for as set out in the Supplier Matrix for that Call-Off Contract.
- 4.16 A Participating Authority may only elect to vary the provisions of Clause 9.5 of Schedule 1 of the Call-Off Terms and Conditions as described in Clause 4.15 of this Schedule 5 where it has obtained the prior written approval of DHSC.
- 4.17 Subject to complying with all the provisions of this Schedule 5, these call-off rules do not prescribe a particular process to be adopted for each Competition. It is anticipated that the process for each Competition will vary in accordance with the requirements of the relevant Participating Authorities and/or the nature of the Statement of Requirements.
- 4.18 These call-off rules do not prescribe particular timescales for each stage of each Competition. It is anticipated that the timescales for each Competition will vary in accordance with the requirements of the relevant Participating Authorities and/or the nature of the Statement of Requirements. including timescales for the process.
- 4.19 Participating Authorities and Suppliers shall comply with the obligations and expectations of the Cabinet Office Statement of Practice “Staff Transfers in the Public Sector” (as amended) (“**COSOP**”) and Fair Deal for Staff Pensions (2013) in relation to any Call-Off Contract.

- 4.20 The transfer of staff in connection with the award of Call-Off Contracts shall be governed by TUPE, or, if TUPE is considered not to apply in any particular circumstances, by COSOP. In line with the principles of TUPE, the terms and conditions (including continuity of service) of transferring staff shall be protected and staff must be treated no less favourably than had TUPE applied.
- 4.21 As provided for by COSOP, neither Participating Authorities nor the Suppliers shall orchestrate a non-TUPE situation.

5 Form of Order

- 5.1 Having followed the process set out at Clause 1 of this Schedule 5, a Participating Authority may, where the Suppliers have submitted the highest scoring Tender in the relevant Competition, place an Order with the Suppliers by serving an Order Form on the Suppliers substantially in the form set out in Schedule 4 of the Call-Off Terms and Conditions.
- 5.2 The relevant Participating Authority shall complete each section of the Order Form (or, in the case of sections that are not applicable, indicate in writing that those sections are not applicable) before serving the Order Form on the Suppliers.
- 5.3 An Order Form shall be deemed to have been served on the Suppliers:
- 5.3.1 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
 - 5.3.2 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
 - 5.3.3 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.
- 5.4 The Parties agree that any document or communication which is not in the form prescribed by this Clause 5 of this Schedule 5 shall not constitute an Order for the Purposes of this DPS Framework Agreement or result in a valid Order being placed with the Suppliers.

6 Accepting and declining Orders

- 6.1 Following the service on them of an Order, the Suppliers shall promptly and in any event within a reasonable period determined by the relevant Participating Authority and notified to the Suppliers in writing at the same time as the service of the Order

(which in any event shall not exceed three (3) Business Days), acknowledge receipt of the Order and either:

- 6.1.1 notify the Participating Authority in writing that it is unable to fulfil the Order and provide the reason(s) for its inability to do so; or
 - 6.1.2 notify the Participating Authority that it is able to fulfil the Order by signing and returning the Order Form.
- 6.2 If the Suppliers:
- 6.2.1 notify the Participating Authority that they are unable to fulfil an Order; or
 - 6.2.2 the time limit referred to in Clause 6.1 of this Schedule 5 has expired;
2. then the Order shall lapse.
- 6.3 If the Suppliers modify or impose conditions on the fulfilment of an Order, then a Participating Authority may either:
- 6.3.1 reissue the Order incorporating the modifications or conditions (provided that such modifications or conditions do not cause the provisions of the revised Order to breach the requirements of the Regulations or of EU procurement Law); or
 - 6.3.2 deem the Suppliers' response as notification of their inability to fulfil the Order and the provisions of Clause 6.4 of this Schedule 5 shall apply.
- 6.4 Where and on each occasion that:
- 6.4.1 the Suppliers notify a Participating Authority that it is unable to fulfil an Order; or
 - 6.4.2 an Order lapses;
 - 6.4.3 the Suppliers are deemed to have notified a Participating Authority that they are unable to fulfil an Order pursuant to Clause 6.3.2;
3. then the Participating Authority may either serve an Order Form on the next highest scoring of the suppliers in the relevant Competition or run a further Competition in accordance with Clause 1 of this Schedule 5.
- 6.5 The Parties acknowledge and agree that the placement of an Order is an "invitation to treat" by the Participating Authority. Accordingly, where the Suppliers sign and return the Order Form this shall constitute its offer to the Participating Authority. The Participating Authority shall signal its acceptance of the Suppliers' offer and the formation of a Call-Off Contract by counter-signing the Order Form.

7 Award Criteria: General

- 7.1 The evaluation criteria and their relative weightings applied by each Participating Authority in each Competition in order to determine the highest scoring Tender submitted in response to each Call-Off ITT shall be as set out below. Each Participating

Authority must state the evaluation criteria that will apply to a Competition in the Call-Off ITT relating to such Competition, and shall select such evaluation criteria as fall within the evaluation criteria set out in Clauses 7 to 9 (inclusive) of this Schedule 5 as such Participating Authority determines will reflect the service requirements of that Participating Authority implementing a Competition under this DPS Framework Agreement.

7.2 Each Call-Off ITT shall state:

7.2.1 Quality evaluation criteria (as further detailed at Clause 8 of this Schedule 5) weighted at between 50% and 85% in total of the total score available for any response to a Call-Off ITT; and

7.2.2 Price evaluation criteria (as further detailed at Clause 9 of this Schedule 5) weighted at between 15% and 50% in total of the total score available for any response to a Call-Off ITT.

8 Award Criteria: Quality Criteria

8.1 The quality evaluation criteria to be applied to each compliant response to a Call-Off ITT shall be consistent with the criteria set out in the table below, with each quality evaluation criteria weighted within the range indicated in the table below in this Clause 8 of this Schedule 5.

8.2 The weightings of each quality evaluation criteria set out in the table below must when added together add up to 100% (which for the avoidance of doubt is 100% of the total weighting set out at Clause 7.2.1 of Schedule 5 above for quality evaluation criteria within the total score available for any response to a Call-Off ITT).

8.3 Due to the range and/or complexities of the potential Deliverables that fall within the scope of the DPS Framework Agreement the Authority reserves the right for Participating Authorities to define in respect of each Competition any applicable sub-criteria and/or additional sub-criteria, (including weightings to be applied to such sub-criteria) to be applied under that Competition. Such more precisely formulated criteria are likely to be necessary in order to reflect the service requirements of each Participating Authority implementing a Competition under this DPS Framework Agreement.

Criteria number	Criteria	Percentage weightings: to be determined for each Competition by each relevant Participating Authority within the ranges set out below:

1	<p>Organisational Capability to perform the Deliverables</p> <p>Sub criteria may (but need not) include and are not limited to:</p> <ol style="list-style-type: none"> 1. Relevant strengths of the organisations bidding, including but not limited to their ability to accept the complexity and risk associated with performance of the Deliverables; 2. Key personnel to be used in the performance of the Deliverables; and/or 3. Governance structure for the performance of the Deliverables. 	5 - 40 %
2	<p>Mobilisation, implementation and transition:</p> <p>Sub criteria may (but need not) include and are not limited to:</p> <ol style="list-style-type: none"> 1. Suppliers' plans to effectively mobilise should they win the Competition; and/or 2. Ability to work effectively with other organisations and to adapt to the evolving needs of customers; and/or 3. Plans for delivering to customer timescales. 	5-30 %
3	<p>Service delivery:</p> <p>Sub criteria may (but need not) include and are not limited to the Suppliers':</p> <ol style="list-style-type: none"> 1. Approach to delivering the Statement of Requirements; 2. Approach to effectively working with the customer and other relevant stakeholders; and/or 3. Approach to embedding the required solution in the customer's organisation. For instance training of customer staff on the use of the supplied solution. 	40-80 %
4	<p>Social Value</p> <p>A Participating Authority should follow the Guidance on the 'Social Value Model' to select social value award criteria which are relevant and proportionate to the subject matter of</p>	10%

	<p>the contract being awarded. Guidance on the ‘Social Value Model’ can be found online at - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/940827/Guide-to-using-the-Social-Value-Model-Edn-1.1-3-Dec-20.pdf</p>	
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9 Award Criteria: Price Criteria

- 9.1 When stating the price evaluation criteria, the Deliverables may either be evaluated as a whole or portions of the Deliverables may be evaluated separately. Where portions of the Deliverables are to be evaluated separately this should be stated in the Call-Off ITT.
- 9.2 Each Call-Off ITT shall state the basis by which price criteria shall be evaluated in the relevant Competition including where applicable stipulating the price criteria that will apply to each portion of the Deliverables tendered under the relevant Competition where such portions of the Deliverables are to be evaluated separately.

10 Further Assessment

- 10.1 Before awarding a Call-Off Contract to any supplier or suppliers the relevant Participating Authority may require any or all of the suppliers who are party to the relevant Tender to promptly reconfirm their current status, position or data (as applicable) in relation to the information submitted by such supplier or suppliers in response to the DPS Framework ITT.
- 10.2 Where any information supplied to a Participating Authority by a supplier or suppliers pursuant to Clause 10.1 of this Schedule 5 would;
 - 10.2.1 had it been submitted as part of that supplier’s or suppliers’ response to the DPS Framework ITT, have lead to that supplier or suppliers:
 - 10.2.1.1 failing to be appointed to this DPS Framework Agreement in respect of any Lot, or at all; or
 - 10.2.1.2 being awarded a Provisional Award to the relevant Lot or in respect of any relevant Deliverables under the Framework Lot; or
 - 10.2.2 would justify either the termination of this DPS Framework Agreement or a Suspension under this DPS Framework Agreement;
- 4. then the Participating Authority shall be entitled to reject and disregard the relevant Tender.

11 Below Threshold Call-Offs

- 11.1 Participating Authorities may award a Call-Off Contract to Suppliers where the value of the Call-Off Contract falls below the relevant threshold contract value (as amended from time to time) in regulation 5 of the Regulations.
- 11.2 When a Participating Authority wishes to award a Call-Off Contract pursuant to clause 11.1 of this Schedule 5 that Participating Authority must use the form of Call-Off Contract but otherwise the provisions of the Call-Off Rules shall not apply to any such below threshold Call-Off Contract awarded.

**Dynamic Purchasing System Framework Agreement Terms and Conditions (August
2022 edition)**

Schedule 6

Information Governance Provisions

1 Confidentiality

- 1.1 In respect of any Confidential Information it may receive directly or indirectly from the other Party (“**Discloser**”) and subject always to the remainder of Clause 1 of this Schedule 6, 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 6 shall not apply to any Confidential Information:
 - 1.1.2.1 which is in or enters the public domain other than by breach of this DPS Framework Agreement or other act or omissions of the Recipient;
 - 1.1.2.2 which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
 - 1.1.2.3 which is authorised for disclosure by the prior written consent of the Discloser;
 - 1.1.2.4 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
 - 1.1.2.5 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 6, 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 6.
- 1.3 Any disclosure by the Suppliers to a subcontractor as envisaged by Clause 1.2 of this Schedule 6 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

6 on such subcontractor. The Suppliers shall impose identical obligations to those obligations set out at Clause 1.1 of this Schedule 6 on each such subcontractor prior to the disclosure of any such Confidential Information.

- 1.4 Nothing in Clause 1 of this Schedule 6 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 6, 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 this 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 this 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 8 and Clause 24 of Schedule 2; 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.
- 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 DPS Framework Agreement. The Suppliers shall ensure that such Supplier Personnel are aware of and shall comply with the Suppliers’ obligations in Clause 1 of this Schedule 6 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 DPS Framework Agreement.

- 1.7 For the avoidance of doubt, save as required by Law or as otherwise set out in this Schedule 6, 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 DPS Framework Agreement and/or that they have been appointed as Suppliers to the Authority and/or make any other announcements about this DPS Framework Agreement.
- 1.8 Clause 1 of this Schedule 6 shall remain in force:
 - 1.8.1 without limit in time in respect of Confidential Information which comprises:
 - 1.8.1.1 Personal Data;
 - 1.8.1.2 Special Categories of Personal Data;
 - 1.8.1.3 Criminal Offence Data; and/or
 - 1.8.1.4 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 DPS Framework Agreement.

2 Data Protection

- 2.1 All Parties shall comply with this Clause 2 of this Schedule 6 to the extent applicable to the operation of this DPS Framework Agreement.
- 2.2 The Parties shall seek to agree their respective roles under the Data Protection Legislation and the capacity that they act in be this a Controller, Processor, joint Controller or Controller in common. In the absence of such agreement it shall be assumed that the Suppliers shall act as a Processor and the Authority as a Controller. Before the Processor undertakes any Processing, the Controller shall complete the form set out in the Annex to this Schedule 6 (the Data Processing Form). The Processor is authorised to undertake only that Processing that is set out in the completed Data Processing Form.
- 2.3 The Processor shall notify the Controller immediately if they consider that any of the Controller's instructions infringe the Data Protection Legislation.
- 2.4 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
 - 2.4.1 a systematic description of the envisaged Processing operations and the purpose of the Processing;

- 2.4.2 an assessment of the necessity and proportionality of the processing operations in relation to the Deliverables;
 - 2.4.3 an assessment of the risks to the rights and freedoms of natural persons; and
 - 2.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 2.5 The Processor shall provide all reasonable assistance to the Controller if the outcome of the Data Protection Impact Assessment leads the Controller to consult the Information Commissioner.
- 2.6 The Processor shall, in relation to any Personal Data Processed in connection with their obligations under this DPS Framework Agreement:
- 2.6.1 Process that Personal Data only in accordance with the instructions set out in the completed Data Processing Form unless the Processor are required to do otherwise by Law. If the Processor is so required, they shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
 - 2.6.2 ensure that they have in place Protective Measures which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the;
 - 2.6.2.1 nature of the data to be protected;
 - 2.6.2.2 harm that might result from a Data Loss Event;
 - 2.6.2.3 state of technological development; and
 - 2.6.2.4 cost of implementing any measures;
 - 2.6.3 ensure that:
 - 2.6.3.1 the Processor Personnel do not process the Personal Data except in accordance with this DPS Framework Agreement (and in particular the completed Data Processing Form);
 - 2.6.3.2 they take all reasonable steps to ensure the reliability and integrity of any Processor Personnel who will have access to Personal Data and ensure that the Processor Personnel:
 - 2.6.3.2.1 are aware of and comply with the Processor's duties under this Clause 2 of this Schedule 6;
 - 2.6.3.2.2 are subject to confidentiality undertakings with the Processors (or where the Controller permits the Processor to sub-contract the processing of Personal Data pursuant to Clause 2.8 of this Schedule 6 below, with the relevant sub-contractors) that are in writing and are legally

enforceable in respect of the Personal Data processed under this DPS Framework Agreement. Such confidentiality undertakings must as a minimum require each member of Processor Personnel to keep all Personal Data Processed under this DPS Framework Agreement confidential;

2.6.3.2.3 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in advance and in writing to do so by the Controller or as otherwise permitted by this DPS Framework Agreement; and

2.6.3.2.4 have undergone adequate training in the use, care, protection and handling of Personal Data that enables them and the Processor to comply with their responsibilities under the Data Protection Legislation and this DPS Framework Agreement. The Processor shall provide the Controller with evidence of the completion and maintenance of that training within three (3) Business Days of request by the Controller; and

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

2.6.4.1 the Controller or the Processor have provided appropriate safeguards in relation to the transfer (in accordance with the Data Protection Legislation) as determined by the Controller;

2.6.4.2 the Data Subject has enforceable rights and effective legal remedies;

2.6.4.3 the Processor complies 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 Controller in meeting its obligations); and

2.6.4.4 the Processor complies with any reasonable instructions notified to them in advance by the Controller with respect to the processing of the Personal Data;

- 2.6.5 at the written direction of the Controller, delete or return the Personal Data (and any copies of it) to the Controller on termination of this DPS Framework Agreement unless the Processor is required by Law to retain the Personal Data. If the Processor is asked to delete the Personal Data by the Controller, the Processor shall provide the Controller 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 Controller.
- 2.7 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 Processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including, but not limited to, as appropriate:
 - 2.7.1 the pseudonymisation and encryption of Personal Data;
 - 2.7.2 the ability to ensure the ongoing confidentiality, integrity, availability and resilience of Processing systems and services;
 - 2.7.3 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
 - 2.7.4 a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of Processing.
- 2.8 Before permitting any Sub-processor of the Processor to Process Personal Data related to this DPS Framework Agreement, the Processor must:
 - 2.8.1 notify the Controller 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 DPS Framework ITT;
 - 2.8.2 obtain the written consent of the Controller save where such intended Sub-processor has been specified in the Supplier's response to the DPS Framework ITT;
 - 2.8.3 enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Clause 2 of this Schedule 6 such that they apply to the Sub-processor and in respect of which the Controller is given the benefit of third party rights to enforce the same; and
 - 2.8.4 provide the Controller with such information regarding the sub-contractor as the Authority may reasonably require.
- 2.9 The Processor shall ensure that the Sub-processor's access to the Personal Data terminates automatically on the termination of this DPS Framework Agreement save that the Sub-processor may access the Personal Data in order to securely destroy it

(or at the option of the Controller return it) in accordance with the requirements of the Data Protection Legislation.

- 2.10 For the avoidance of doubt, the Processor 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 DPS Framework Agreement.
- 2.11 Subject to Clause 2.12 of this Schedule 6 below, the Processor shall notify the Controller immediately if they:
 - 2.11.1 receive a Data Subject Access Request (or purported Data Subject Access Request);
 - 2.11.2 receive a request to rectify, block or erase any Personal Data;
 - 2.11.3 receive any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 2.11.4 receive any communication from the Information Commissioner or any other Regulatory or Supervisory Body in connection with Personal Data processed under this DPS Framework Agreement;
 - 2.11.5 receive a request from any third party for disclosure of Personal Data; or
 - 2.11.6 become aware of an actual or suspected Data Loss Event.
- 2.12 The Processors obligation to notify the Controller under Clause 2.11 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.
- 2.13 The Processor shall not respond substantively to the requests, complaints or communications listed in Clause 2.11 above save that they may respond to a Regulatory or Supervisory Body following prior consultation with the Controller.
- 2.14 Taking into account the nature of the Processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 2.11 of this Schedule 6 above (and within the timescales reasonably required by the Authority) including by promptly providing:
 - 2.14.1 the Controller with full details and copies of the complaint, communication or request;
 - 2.14.2 such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 2.14.3 such assistance as is reasonably requested by the Controller to enable the Controller 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)
- 2.14.4 the Controller, at its request, with any Personal Data the Processor hold in relation to a Data Subject;
 - 2.14.5 such assistance as is requested by the Controller following any Data Loss Event;
 - 2.14.6 such assistance as is requested by the Controller in relation to informing a Data Subject about any Data Loss Event, including communication with the Data Subject;
 - 2.14.7 such assistance as is requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 2.15 The Processor shall take such prompt and proper remedial action regarding any Data Loss Event as is agreed with the Controller.
 - 2.16 The Processor shall provide the Controller with copies of any requests from Data Subjects seeking to exercise their rights under the Data Protection Legislation. Where the Supplier is a Processor, such requests must be sent to england.ig-corporate@nhs.net immediately and within no longer than one (1) Business Day of receipt by the Suppliers.
 - 2.17 The Processor shall provide the Controller with evidence to demonstrate compliance with all of their obligations under this DPS Framework Agreement and the Data Protection Legislation.
 - 2.18 The Processor shall allow for audits of their Processing activity by the Controller or the Controller's designated auditor who for the avoidance of doubt shall enter into obligations of confidentiality and non-use the same as those set out in this Schedule 4 and the audits shall be conducted during normal business hours having given advance written notice of no less than five (5) Business Days. The Processor shall provide all reasonable cooperation with such audit and accompany the Authority or its authorised representative(s) if requested. The Controller (or the Controller'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 Processor (not to be unreasonably withheld or delayed).
 - 2.19 The Processor shall each (where multiple Processors) designate a Data Protection Officer if required by the Data Protection Legislation and shall notify the Controller of the name and contact details of any such Data Protection Officer.
 - 2.20 The Processor shall maintain complete and accurate records and information to demonstrate their compliance with this DPS Framework Agreement, the Data Protection Legislation and the Data Guidance. The Processor shall create and

maintain a record of all categories of data Processing activities carried out under this DPS Framework Agreement, containing:

- 2.20.1 the categories of Processing carried out under this DPS Framework Agreement;
 - 2.20.2 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;
 - 2.20.3 a general description of the Protective Measures taken to ensure the security and integrity of the Personal Data Processed under this DPS Framework Agreement; and
 - 2.20.4 a log recording the Processing of Personal Data in connection with this DPS Framework Agreement 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.
- 2.21 The Processor shall ensure that the record of Processing maintained in accordance with Clause 2.20 of this Schedule 6 is provided to the Controller within four (4) Business Days of a written request from the Controller.
- 2.22 This DPS Framework Agreement does not relieve the Processor from any obligations conferred upon them by the Data Protection Legislation.
- 2.23 The Parties agree to take account of any guidance issued by the Information Commissioner. The Controller may on not less than thirty (30) Business Days' notice to the Processor amend this DPS Framework Agreement to ensure that it complies with any guidance issued by the Information Commissioner.
- 2.24 The Controller may, at any time on not less than 30 Business Days' notice, revise this Clause 2 of this Schedule 6 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 DPS Framework Agreement).
- 2.25 Where the Processor is Processing Personal Data under or in connection with this DPS Framework Agreement the Processor shall:
- 2.25.1 where such Personal Data is patient identifiable Personal Data ensure that such Personal Data is only:
 - 2.25.1.1 used for the purposes of providing direct care for the relevant person to whom such Personal Data relates; or
 - 2.25.1.2 used as otherwise permitted by Law; and

- 2.25.2 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.
- 2.26 The Processor and the Controller 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:
 - 2.26.1 if such transfer of Personal Data is essential, having regard to the purpose for which the transfer is conducted; and;
 - 2.26.2 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).
- 2.27 Where, as a requirement of this DPS Framework Agreement, the Processor is Processing Personal Data (to include, without limitation, Special Categories of Personal Data and Criminal Offence Data) relating to patients and/or service users, the Processor shall:
 - 2.27.1 comply with the requirements of the Data Protection Legislation and the Data Security and Protection Toolkit;
 - 2.27.2 nominate an information governance lead able to communicate with the Processor's board of directors or equivalent governance body, who will be responsible for information governance and from whom the Processor's 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;
 - 2.27.3 put in place and maintain policies that describe individual personal responsibilities for handling Personal Data and apply those policies vigorously; and
 - 2.27.4 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.
- 2.28 The Processor shall assist the Controller 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 Processor.
- 2.29 The Processor shall assist the Controller by taking appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Controller's obligation to respond to requests for exercising rights granted to individuals by the Data Protection Legislation.

- 2.30 The Processor warrants and undertakes that they will Process Personal Data in accordance with all Data Protection Legislation, any Data Guidance and this DPS Framework Agreement 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 Processor shall not do or omit to do anything that may put the Authority in breach of the Data Protection Legislation or the Data Guidance.
- 2.31 The Processor shall indemnify and keep the Controller 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 DPS Framework Agreement or any other breach of the Processors obligations relating to Personal Data under this DPS Framework Agreement. In the event that the Controller and the Processor 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 2.28 of this Schedule 6 shall be reduced by a fair and reasonable amount proportionate to the Controller'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 22 of Schedule 2.

3 Freedom of Information and Transparency

- 3.1 The Parties acknowledge the duties of Contracting Authorities under the FOIA, Codes of Practice and Environmental Regulations and shall give each other all reasonable assistance as appropriate or necessary to enable compliance with those duties.
- 3.2 The 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 DPS Framework Agreement and any recorded information held by the Suppliers on the Authority's behalf for the purposes of this DPS Framework Agreement are subject to the obligations and commitments of the Authority under the FOIA, Codes of Practice and Environmental Regulations;
 - 3.2.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA, Codes of Practice and Environmental Regulations is a decision solely for the Authority;
 - 3.2.3 that where the 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 DPS Framework Agreement; 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 DPS Framework Agreement is not Confidential Information.
 - 3.4 Notwithstanding any other term of this DPS Framework Agreement, the Suppliers consent to the publication of this DPS Framework Agreement 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 DPS Framework Agreement for publication under Clause 3.4 of this Schedule 6, 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 DPS Framework Agreement.
 - 3.7 Where any information is held by any subcontractor of the Suppliers in connection with this DPS Framework Agreement, the Suppliers shall procure that such subcontractor shall comply with the relevant obligations set out in Clause 3 of this Schedule 6, 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 6, the Suppliers shall:
- 4.2.1 notify the Authority immediately about any information security breaches or near misses (including without limitation any potential or actual breaches of confidentiality or actual information security breaches) in line with the Authority's information governance Policies; and
 - 4.2.2 make available to the Authority all information necessary to demonstrate compliance with the requirements of this Schedule 6, 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 6 shall be without prejudice to the Suppliers' other obligations under this Schedule 6 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 The Suppliers will ensure that they put in place and maintain an Information Security Management Plan appropriate to the obligations placed on the Suppliers under this DPS Framework Agreement 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. 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.

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 DPS Framework Agreement 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 writing by the Authority.

- 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. 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 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.

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 6, if Malicious Software is found in the IT Environment, the Parties shall cooperate to reduce the effect of the Malicious Software and assist each other to mitigate any losses, including but not limited to where

Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data.

- 6.3 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 6.

Annex to Schedule 6 - Processing, Personal Data and Data Subjects

The Authority shall complete the Data Processing Form, below, before the Suppliers undertake any Processing arising out of or in connection with this DPS Framework Agreement.

The Suppliers may only undertake Processing arising out of or in connection with this DPS Framework Agreement when they are in receipt of a Data Processing Form completed by the Authority.

The Suppliers are only authorised to Process Personal Data in accordance with a completed Data Processing Form.

The Suppliers shall comply with any further written instructions with respect to Processing from the Authority from time to time. Any such further instructions shall be incorporated into the Data Processing Form.

5.

Description	Data
Subject matter of the Processing	<i>[This should be a high level, short description of what the processing is about i.e. its subject matter]</i>
Duration of the Processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the Processing	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.]</i></p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.]</i></p>

<p>Type of Personal Data</p>	<p><i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.]</i></p> <p><i>You should be clear what data is being used for each purpose you have outlined above.</i></p> <p><i>You should identify whether you are processing any special categories of personal data or any criminal offence data.</i></p> <p><i>The special categories of personal data are very similar to sensitive personal data under the DPA 1998. They are set out at Article 9. The special categories of personal data are:</i></p> <ul style="list-style-type: none"> • <i>race</i> • <i>ethnic origin</i> • <i>political opinion</i> • <i>religion or philosophical belief</i> • <i>trade union membership</i> • <i>genetics</i> • <i>biometrics (where used for ID purposes)</i> • <i>health (including mental health)</i> • <i>sex life</i> • <i>sexual orientation</i> <p><i>Unlike under the DPA 1998 personal data relating to criminal convictions and offences are not included. However, similar extra safeguards apply to criminal offence data, which includes data about criminal allegations, proceedings or convictions that would have been sensitive personal data under DPA 1998 and also personal data linked to related security measures. You should identify if you are processing this type of data and if so seek further advice from england.ig-corporate@nhs.net before the data is processed.</i></p>
<p>Categories of Data Subject</p>	<p><i>[Examples include patients, members of the public users of a particular website etc.]</i></p>
<p>Plan for return or destruction of the data once the Processing is complete UNLESS requirement under union or member state law to preserve that type of data</p>	<p><i>[Describe how long the data will be retained for, how it will be returned or destroyed.]</i></p>

7.

Schedule 7 – Guarantee

[Insert the name of the Guarantor]

- and -

[Insert the name of the Beneficiary]

DEED OF GUARANTEE

THIS DEED OF GUARANTEE is made the day of 20[]

BETWEEN:

(1) [Insert the name of the Guarantor] [a company incorporated in England and Wales with number [] whose registered office is at [insert details of the Guarantor's registered office here]] [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] (the "**Guarantor**");

in favour of

(2) [Insert the name of the public sector Party to the Guaranteed Agreement] whose principal office is at [] (the "**Beneficiary**")

WHEREAS:

- [(A) It is a condition of the Beneficiary entering into the Guaranteed Agreement that the Guarantor executes and delivers this Deed of Guarantee to the Beneficiary.]
- (B) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Supplier, to guarantee all of the Supplier's obligations under the Guaranteed Agreement.
- (C) It is the intention of the Parties that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Beneficiary as follows:

Definitions and Interpretation

1 In this Deed of Guarantee:

- 1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;
- 1.2 the words and phrases below shall have the following meanings:
 - 1.2.1 "**Guaranteed Agreement**" means the [insert details of main contract] made between the Beneficiary and the Supplier on [insert date];
 - 1.2.2 "**Guaranteed Obligations**" means all obligations and liabilities of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to,

incurred under, ancillary to or calculated by reference to the Guaranteed Agreement; and

1.2.3 “**Supplier**” means the party(s) named as the ‘Supplier’ under the Guaranteed Agreement.

1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;

1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;

1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;

1.6 the words “other” and “otherwise” are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;

1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;

1.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;

1.9 unless the context otherwise requires, any phrase introduced by the words “including”, “includes”, “in particular”, “for example” or similar, shall be construed as illustrative and without limitation to the generality of the related general words;

1.10 references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and

1.11 references to liability are to include any liability whether actual, contingent, present or future.

2 Guarantee and Indemnity

2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.

2.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under or in connection with the

Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.

2.3 If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:

2.3.1 fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and

2.3.2 as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.

2.4 As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

3 Obligation to enter into a new contract

3.1 If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Supplier other than in the event of the Authority's default, or if the Guaranteed Agreement is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been

original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

4 Demands and Notices

4.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

4.1.1 [Address of the Guarantor in England and Wales]

4.1.2 [Facsimile Number or Email Address]

4.1.3 For the Attention of [insert details]

8. or such other address in England and Wales or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address or facsimile number for the receipt of such demands or notices.

4.2 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:

4.2.1 if delivered by hand, at the time of delivery; or

4.2.2 if posted, at 10.00 a.m. on the second Business Day after it was put into the post; or

4.2.3 if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Business Day, and in any other case at 10.00 a.m. on the next Business Day.

4.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.

4.4 Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

5 Beneficiary's protections

5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by

the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.

- 5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
- 5.2.1 it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
 - 5.2.2 it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
 - 5.2.3 if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
 - 5.2.4 the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- 5.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
- 5.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
- 5.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.

- 5.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
- 5.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

6 Guarantor intent

- 6.1 Without prejudice to the generality of Clause 5 (Beneficiary's protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.

7 Rights of subrogation

- 7.1 The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:
- 7.1.1 of subrogation and indemnity;
 - 7.1.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and
 - 7.1.3 to prove in the liquidation or insolvency of the Supplier,
9. only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights up to such amount as the Beneficiary determines in its sole discretion represents the amount of the Guarantor's liabilities under this Deed of Guarantee (the "**Guarantee Estimate Amount**") on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor may retain for its own account or otherwise deal with any such amounts recovered in excess of the Guarantee Estimate Amount as the Guarantor may determine in its sole discretion. The Guarantor hereby confirms that it has not taken any security from the Supplier (other than cross-indemnities or other security taken in the ordinary course of

its financial arrangements with its Affiliates) and agrees not to do take any further security until the Beneficiary receives all monies payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

8 Deferral of rights

- 8.1 Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:
- 8.1.1 claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Agreement; or
 - 8.1.2 take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement.
- 8.2 Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:
- 8.2.1 exercise any rights it may have to be indemnified by the Supplier;
 - 8.2.2 demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or
 - 8.2.3 claim any set-off or counterclaim against the Supplier.
- 8.3 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

9 Representations and warranties

- 9.1 The Guarantor hereby represents and warrants to the Beneficiary that:
- 9.1.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
 - 9.1.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;

- 9.1.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee (including, without limitation entry into and performance of a contract pursuant to Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:
- 9.1.3.1 the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
 - 9.1.3.2 any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
 - 9.1.3.3 the terms of any agreement or other document to which the Guarantor is a party or which is binding upon it or any of its assets;
- 9.1.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
- 9.1.5 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

10 Payments and set-off

- 10.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 10.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 10.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

11 Guarantor's acknowledgement

- 11.1 The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter

into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

12 Assignment

- 12.1 The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.
- 12.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

13 Severance

- 13.1 If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

14 Third party rights

- 14.1 A person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

15 Governing Law

- 15.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.
- 15.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
- 15.3 Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).

- 15.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.
- 15.5 [Provision dealing with the appointment of English process agent by a non English incorporated Guarantor] [The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] [a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales] either at its registered office or on facsimile number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]

This deed has been entered into on the date stated at the beginning of it.

EXECUTED as a DEED by
[Insert name of the Guarantor] acting by

[Insert/print names]

.....
Director

.....
Director/Secretary

EXECUTED as a DEED by
[Insert name of the Beneficiary] acting by

[Insert/print names]

.....
Director

.....
Director/Secretary

Appendix A

10. Call-Off Terms and Conditions



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CallOffTerms Feb202