

Terms and conditions (Supplier Terms)

Health SaaS or Private Cloud

This NEC G-Cloud Service is available through two different deployment methods:

1. Software as a Service (SaaS); or
2. Private Cloud (an on-premise, or separately procured, private cloud).

The G-Cloud Order Form will stipulate which deployment method has been selected by the Buyer. These Supplier Terms contain two mutually exclusive sections covering the two deployment methods, accordingly, the Supplier Terms relating to the non-selected deployment method should be disregarded and shall not form part of the Call-Off Contract.

The sections of these Supplier Terms are:

- Deployment Method #1: SaaS
- Deployment Method #2: Private Cloud
 - Part 1: Licence Terms
 - Part 2: Support & Maintenance Terms

Deployment Method #1: Software as a Service

Structure of these Supplier Terms

These Supplier Terms contain provisions that are specific to the provision of Health SaaS. At the end of the General Provisions is an Annex for NEC OptoMize which sets out additional product/service specific provisions (which also override the General Provisions if there is any conflict). At the end of the Supplier Terms is a Glossary. Any capitalised terms within these Supplier Terms which are not defined in the Glossary shall have the meaning set out elsewhere in this Agreement.

General Provisions

SaaS Onboarding Services

The Supplier shall deliver the SaaS Onboarding Services specified in the Particulars.

Unless expressly stated otherwise in the Particulars, the parties recognise that any SaaS Onboarding Services and Professional Service days set out in this Agreement are an estimate based on the parties' current understanding of their requirements and obligations.

Unless expressly stated otherwise in the Particulars, all SaaS shall be tested in accordance with the Supplier's standard test policies. Any additional testing activities that the Buyer requires the Supplier to carry out must be agreed in writing between the parties and may be chargeable. The Buyer shall be deemed to accept the SaaS, and such acceptance shall be irrevocable, if the SaaS is used by the Buyer in a live environment and/or for any live operations.

Access to and use of the SaaS

Subject to the Buyer complying with the restrictions set out in these Supplier Terms and the other terms and conditions of this Agreement, the Supplier shall grant to the Buyer a non-exclusive, non-transferable right to permit the Authorised Users to use the SaaS and the Documentation during the SaaS Term solely for the Buyer's internal business purposes.

The Supplier shall grant the Buyer's Administrator access to the SaaS in the technologically appropriate manner either by provision of a licence key, by granting access to a downloadable app, or by means of issuing a user name and password for the SaaS portal which can be accessed through such URL as may be notified by the Supplier from time to time ("**SaaS Portal**").

The Buyer's Administrator shall then be permitted to access the SaaS through the SaaS Portal and it shall be the Buyer's Administrator's responsibility to configure the set-up of the SaaS, within the parameters set out within the Documentation, to reflect the Buyer's own policies and practices on application assessment and decision making.

The Buyer's Administrator, in accordance with the Documentation, shall be permitted to set up further users authorised to access the SaaS on behalf of the Buyer. It is the Buyer's Administrator's responsibility to set the controls on and levels of access for each further user authorised. For the avoidance of doubt, the Buyer's Administrator and the further users set up by the Buyer's Administrator under this paragraph shall be the "Authorised Users" for the purposes of this Agreement.

If there is an End User named in the Particulars, the Supplier grants the Buyer the right to access and use the SaaS for the benefit of such End User.

In relation to the Authorised Users, the Buyer undertakes that:

- Each Authorised User shall keep a secure password for his/her use of the SaaS and Documentation, that such password shall be kept confidential and shall be changed no less frequently than every 90 days;
- It shall permit the Supplier to audit the SaaS. Such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Buyer's normal conduct of business; and

If any of the audits referred to in this paragraph reveal that any unauthorised access has occurred, then without prejudice to the Supplier's other rights, the Buyer shall promptly disable such accounts.

- In relation to the Buyer's Administrator, the Buyer undertakes that:
- The Buyer's Administrator will review and act upon any update information or reasonable instructions of the Supplier, including disseminating such applicable update information and instructions to other Authorised Users; and
- The Buyer's Administrator shall monitor the Authorised Users and ensure that they act in accordance with the terms of this Agreement.

The Buyer shall not (and shall ensure that its Authorised Users shall not) access, store, distribute or transmit any Viruses, or any material during the course of its use of the SaaS that:

- Is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- Facilitates illegal activity;
- Depicts sexually explicit images;
- Promotes unlawful violence;
- Is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- Is otherwise illegal or causes damage or injury to any person or property,

and the Supplier reserves the right, without liability or prejudice to its other rights to the Buyer, to disable the Buyer's access to any material that breaches the provisions of this paragraph.

The Buyer shall not (and shall ensure that its Authorised Users shall not):

- Attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the SaaS, except:
 - ➔ As may be allowed by any applicable law which is incapable of exclusion by agreement between the parties; and
 - ➔ To the extent expressly permitted under this Agreement.
- Attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the SaaS and/or Documentation (as applicable) in any form or media or by any means; or

- Access all or any part of the Services and Documentation in order to build a product or service which competes with the SaaS and/or the Documentation; or
- Use the SaaS and/or Documentation to provide services to third parties (the Buyer's citizens shall not be deemed to be third parties for the purposes of this paragraph); or
- License, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the SaaS and/or Documentation available to any third party except the Authorised Users; or
- Attempt to obtain, or assist third parties in obtaining, access to the SaaS and/or Documentation, other than as provided under this paragraph.

The Buyer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the SaaS and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

The Buyer shall access the SaaS by network communications as agreed between the parties.

The Supplier will use reasonable commercial endeavours to accommodate the introduction of legislative changes. The Supplier expressly reserves the right to charge for the provision of any such legislative updates where: (a) the development of the update is in the reasonable opinion of the Supplier technically complex; and (b) the costs of developing the update are in the reasonable opinion of the Supplier sufficient to warrant a charge for the provision of the update to the Supplier's buyers at large.

Security, Disaster Recovery and Back-up Policy

The Buyer shall own all right, title and interest in and to all of the Buyer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Buyer Data.

The Supplier confirms that:

- The SaaS is provided via a private community cloud for the sole use by or on behalf of the public sector;
- The SaaS platform is designed and implemented in accordance with the 27001 baseline control set, the 14 Cloud Security Principles and National Cyber Security Centre (NCSC) guidance. The platform has a number of tenants that have undergone formal accreditations from various independent and Government departments. The environment from which the SaaS shall be delivered conforms to the relevant sections of the Government Security Policy Framework and Personnel Security Controls and to all relevant Communications Electronics Security Group Memoranda, Manuals and Standards;
- It shall comply with the Supplier's Privacy and Security Policy relating to the privacy and security of the Buyer Data;
- Its information security management system is certified to ISO 27001 and ISO 27002;
- Its quality management system is certified to ISO 9001:2008 (TickIT);
- Its service management system operates in accordance with ITIL v.3; and

- The information assurance process as detailed within the paragraphs above will be periodically revised and updated to ensure alignment with good industry practice.

The Buyer recognises that the SaaS is a hosted, multi-tenanted solution. The Buyer Data will be segregated from the data of other Supplier buyers using the SaaS and there will be no data sharing facility unless expressly authorised by the Buyer.

The Supplier confirms that it uses more than one data centre with separate infrastructure and resilience for provision of the SaaS to ensure relocation of the SaaS provision in the event of non-availability of one data centre.

The Supplier confirms that its disaster recovery and business continuity policies, processes and procedures are based on standard BS25999 and ISO 22301:2019.

The Back-Up Policy is as follows:

- The Supplier takes multiple back-ups within the system as part of the SaaS, in particular, back-ups (using a cycle that includes daily (incremental), weekly (entire image), monthly and annual saves) are taken daily from the live system utilising an automated process scheduled to run overnight, taking into account any batch routines and system availability requirements;
- Back-ups are transferred offsite daily and stored in a secure offsite location;
- In the event of any loss or damage to Buyer Data, the Buyer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Buyer Data from the latest back-up of such Buyer Data maintained by the Supplier; and
- The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Buyer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Buyer Data maintenance and back-up).

Buyer Obligations

Except where the Supplier has specifically agreed to provide such services the Buyer will:

- During the onboarding phase provide appropriately skilled personnel to support configuration of the SaaS, as required;
- Be responsible for the operation and use of the SaaS and any associated documentation and the results obtained from these; and
- Supply the Supplier with any information and assistance reasonably necessary for the Supplier to perform its obligations under this Agreement.

The Buyer shall in good faith:

- Provide the Supplier with (i) all necessary co-operation in relation to this Agreement; and (ii) all necessary access to such information as may be required by the Supplier in order to provide the SaaS, including but not limited to Buyer Data;
- Comply with all applicable laws and regulations with respect to its activities under this Agreement;

- Carry out all other Buyer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Buyer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary and reserves the right to charge the Buyer for any costs incurred by the Supplier as a consequence of such delay;
- Ensure that (where applicable) the Authorised Users use the SaaS and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
- Obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this Agreement, including without limitation the SaaS;
- Ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- To the extent it is within their control, be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Buyer's network connections or telecommunications links or caused by the internet. The Supplier is not responsible for network issues which arise outside of its network perimeter.

SaaS Availability and Support

The Supplier shall use commercially reasonable endeavours to make the SaaS available 08:00 to 20:00 UK time on Business Days, except for:

- Planned maintenance carried out during the maintenance window of (i) 17:30 to 09:00 UK time on Business Days; and (ii) at any time on a non-Business Day, for which the Supplier shall give the Buyer at least 24 hours' notice in advance; and
- Unscheduled emergency maintenance carried out, where possible unless there is an identified and demonstrable immediate risk to the SaaS infrastructure, during the maintenance window of (i) 17:30 to 09:00 UK time on a Business Day; and (ii) at any time on a non-Business Day, for which the Supplier shall use reasonable endeavours to give the Buyer at least six hours' notice in advance.

The SaaS supports mainstream browsers for example IE (until June 2022), Edge, Chrome, Firefox and Safari unless otherwise stated in the release documentation.

During the SaaS Term the Supplier shall, as part of the SaaS and at no additional cost to the Buyer, provide the Buyer with the Supplier's standard Buyer support services through its service desk ("**Service Desk**").

The Service Desk can be contacted by the Buyer's Authorised Users in the following ways during the following times:

- Via the Supplier's customer portal which can be accessed through the URL <https://helphub.necsws.com/> ("**Customer Portal**"), 24 hours a day, seven days a week; or
- Where the Customer Portal is not available for any reason, through the Service Desk telephone number (to be provided) during Normal Business Hours.

When logging a request for support ("**Support Request**"), the Authorised User must provide the following information to the Service Desk (whether through the Customer Portal or via email):

- Authorised User Name;
- Authorised User Location;
- Authorised User's contact details – telephone and email;
- Details of the nature of the fault or description of the issue; and
- Details of who is being affected, i.e. single user, a group of users or the whole organisation, and the impact that the fault or issue is having including any urgency surrounding the support call.

The Service Desk will then resolve the call remotely, which may (a) involve a call to the Authorised User for additional information and data; and/or (b) referral to the Supplier's application support team for further investigation.

The Supplier shall have no obligation to:

- Correct any incident reported by the Buyer if such reported incident is not reproducible by the Supplier in the SaaS; or
- Correct any Priority 4 reported incident and reserves the right to abandon attempts to provide a fix where the costs are likely to be excessive or the commercial benefits to the Supplier's customers at large are likely to be negligible; or
- Correct any incident if such incident arises from misuse or abuse of the SaaS.

Termination and Consequences of Termination

In the event the Supplier elects to withdraw a particular type of SaaS, it may do so without liability provided it has given the Buyer not less than six months' prior written notice.

The Supplier shall, following the expiry of the SaaS Term, disable the Buyer's access to the SaaS.

Miscellaneous

- If this Agreement contains the Buyer's service description, requirements or specification ("**Specification**") and if any provision of that Specification conflicts with these Supplier Terms, then regardless of any other provision in this Agreement, these Supplier Terms will take precedence.
- Regardless of any other provision in this Agreement, except to the extent not permitted by law:
 1. The Buyer assumes sole responsibility for results obtained from its use of the Supplier's deliverables and for any conclusions drawn from such use; and
 2. The Supplier shall have no liability for any damage caused by errors or omissions in any information, data, instructions or scripts provided to the Supplier by the Buyer in connection with this Agreement, or any actions taken by the Supplier at the Buyer's direction.

- Except where the Supplier has specifically agreed to provide such services, the Buyer will promptly:
 1. Supply the Supplier with any information and assistance reasonably necessary for the Supplier to perform its obligations under this Agreement; and
 2. Provide the Supplier's personnel with full free and safe access to its site when required, to enable the Supplier to perform its obligations under this Agreement.
- The Buyer warrants, represents and undertakes to the Supplier that there will be no relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) ("**TUPE**") of employees from the Buyer (or any supplier, contractor or other service provider to the Buyer) to the Supplier. Regardless of any other provision of this Agreement, the Buyer agrees to indemnify the Supplier against all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the Supplier in connection with or as a result of:
 1. A claim by any person who transfers or alleges that they have transferred to the Supplier as a result of entering into this Agreement; and/or
 2. Any failure by the Buyer to comply with its obligations under regulations 13 and 14 of TUPE, or any award of compensation under regulation 15 of TUPE.

Annex: NEC OptoMize

The additional provisions set out in this Annex apply to the provision of NEC OptoMize Software as a Service. If there is any conflict between the provisions set out in this Annex and the General Provisions, this Annex shall apply.

Hosting

The Buyer acknowledges that NEC OptoMize SaaS is hosted in a third party environment provided by Wemtech using a public cloud solution which, regardless of any other provision in this Agreement, shall be provided in accordance with Wemtech's standard terms & conditions to the exclusion of all other terms, including in relation to service availability and support. For clarity, the only Service Levels that shall apply to the Wemtech hosting platform component of NEC OptoMize are those provided by Wemtech.

Technical Requirements

Service Dependencies

In order to access and use the NEC OptoMize SaaS the Buyer must provide the following:

- An HSCN / Swan Network connection to access NEC OptoMize.
- NEC OptoMize is designed to work over a range of bandwidths, dependent on the number of users, and the type of data to be uploaded / displayed. As a minimum HSCN/ SWAN Network throughput speeds for the Buyer site must be 256kb/s or above.

Backup / Restore

The Supplier will ensure Buyer Data is backed up daily from the live systems using an automated process scheduled to run overnight, taking into account any batch routines and service availability requirements.

The backup tape cycle includes:

- Daily (incremental)
- Weekly (entire image)
- Monthly and annual saves.

Backup tapes are taken off-site daily and stored in a secure location. NEC OptoMize is delivered from two data centres. Each has a physically separate infrastructure, such that a failure in one will not affect another.

Inter-data centre connectivity provides telecommunications resilience and data replication. All production critical data is replicated to the secondary data centre.

The primary data centre has been designed to be highly resilient to meet requirements for performance and availability. All components have in-built redundancy (for example, multiple power supplies, fans, and so on), with components deployed in duplicate in either an active-active or fail-over configuration.

Service Level Agreement

For the purposes of this Service Level Agreement, the following terms shall have the meaning set out below:

Core Service Hours means 8.30am to 5.00pm Monday to Friday excluding bank holidays in England and Wales.

Service Availability

The Supplier provides NEC OptoMize as a fully hosted and supported solution. The Supplier shall use commercially reasonable endeavours to make the service available 24x7x365 subject to downtime for routine and emergency maintenance.

Help Desk

Help desk services will be delivered from the Supplier's Customer Service Centre (CSC). Access to the Customer Portal (detailed in the General Provisions above) will be made available for call logging by Authorised Users 24/7 or calls can be logged via an email address. For Priority 1 calls only, Authorised Users can contact the help desk via telephone during Core Service Hours:

Dedicated email address:	deshelpdesk@necsws.com
Helpdesk Portal:	https://helphub.necsws.com/
Dedicated help desk P1 phone number:	01223 957999

All requests for support will be logged on the Supplier's service management system and will be owned by the help desk through to conclusion by the Supplier's support team(s).

Where calls are logged and raised via either the portal or the help desk email, the Supplier's CSC will contact the Authorised User to conduct an initial analysis of the incident / request in order to try and resolve the call. Where it is not possible to resolve the call through the help desk, the Authorised User will be notified and the call will be escalated to the relevant technical support team.

To enable the timely resolution of calls the Buyer will provide:

- A named lead user with current contact details including email and telephone number
- A named IT Department contact with current contact details including email and telephone number
- HSCN / SWAN connection available with up-to-date connection details
- On site access for Supplier staff if required

Service Levels

Response Times

Definition	Service Level
Helpdesk Response Time (measured during Core Service Hours)	<p>All calls raised through the Customer Portal will immediately be given an automatic receipt which will detail the call reference number.</p> <p>Emails will be logged 4 times daily: early morning, mid-morning, early afternoon and mid-afternoon at which point the call reference number will be issued to the Authorised User.</p>

Incident priority levels are defined as follows:

Priority Level	Definition
Priority 1	<p>Any incident shall be categorised as Priority 1 where an immediate action is required because a significant part of the service is unavailable, resulting in users being unable to perform their duties or a clinical incident arises, in each case which meets the applicable criteria below.</p> <p>A service failure which, in the reasonable opinion of the Buyer and or Authorised User:</p> <ul style="list-style-type: none"> • constitutes a loss of NEC OptoMize which prevents more than 45% of end users or Authorised Users from working; or • has a critical impact on the activities of the Buyer or Authorised User; or • results in any material loss or corruption of Buyer or Authorised User data; or • presents a clinical safety issue; or • prevents an end user or Authorised User from logging an incident with the Help Desk.
Priority 2	<p>A service failure which, in the reasonable opinion of the Buyer and or Authorised User has the potential to:</p> <ul style="list-style-type: none"> • have a major (but not critical) adverse impact on the activities of the Buyer and or Authorised User; or • cause disruption and or financial loss to the Buyer and or Authorised User which is more than trivial but less severe than the significant disruption described in the definition of a Priority 1 service failure.
Priority 3	<p>A service failure which, in the reasonable opinion of the Buyer and or Authorised User has the potential to have a moderate or minor adverse impact on the activities of the Buyer or Authorised User or which is in respect of guidance and advice.</p> <p>Non exhaustive list of examples:</p> <ul style="list-style-type: none"> • typically impacts one hospital or Authorised User but could be a minor bug that impacts all users;

Priority Level	Definition
	<ul style="list-style-type: none"> non-clinical display issues; e.g. the data is correct but highlighting of statuses, RAG, rating, etc. may not be functioning.
Priority 4	Bugs and known errors that require patching of NEC OptoMize
Priority 5	Requests for changes to NEC OptoMize where additional functionality or changes to existing functionality are required.

Service Levels for the Core System

The Supplier shall meet or exceed the following Service Levels:

Definition	Measure	Measurement Period
Availability of the Core System	99.7%	Quarterly
Priority 1 incident fix	Resolution within 4 Core Hours	Quarterly
Priority 2 incident fix	Resolution within 1 Business Day	Quarterly
Priority 3 incident fix	85% Resolved within 3 Business Days.	Quarterly
Priority 4 incidents fix (bugs)	75% Resolved within 90 days	
95% Resolved within 180 days	Rolling 90 days	
Rolling 180 days		
Priority 5 incidents (changes)	100% Costed within 90 days	Rolling 90 days
Yearly P1	6 or less a Year	Yearly
Number of technical faults (alerts) reported (e.g. CPU utilisation threshold reached)	In the first Year a month on month reduction of fault reports (alerts)	Yearly
Priority 1 & 2 incidents	In Year Two less than 4 per month	Yearly

Incident Resolution / Response Times

The Supplier shall record the time at which any incident is logged with the help desk and the time that the incident is subsequently resolved. In the case of incidents reported via the Customer Portal, the user will receive an automated email confirmation with the incident reference number. For the purposes of measuring the applicable Service Level, the point at which the incident is recorded on the call logging system shall be the start time.

The resolution time guidelines which apply to all calls made to the help desk are set out in table above. Measurement of the target times will begin at the earliest point in time during Core Service Hours at which the Incident was registered by the help desk.

Timings end (within Core Service Hours) when the Incident has been resolved and resolution notified to the party reporting the incident.

An incident is deemed to be resolved once (i) the cause of the incident has been identified and addressed or (ii) a satisfactory work around has been provided by the Supplier, and at this point the fix time is calculated. An incident can only be closed once the originator has been contacted and has confirmed the incident as being corrected

Both Parties acknowledge and agree that where a satisfactory work around has been provided by the Supplier, the Supplier will, within 60 Core Service Hours of the work around being provided, provide the Buyer with written confirmation as to when a permanent fix will be provided. In any event, the permanent fix must be provided to the Buyer within a reasonable timeframe (having regard to the nature of the incident and the impact upon the Buyer of complying with the workaround).

Where an incident re-occurs within 24 Core Service Hours of it having been confirmed as corrected, the incident shall be deemed not to have been fixed and the fix time shall be deemed as continuing from the point of the initial call.

Both Parties acknowledge and agree that it may not be possible for all calls to be concluded within proposed guidelines.

From time to time, it may be necessary by mutual agreement to leave an incident open for an extended period in order to monitor for additional occurrences or to evaluate the effect of proposed solutions.

Planned Maintenance

The Supplier shall use reasonable endeavours to provide the Buyer with at least 48 hours advance notice of any planned maintenance of any infrastructure relating to NEC OptoMize and to ensure that NEC OptoMize is not unavailable for more than 12 Core Service Hours in any quarter.

Emergency Maintenance

Whenever possible, the Buyer will have at least six hours advance notice of any emergency maintenance of any of the infrastructure relating to NEC OptoMize.

Emergency Maintenance of the Supplier's infrastructure will, whenever possible, take place between the hours of 17:30 and 09:00 (UK local time) on a Business Day unless there is an identified and demonstrable immediate risk to the NEC OptoMize.

Service Management

The Supplier will appoint a Customer Service Manager (CSM) who will be responsible for ensuring the service is managed and delivered in accordance with the Agreement.

The CSM will provide a single point of contact to the Buyer for all service related aspects of the contract including assistance with reporting, incident escalation and continual service improvement. The CSM will manage processes such as Incident, Problem and Change Management.

A Consultant will also be allocated to work with the Buyer's programme team staff to provide advice, guidance and support in the use of NEC OptoMize.

The Supplier shall provide a bi-annual service report to the Buyer and arrange a follow-up service call to address any issues raised by the Buyer.

Escalation Procedure

The escalation contacts listed below are the relevant people to be contacted once escalation levels have been reached. There are three escalation levels for Priority 1 and Priority 2 levels, with different timescales for each priority escalation level. Each level of escalation is reached if for Priority 1 and 2 issues, an incident is not resolved within the applicable Service Level.

The roles defined are:

The Supplier:

Level 1 – Customer Service Manager

Level 2 – Product Owner

Level 3 - Head of Health Delivery

The Buyer:

Level 1 – Screening Programme Manager

Level 2 – To be agreed

Level 3 – To be agreed

Priority Level	Escalation target time (Hours)	Escalation Level	Supplier Contact	Buyer Contact
1	2	1	Customer Service Manager	Level 1
1	4	2	Customer Service Manager Product Owner	Level 1 Level 2
1	6	3	Customer Service Manager Product Owner Head of Health Delivery	Level 1 Level 2 Level 3
2	4	1	Customer Service Manager	Level 1
2	24	2	Customer Service Manager Product Owner	Level 1 Level 2
2	36	3	Customer Service Manager Product Owner Head of Health Delivery	Level 1 Level 2 Level 3

Glossary

In addition to the terms defined elsewhere in these Supplier Terms (or other parts of the Agreement), the following terms shall have the following meaning:

"Agreement"	means the Call-Off Agreement.
"Authorised Users"	means those employees, agents and independent contractors of the Buyer who are authorised by the Buyer to use the SaaS and the Documentation, as further described in these Supplier Terms.
"Back-Up Policy"	means the specific arrangements for the back-up of Buyer Data as set out in these Supplier Terms, as may be amended from time to time by the Supplier in its sole discretion upon reasonable prior written notice.
"Business Day"	means any day which is not a Saturday, Sunday or bank or public holiday in the UK.
"Buyer's Administrator"	means the person duly appointed by the Buyer to act as its administrator and the Supplier's lead contact for the purposes of the SaaS, as notified by the Buyer to the Supplier.
"Buyer Data"	means the data inputted by the Buyer, or Authorised Users for the purpose of using the SaaS or facilitating the Buyer's use of the SaaS.
"Documentation"	means the written and/or online descriptions of the SaaS features, functions and methods of operation and the instructions provided for its use.
"End User"	means the entity identified as such in the Particulars.
"Normal Business Hours"	means 09:00 to 17:30 UK time, each Business Day.
"Particulars"	means the Order Form.
"Privacy and Security Policy"	means the Supplier's policy relating to the privacy and security of the Buyer Data, as may be amended from time to time by the Supplier in its sole discretion, which is available on request.
"SaaS"	means the Software as a Service to be delivered as set out in the Particulars.
"SaaS Term"	means the term specified in the Particulars.
"SaaS Portal"	has the meaning set out in these Supplier Terms.
"Service Desk"	means the Supplier's service desk, as described in these Supplier Terms.
"Virus"	means any thing or device (including any software, code, file or program) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or

otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Deployment Method #2: Private Cloud

Part 1 of 2: Licence Terms

Structure of these Supplier Terms

These Supplier Terms contain provisions that are specific to the provision of software licences. At the end of General Provisions there is an Annex for NEC OptoMize which sets out additional product/service specific provisions (which also override the General Provisions if there is any conflict). At the end of these Supplier Terms is a Glossary. Any capitalised terms within these Supplier Terms which are not defined in the Glossary shall have the meaning set out elsewhere in this Agreement.

General Provisions

Software Licence Grant

Subject always to the Third Party Software section below, the Termination section below and the termination provisions elsewhere in this Agreement and following delivery, the Supplier grants the Buyer a personal non-exclusive non-transferable revocable licence to Use the machine readable portion of the Software (and where appropriate the Documentation) for the applicable Licence Term, for the Buyer's own internal data processing purposes and to copy the same solely for back-up purposes to the extent permitted by law, and to possess and refer to the Documentation, provided always that the Buyer adheres to the following licence terms:

- The Buyer uses only one copy of the Software for live operations;
- The Buyer pays the Licence Charges in accordance with this Agreement;
- The Buyer does not delete, amend or otherwise alter any copyright or other ownership notices or legends displayed, contained in or attached to the Software and Documentation;
- The Buyer does not decompile or reverse engineer the Software, save where the necessary information has not been made available by the Supplier and save as expressly permitted by the EU Software Directive – Council Directive no. 2009/24/EC as enshrined into UK Legislation by EUWA as amended from time to time;
- Save as provided above, the Buyer may not assign, transfer, sell, trade or otherwise deal in, lease, encumber, market, rent, disclose, publish technical details of (including the results of benchmark or other tests), copy, modify, enhance, convert or translate the Software or Documentation;
- The Buyer does not store, distribute or transmit any viruses, or any material through the Software that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;
- The paragraph above shall not apply to the extent only that the Software is specifically designed for such purposes and is being used for lawfully including for the prevention and/or detection of criminal activity;

- The Buyer does not exceed any of the restrictions set out within this Agreement (including as set out in the Particulars) such as the number of Authorised Users, number of concurrent or named users, number of Council Tax Properties;
- Subject to the APIs section and End User Rights section below, the Buyer does not permit any third party to Use the Software or Documentation;
- Subject to the End User Rights section below, the Buyer does not Use the Software or Documentation on behalf of or for the benefit of or to provide services to any third party;
- The Buyer does not access all or any part of the Software in order to build a product or service which competes with the Software and/or the Services, or attempt to obtain, or assist third parties in obtaining, access to the Software, other than as provided under these Supplier Terms;
- The Buyer shall use reasonable endeavours to prevent any unauthorised access to, or use of, the Software and it shall notify the Supplier promptly of any such unauthorised access or use.

Implementation and Testing

- The Supplier will deliver one copy of the Software which the Buyer will be responsible for installing and implementing (except to the extent that the Supplier has agreed to provide Services to assist with the installation and implementation), together with one copy of the Documentation.
- Except where expressly agreed otherwise in writing, all Software shall be tested in accordance with the Supplier's standard test policies. Any additional testing activities that the Buyer requires the Supplier to carry out must be agreed in writing between the parties and may be chargeable. Regardless of any other provision in this Agreement, the Buyer shall be deemed to accept the Software, and such acceptance shall be irrevocable, if the Software is used by the Buyer in a live environment and/or for any live operations.

Audit Rights

- At the Supplier's written request, which shall not be more frequently than annually, the Buyer will furnish the Supplier with a signed statement verifying that the Software and Documentation are being used pursuant to the provisions of this Agreement and any restrictions set out in this Agreement. The Buyer agrees to grant the Supplier access, upon reasonable prior notice, to the Buyer's site in order to audit the use of the Software and Documentation. If such audit establishes that the Buyer has unauthorised copies of the Software or Documentation, the Supplier reserves the right to charge the Buyer for the costs of performing the audit, in addition to recovering the charges which would have been due to the Supplier had the Supplier licensed such copies for use.
- Should an audit conducted pursuant to the paragraph above reveal that passwords have been provided to individuals who are not Authorised Users then, without prejudice to the Supplier's other rights, the Buyer shall promptly disable such passwords and shall not issue any new passwords to such individuals (unless or until the appropriate charges due in respect of any additional concurrent or named users have been paid).

APIs

Where the Supplier Software includes an API, the following licence terms shall apply in addition to those set out in the paragraphs above:

- The Buyer must hold sufficient, current licences of any the Supplier Software accessed via the APIs and must have a support agreement in place in respect of such the Supplier Software; and
- The Buyer will only Use the API to interface IT applications, solutions or components which are utilised by the Buyer with the Supplier Software to achieve an “Interfaced Solution”; and
- The Interfaced Solution will not be Used by any party other than the Buyer; and
- The Buyer will use all reasonable precautions to prevent viruses or other malicious software from being introduced onto or into the Supplier Software and/or the Supplier's IT facilities and systems; and
- If the Supplier provides a hosted or cloud service to the Buyer, the Supplier reserves the right to (i) use metering technology to monitor use of the Supplier platform (including but not limited to disk space, networks, servers and support); and (ii) levy additional reasonable charges upon the Buyer if and to the extent use by the Buyer of the APIs places additional burden on the Supplier platform causing the Buyer to exceed its contracted usage; and
- The Supplier shall not be liable for any unavailability, incidents or other failure of the Software to operate or perform in accordance with the Service Levels or any other aspect of the Agreement as a result of any act or omission of the Buyer; and
- The Buyer may grant a sub-licence to the API to a named API User subject to:
 - ➔ The Buyer obtaining the Supplier's prior written consent; and
 - ➔ The Buyer entering into a written sub-licence agreement with the API User on the same licence terms as those which apply to the Buyer subject to express provisions which: (i) preclude the API User from any further right to sub-licence; and (ii) confer a right on the Supplier to enforce the sub-licence terms under the Contracts (Rights of Third Parties) Act 1999; and
 - ➔ The Buyer hereby indemnifies the Supplier against any costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the Supplier in connection with or as a result of any act or omission of the API User, irrespective of any other provisions in this Agreement.

End User Rights

If there is an End User named in the Particulars or other relevant part of this Agreement, the Supplier grants the Buyer:

- The right to Use the Software for the benefit of such End User; and
- The right to grant a sub-licence to the End User for its internal use only on the same licence terms as those which apply to the Buyer but with no further right to sub-licence, other than as set out in the APIs section above.

Termination

If the Software has been licensed on a perpetual basis, this is subject to the Buyer continuing to pay the applicable charges for Support and Maintenance Services. If

Support and Maintenance Services expire or are terminated, the perpetual licence shall be terminated and continued Use of the Software by the Buyer shall be subject to the payment of an additional licence fee.

The following licences shall be terminated on the date of termination of this Agreement:

- Fixed term licences, if the Agreement is terminated for any reason; and
- Perpetual licences, if the Agreement is terminated for the Buyer's material breach.
- If the licence granted under this Agreement is terminated, the Buyer will immediately cease using the Software and Documentation in its possession or control and return to the Supplier or destroy (as requested by the Supplier) the originals and all copies of the Software and Documentation in its possession or control. Upon request by the Supplier, the Buyer's duly authorised officer will certify in writing that it has complied with this paragraph.
- Where the Supplier, in accordance with the terms of this Agreement, terminates the licences granted above, the corresponding Support and Maintenance Services and any other related Professional Services shall also terminate.

Software Warranty

- The Supplier warrants that:
 - ➔ The Supplier Software will operate in material compliance with the relevant parts of the Documentation for a period of six months from delivery;
 - ➔ The Third Party Software will operate in material compliance with the relevant parts of the Documentation for a period of 30 days from delivery;
 - ➔ The media on which the Software and the Documentation are delivered to the Buyer will be free from defects in materials and workmanship under normal use for a period of 30 days from delivery.
- If the Buyer notifies the Supplier within any time periods specified in the paragraph above that the Software or the media on which the Software and the Documentation are delivered does not conform with the provisions of that paragraph, then the Supplier will repair or replace, at its discretion, the non-conforming portion of the Software or, where applicable, the media free of charge.
- The Supplier does not warrant that the Software is free from minor errors or defects; that it operates without interruption or is designed to meet the Buyer's specific requirements.

Third Party Software

- If the Buyer is taking delivery of any Third Party Software the following additional terms shall apply regardless of any other provision in this Agreement:
 - ➔ Third Party Software is licensed pursuant to the relevant licence terms supplied to the Buyer, receipt of which is hereby acknowledged and such terms shall apply as if incorporated in this Agreement; and
 - ➔ The Supplier accepts no liability for infringement of third party Intellectual Property Rights in respect of the Use or possession by the Buyer of the Third Party Software.

Buyer Responsibilities

- Except where the Supplier has specifically agreed to provide such services, the Buyer will:
 - ➔ Promptly agree with the Supplier a specification for and make available hardware, operating system and communications/networking facilities to enable the Supplier to meet its obligations under this Agreement without delay;
 - ➔ Be responsible for the selection, installation, management, operation and use of the Software and any associated documentation and the results obtained from these; and
 - ➔ Be responsible for, take and validate, regular back-up copies of its data used in connection with the Software and keep the back-up copies and media safe.
- Where the Supplier has agreed to provide any Professional Services to assist with the installation and/or integration of the Software, the Buyer will accept the Software upon completion by the Supplier of such Professional Services. Where the Buyer has not requested any Professional Services to assist with the installation and/or integration of the Software, acceptance shall occur automatically if the Buyer has failed to advise the Supplier within 14 days of delivery of the Software by the Supplier of any non-trivial or non-compliance with the Documentation affecting the Software. Where the Buyer has advised the Supplier of any defect and/or non-compliance within the 14 day period specified above, the Supplier shall either replace the Software or rectify the relevant defect and/ or non-compliance, using reasonable endeavours to meet any previously agreed delivery or lead times;
- Where the Software includes the document production facility (NEC Document Services), the Buyer shall be granted access to NEC Document Services for the production of documents and will support the technical requirements as set out in the technical configuration documentation.

IPR Indemnity

The Supplier shall defend the Buyer against any claim and indemnify the Buyer against any award of damages or costs or any settlement negotiated by the Supplier arising from or incurred by reason of any infringement of any third party Intellectual Property Rights by the Buyer's normal operation, possession or Use of the Supplier Software, within the UK and/or European Union, provided that the Buyer:

- Notifies the Supplier promptly in writing of any alleged infringement and makes no admissions in respect thereof; and
- Gives the Supplier information, assistance and sole control of the defence and all related settlement negotiations. Reasonable out-of-pocket expenses incurred by the Buyer in providing such assistance will be reimbursed by the Supplier.

The indemnity set out in the paragraph above shall not apply where the infringement or alleged infringement arises from, or is incurred by reason of:

- The Buyer's use of a modified version of the Supplier Software, where such modifications were not approved or undertaken by the Supplier; or
- The Buyer's use of a de-supported version of the Supplier Software without the consent of the Supplier; or
- The combination, or use, of the Supplier Software and any equipment or software not supplied or approved in writing by the Supplier; or

- The Buyer's use of the Supplier Software other than as authorised under this Agreement.

In the event that the Supplier Software is held, or is believed by the Supplier, to infringe the Intellectual Property Rights of another, the Supplier shall have the option, at its expense to:

- ➔ Modify the Supplier Software (without materially detracting from its functionality) so as to avoid the infringement; or
- ➔ Obtain for the Buyer a licence to continue to use the Supplier Software; or
- ➔ Replace the Supplier Software with non-infringing substitutes provided that such substitutes do not entail a material reduction in functionality; or
- ➔ Terminate the licence for the infringing the Supplier Software (or part thereof) and refund the Software Licence Charges paid for such the Supplier Software, pro-rated over the Licence Term or, if no term is specified or the term is perpetual, over a five year period from delivery.

This IPR Indemnity section states the Supplier's entire liability and the Buyer's sole remedy with regard to infringement of any Intellectual Property Rights by the Use or possession of the Supplier Software.

Miscellaneous

If this Agreement contains the Buyer's service description, requirements and/or specification (together the "Specification") and if any provision of that Specification conflicts with these Supplier Terms, then regardless of any other provision in this Agreement, these Supplier Terms will take precedence.

Regardless of any other provision in this Agreement, except to the extent not permitted by law:

1. The Buyer assumes sole responsibility for results obtained from its use of the Deliverables and for any conclusions drawn from such use; and
2. The Supplier shall have no liability for any damage caused by errors or omissions in any information, data, instructions or scripts provided to the Supplier by the Buyer in connection with this Agreement, or any actions taken by the Supplier at the Buyer's direction.

Annex: NEC OptoMize

Where NEC OptoMize is purchased, the provisions set out in this Annex shall also apply. If there is any conflict between the provisions set out in this Annex, and any other provisions set out in these Supplier Terms, this Annex shall apply.

The Supplier hereby grants to the Buyer, on and subject to the terms and conditions of this Agreement, a non-exclusive, non-transferable licence to install the Software on the Clients (where "Client" means a single workstation installed with the Software).

The Buyer shall configure, connect and design its network and IT infrastructure (including the security and integrity thereof) in accordance with recognised best practice to mitigate the risk of it being a target or a source of disruptions or network defects or attacks, including having in place at all times industry standard encryption software and adequate and appropriate protections against any virus;

The Supplier grants to the Buyer a licence of the third party software embodied in the Software allowing the Buyer to use the Software as contemplated by this Agreement without breaching the rights of the relevant third parties (provided always that the Buyer has correctly identified itself as being an eligible public sector Buyer for the purposes of the relevant third party licensing terms (including, with regard to the eligibility criteria for PSA12 Licensing available from Microsoft). If the Buyer is held to be ineligible then additional licensing fees may apply (and be payable by the Buyer) as appropriate.

In relation to Authorised Users:

- The number of agreed individual concurrent Authorised Users (as specified in the Particulars) shall be subject to a quarterly review and any variation to such number shall be subject to the written agreement of both parties; and
- The Buyer shall ensure that each Authorised User keeps a secure password for their access to, and use of, the Software, that such password is changed no less frequently than monthly unless otherwise agreed and that each Authorised User keeps their password confidential.

Glossary

In addition to the terms defined elsewhere in this Agreement, in these Supplier Terms the following terms shall (regardless of any other provision in this Agreement) have the meaning set out below:

"Agreement"	means the Call-Off Contract.
"API"	means the Supplier's (or applicable third party licensor's) proprietary application programming interface which is licensed by the Supplier under the terms of this Agreement.
"API User"	means any third party acting in a technical capacity on the Buyer's or End User's behalf (as applicable) to use an API to create an Interfaced Solution.
"Authorised User"	Means those employees and independent contractors of the Buyer who are entitled to Use the Software under this Agreement.
"Documentation"	means the written and/or online descriptions of the Software's features, functions and methods of operation and the instructions provided for its Use.
"End User"	means any third party identified as such in the Agreement for whose benefit the Supplier and the Buyer enter into this Agreement.
"Intellectual Property Rights" or "IPR"	means any intellectual property rights including any patents, trademarks, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, know-how, trade or business names and other similar rights or obligations whether registrable or not, in any country including but not limited to the UK.
"Interfaced Solution"	has the meaning set out in the APIs section above.
"Licence Charges"	means the applicable charges for the Software licence(s) granted under this Agreement, as specified in the Particulars.
"Licence Term"	means the applicable duration of the Software licence granted under this Agreement, as specified in the Particulars or other relevant part of this Agreement.

"Particulars"	means the Order Form.
"Partner Organisation"	means any third party nominated by the Buyer which is collaborating with the Buyer in the delivery of the Buyer's services.
"Software"	means the software itemised in the Particulars or other relevant part of this Agreement (together with any modifications and enhancements thereto plus any other computer programs supplied by the Supplier from time to time under this Agreement) which is licensed in accordance with these Supplier Terms.
"Supplier Software"	means Software which is proprietary to the Supplier.
"Third Party Software"	means Software which is proprietary to a third party.
"Use" or "Used"	means in relation to the machine readable portion of the Software, reproduction through any act of loading, displaying, running, transmitting or storage, in whole or in part for the purposes of processing the instructions contained in the Software and any data belonging to the Buyer.

Deployment Method #2: Private Cloud

Part 2 of 2: Support and Maintenance

Structure of these Supplier Terms

These Supplier Terms contain provisions that are specific to the provision of Health Support and Maintenance. At the end of the General Provisions there is an Annex for NEC OptoMize which sets out additional product/service specific provisions (which also override the General Provisions if there is any conflict). At the end of these Supplier Terms is a Glossary. Any capitalised terms within these Supplier Terms which are not defined in the Glossary shall have the meaning set out elsewhere in this Agreement.

General Provisions

Introduction

The provision of Support and Maintenance Services is conditional upon the Buyer holding a valid licence to use the relevant Supplier Software.

Support Services

The Buyer's Support Team shall provide the following services:

- Infrastructure support
- Application of operating system and antivirus updates
- A managed DBA service e.g. DBA, excluding support for the database schema (tables, views and stored procedures only), which is the responsibility of the Supplier
- Maintaining, storing and making accessible licence keys/media as required
- Maintenance of the data stored within the database including database backups.
Receive Calls from Authorised Users
- Apply the Buyer's service management processes
- Request Fulfilment (i.e. respond to Service Requests) comprising:
 - ➔ System administration
 - ➔ Configure additional users
- Incident Management comprising:
 - ➔ Carry out appropriate tests and diagnostics on the system to establish potential causes
 - ➔ Carry out work on-site to assist the Supplier Support Team in further diagnostics
 - ➔ Provide suitable remote access to the Supplier. The Buyer will be responsible for any costs associated with implementing and maintaining the remote access solution
 - ➔ Provision of database and administrative access to the Supplier Software and the infrastructure/environment on which it is installed to the Supplier

- Simple software investigation and resolution using diagnostic tools / log files
- Implement Resolution by switching to a standby system (if applicable) or from backups or implement a temporary work-around and continue work to apply a permanent Resolution
- Notify the Supplier of any Incident which has been resolved and the steps taken to resolve
- Change management comprising:
 - Agree applicable downtime in writing as required

Should the Buyer's Support Team be unable to resolve an Incident or fulfil a Service Request, a Call shall be logged with the Supplier. During the Support Term the Supplier shall, provide the Buyer's Support Team access to the Service Desk which operates 24x7x365 for recording details of Calls. The Buyer's Support Team can use the following methods to contact the Service Desk:

- Telephone (Priority Levels P1, P2, P3, P4 and Service Request);
- Supplier's Customer Portal (Priority Level P3, P4 and Service Request); and
- Email (Priority Level P3, P4 and Service Request).

When contacting the Service Desk to report a Call, the Buyer's Support Team shall provide the following information:

- Caller name (and further contact details if required);
- Name and contact details of the Authorised User experiencing the issue (if applicable);
- Priority;
- A description of the issue including the steps to replicate; and
- A description of the urgency and impact of the issue.

Once these details have been entered into the Supplier's IT service management tool, the Supplier will provide the Buyer's Support Team with a Call reference number, which shall be quoted by the Buyer's Support Team in all further communication with the Supplier in connection with the Call.

Once Calls have been logged, they are passed to a software support team for resolution (the "**Supplier Support Team**") during Normal Support Hours.

At any stage during the lifecycle of a Call the Buyer's Support Team can enquire on progress status by contacting the Service Desk and quoting the relevant Call reference number.

Scope of Support Services for the Supplier Software

The Supplier Support Team shall provide the following services in respect of the Supplier Software:

- Remote support services as detailed in these Supplier Terms;
- New Releases, which may be subject to an additional charge;
- Software Patches to resolve incidents/problems;
- Service Packs as they are made generally available, which may be subject to an additional charge if they include new functionality.

The provision of the Support Services is subject to the Buyer:

- Providing such information as is reasonably necessary to enable the Supplier to diagnose any Incidents in the Supplier Software;
- Using the current or immediately preceding Version Number of the Supplier Software (n-1); and
- Operating on a compatible version of the relevant operating system software and recommended infrastructure.

Service Levels

Calls logged with the Service Desk will be allocated by the Supplier to the appropriate Supplier Support Team for Resolution during Normal Support Hours. The Particulars shall specify whether 24x7 support for P1 and P2 Incidents shall apply.

Incidents and Service Requests are processed on a Priority Level basis. The Supplier will verify the Priority Level assigned by the Buyer's Support Team on the Call, by reference to the applicable Annex, and the parties will agree a revised Priority Level if appropriate. The final decision on the Priority Level will remain with the Supplier.

In order to perform Incident investigation and Service Request fulfilment, the Supplier may require access to the Authorised User experiencing the issue, and/or the infrastructure on which the Supplier Software runs. The Buyer shall promptly provide the Supplier with remote access as and when reasonably required. If remote access is unavailable the Service Levels in the applicable Annex shall not apply. The Supplier shall use reasonable endeavours only to provide the Support & Maintenance services.

As Calls are progressed, the Supplier will record details of all its contact with the Buyer's Support Team and/or Authorised User.

Once a Call has been resolved, the Supplier Support Team or Service Desk will contact the Buyer's Support Team and the Call will only be closed if both parties are in agreement. Closed Calls cannot be reopened except with the consent of both parties. Should the Supplier not receive confirmation of closure after seven calendar days of requesting the same from the Buyer's Support Team, then the Supplier will automatically close the Incident.

When a Problem is identified which requires a software change, a Problem will be recorded and a reference number supplied to the Buyer's Support Team; this needs to be quoted in all correspondence with the Supplier relating to that Problem. The corresponding Incident is then closed if a workaround is provided.

Measurement of the Response time begins at the earliest point in time during Normal Support Hours at which the Call is reported to the Service Desk, and will continue during Normal Support Hours. If a Call is reported outside of Normal Support Hours, the Response time will start to be measured at the beginning of the next Normal Support Hours period. Measurement of the Response time ends when the Supplier has contacted or attempted to contact, via any means, the Buyer's Support Team to acknowledge receipt of or further discuss a reported Call.

Measurement of the Resolution time begins at the earliest point in time during Normal Support Hours at which the Call is reported to the Service Desk, and will continue during Normal Support Hours. If a Call is reported outside of Normal Support Hours, the Resolution time will start to be measured at the beginning of the next Normal Support Hours period. Measurement of the Resolution time ends when the Incident has been

resolved and the workaround or permanent fix provided to the Buyer, or the Service Request has been fulfilled (as applicable).

The Supplier SLA clock is paused, in the following circumstances, including:

- While the Call is outside the scope or control of Supplier.
- Outside Normal Support Hours
- While the Supplier is awaiting information from the Buyer's Support Team or Authorised User
- Awaiting remote access.

If the Buyer fails to provide such access, or the access is unavailable, incident resolution activities would need to be undertaken without remote access and therefore such incidents shall be exempt from the response, resolution and permanent fix targets until such time as the Authorised User or remote access becomes available. In addition, should Supplier personnel be required to attend site, this will be charged for on a time and materials basis in accordance with the rate card set out in the contract (or if none included in accordance with the Supplier's prevailing rates) plus expenses.

The Supplier will not be liable for any service failure:

- For which the Supplier is not responsible; or
- Which relates to an Additional Service; or
- Which arises as a result of Incidents arising due to factors beyond the Supplier's reasonable control.

The Supplier shall use commercially reasonable endeavours to make the Supplier Software available to be accessed and used by the Buyer, excluding the following periods:

- Planned maintenance (which shall be carried out at such times as are notified to the Buyer, by giving a reasonable period of advance notice); and
- Unscheduled emergency maintenance carried out where there is an identified and demonstrable immediate risk to the solution.

Service credits shall not apply in the event of breach of the Service Levels.

Service reporting is not provided.

Additional Services

Additional Services shall be provided at the Supplier's sole discretion and may be subject to additional charges accruing on a time and materials basis based on the Supplier's then prevailing day rates, unless otherwise agreed. Such Additional Services include:

- The support of any environment other than a single production environment.
- The provision of health checks either monthly, quarterly or annually
- The provision of service reporting
- Engagement with respect to a business continuity or disaster recovery testing.
- Attendance on Buyer's site to investigate and resolve an incident or problem
- Deployment of releases

- Assistance or advice in relation to Buyer supplied hardware or software
- Investigation and resolution of an Incident reported by the Buyer if such reported Incident is not reproducible by the Supplier in the Supplier Software
- Investigation and resolution of an error reported by the Buyer if such reported error is not reproducible by the Supplier.
- Investigate and resolve any Priority 4 Incidents or Problems where costs are likely to be excessive or the commercial benefits to the Buyer are likely to be negligible

The Support Services shall not include the diagnosis or rectification of any Incident which is not attributable to a Problem in the Supplier Software or which results from any of the following, the diagnosis or rectification of which shall all be considered Additional Services:

- Improper use, operation or neglect of either the Supplier Software or the equipment and environment on which the Supplier Software is licensed for use; or
- Modification of the Supplier Software or its merger (in whole or in part) with any other software, without the Supplier's prior written consent; or
- Use of the Supplier Software on equipment which does not meet the minimum specification for hardware, operating system and/or Third Party Software published by the Supplier in accordance with the Supplier Software release information document; or
- Failure by the Buyer to implement recommendations in respect of or solutions to Incidents or Problems previously advised by the Supplier; or
- Any repair, adjustment, alteration or modification of the Supplier Software by any person other than the Supplier without the Supplier's prior written consent; or
- Use of the Supplier Software for a technical purpose for which it was not designed; or
- A consequence of infrastructure components or network factors which the Supplier is not responsible for supporting; or
- A failure caused by any other factors outside the reasonable control of the Supplier; or
- Any situation where a reasonably skilled and competent Authorised User would consider assistance from the Supplier to be unnecessary; or
- A consequence of any programming error, virus or disabling code set out in the Third Party Software.

Variations

If a third party supplier to the Supplier increases the fees charged, the Supplier reserves the right at any time to pass these increases onto the Buyer.

The Supplier will use all reasonable commercial endeavours to accommodate the introduction of substantive legislative changes. The Supplier expressly reserves the right to charge for the provision of any such substantive legislation updates where: (a) the development of the update is in the reasonable opinion of the Supplier technically complex; and (b) the costs of developing the update are in the reasonable opinion of the Supplier sufficient to warrant a charge for the provision of the update to the Supplier's customers at large

The Supplier may, upon six months prior written notice to the Buyer, modify the Support Services or any part thereof provided that there is no material degradation of the service.

Termination and consequences of Termination

In the event the Supplier elects to withdraw Support and Maintenance Services for a particular item of Software, it may do so without liability provided it has given the Buyer not less than six months' prior written notice.

The Supplier may from time to time develop New Releases of the Supplier Software which will be made available to the Buyer. The Supplier reserves the right to charge for such New Releases.

Support and Maintenance for the Supplier Software should be continuous. In the event of any break in the provision of Support and Maintenance of any module of the Supplier Software for any reason, if the Buyer subsequently elects to reinstate the same, the Supplier shall be entitled to levy charges for: (a) such amount as would have been payable for Support and Maintenance during the period of lapse and; (b) a recommencement fee.

Configuration Management (Patches and Version Changes) For On-Premise Software

All New Releases, Service Packs and Patches are sequential and cumulative and should be applied in the order issued unless advised otherwise by the Supplier. Patches provide emergency fixes and are generally only supplied in response to high priority Incidents raised by the Buyer. New Releases, Service Packs and Patches must be installed by the Supplier and appropriate access provided when so advised by the Supplier.

Any given release of the Supplier Software will only be supported when running on hardware, operating systems and Third Party Software platforms which meet the specification stated in the Supplier Software release information document.

The release documentation for each New Release shall specify the particular requirements for the New Release. Where necessary this will include information about the minimum specification for hardware, operating systems and other software and any other changes which need to be made to the environment to support the New Release.

Miscellaneous

- If this Agreement contains the Buyer's service description, requirements or specification ("**Specification**") and if any provision of that Specification conflicts with these Supplier Terms, then regardless of any other provision in this Agreement, these Supplier Terms will take precedence.
- Regardless of any other provision in this Agreement, except to the extent not permitted by law:
 3. The Buyer assumes sole responsibility for results obtained from its use of the Supplier's deliverables and for any conclusions drawn from such use; and
 4. The Supplier shall have no liability for any damage caused by errors or omissions in any information, data, instructions or scripts provided to the Supplier by the Buyer in connection with this Agreement, or any actions taken by the Supplier at the Buyer's direction.

- Except where the Supplier has specifically agreed to provide such services, the Buyer will promptly:
 3. Supply the Supplier with any information and assistance reasonably necessary for the Supplier to perform its obligations under this Agreement; and
 4. Provide the Supplier's personnel with full free and safe access to its site when required, to enable the Supplier to perform its obligations under this Agreement.
- The Buyer warrants, represents and undertakes to the Supplier that there will be no relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) ("**TUPE**") of employees from the Buyer (or any supplier, contractor or other service provider to the Buyer) to the Supplier. Regardless of any other provision of this Agreement, the Buyer agrees to indemnify the Supplier against all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the Supplier in connection with or as a result of:
 1. A claim by any person who transfers or alleges that they have transferred to the Supplier as a result of entering into this Agreement; and/or
 2. Any failure by the Buyer to comply with its obligations under regulations 13 and 14 of TUPE, or any award of compensation under regulation 15 of TUPE.

Annex: NEC OptoMize

Where NEC OptoMize is to be provided the provisions set out in this Annex shall apply. If there is any conflict between the provisions set out in this Annex and the General Provisions above, this Annex shall apply.

NEC OptoMize Service Setup

NEC OptoMize works from a central server, hosted at a data centre, or by the local programme. The server runs the NEC OptoMize care pathway and stores all images and data.

There are two types of NEC OptoMize client: fixed and synchronisation:

- Fixed clients are installed locally on the user's machines and require a constant connection to the central server.
- Synchronisation clients allow the software to be used when not connected to the main server. The client can be synchronised to download all relevant information for screening patients in a clinic and then taken out to the clinic. The images can be captured and even graded before synchronising again and uploading all information captured during the clinic.

The server is usually separated into two parts, the SQL server, and the Application server, though it is possible to have both on the same server. The SQL server hosts the database, and this contains all data, including the patient and programme information. The application server contains the installs of the software and services that run the program and allow the clients to connect.

The Image store will be located on the application server, or a linked location the server sees, and all images will be saved in an anonymised format.

NEC OptoMize has two services that will be installed on the application server:

- **WCF Host service** - the WCF Host service deals with all connections between clients and the SQL server. It passes data back and forth and ensures data connections are encrypted. As the only access to the SQL database is through the WCF Host service, it creates a secure environment whereby anything without the correct protocols cannot connect and retrieve data.
- **Timer service** - the Timer service deals with the automated care pathway and ensures that patient states are updated as and when required. Any failsafe timers will also be actioned by the Timer service.

NEC OptoMize supports different client connection methods from TCP/IP, HTTPS, or named pipes, with extra security options available through Windows or Certificate security.

What is Supported

All application software and interfaces supplied are supported. Hardware owned by the DESP is not covered under the Supplier's support package.

Scope of Support Services

The Supplier will be responsible for implementing; new releases, service packs and patches where it is necessary to resolve incidents/problems, otherwise new releases may be subject to implementation costs.

Scope of Support Services for the NEC OptoMize Database

A default set of automated maintenance tasks is provided with the NEC OptoMize Software. The Supplier will provide support for the maintenance tasks. The Supplier does not proactively monitor these tasks for success or failures. Automated maintenance tasks should not replace the role of a database administrator.

Service Levels

All target times specified in the table below are measured within the Normal Support Hours.

Service Levels for NEC OptoMize		
Severity	Description	Target Resolution Time (during Normal Support Hours)
1	Software is unavailable for all users	Four (4) hours
2	Individual element of the software unavailable	Eight (8) hours
3	Core / Clinical module failure	Fifty (50) hours
4	Non-core module failure	One hundred and twenty (120) hours
5	Faults of a cosmetic nature or which are otherwise not material	Potential future release if the Supplier accepts that a fault exists

Glossary

In addition to the terms defined elsewhere in this Agreement, in these Supplier Terms the following terms shall (regardless of any other provision in this Agreement) have the meaning set out below:

“Additional Services”	means any support, maintenance and other services which are outside the scope of the Support Services and which Supplier has agreed to provide;
“Agreement”	means the Call-Off Contract;
“Authorised User(s)”	means those employees, agents and independent contractors of the Buyer who are authorised by the Supplier to use the Supplier Software and the Documentation;
“Buyer’s Support Team”	means those employees, agents and independent contractors of the Buyer who are authorised by the Supplier to use the Supplier’s support service;
“Call”	means notification of an Incident or Service Request by an Buyer’s Support Team to the Service Desk in accordance with these Supplier Terms;
“Incident”	means any event which is not part of the standard operation of the Supplier Software and which causes, or may cause an interruption to, or a reduction in, the quality of that software or service;
“Major Release”	means a new version of the Supplier Software containing major functional enhancements, normally designated by an increase in the first digit of the Version Number (e.g. V1.3 to V2.0). Major Releases will consolidate all previous versions of the Supplier Software;
“Minor Release”	means a new version of the Supplier Software containing significant functional or operational enhancements, normally designated by an increase in the second digit of the Version Number (e.g. V1.1 to V1.2). Minor Releases will consolidate all

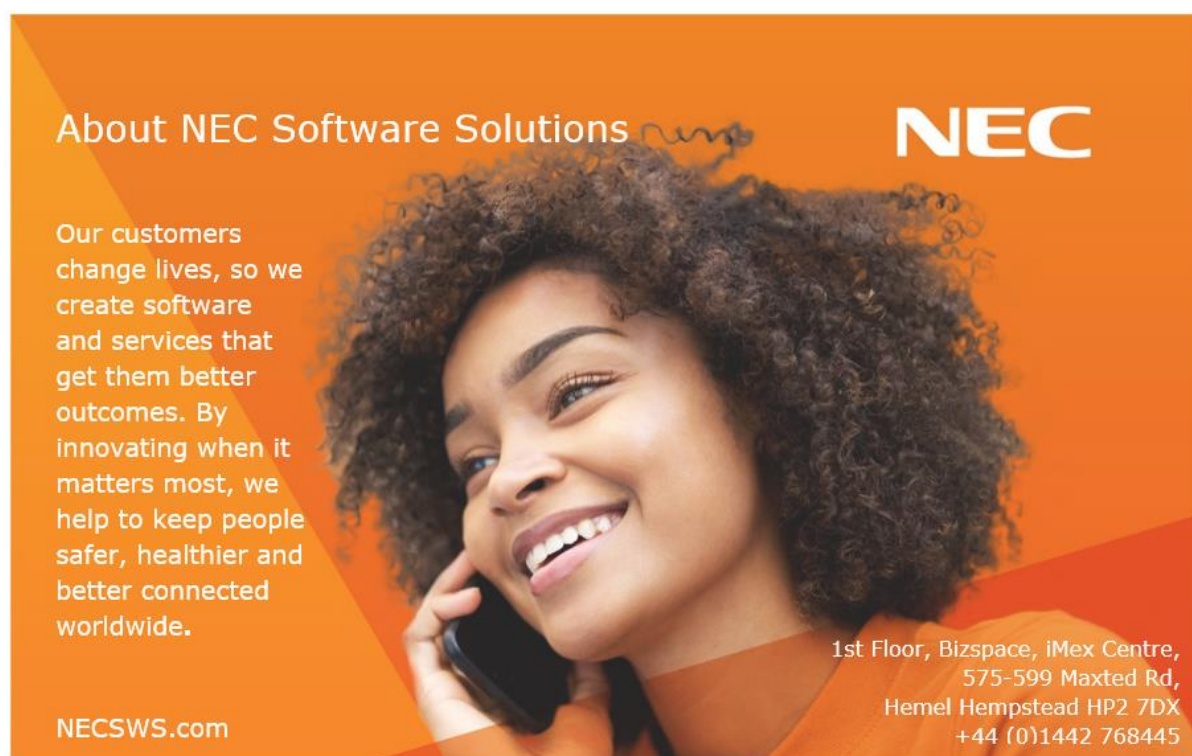
	previous versions of the Supplier Software;
"New Release"	means any new Major Release or Minor Release provided by the Supplier;
"Normal Support Hours"	means <ul style="list-style-type: none">(i) Monday to Friday 08:30 – 17:00 (eight and a half hours) UK Time excluding bank and public holidays in England and Wales; or(ii) Emergency cover is supplied during the Christmas holiday break;
"Particulars"	means the Order Form;
"Patch"	means software provided by the Supplier to resolve a specific reported Incident in the Supplier Software;
"Priority"	means the priority level of the Call reasonably specified by the Buyer's Support Team, and agreed by the Supplier, according to the criteria set out in the applicable Annex;
"Problem"	means the unknown underlying root cause of one or more Incidents;
"Resolution"	means action which will resolve an Incident which may be a Workaround;
"Response"	means contact via any means made by the Supplier to the Buyer's Support Team or Authorised User in response to a Call reported via the Service Desk;
"Service Desk"	means the Supplier's service desk detailed in these Supplier Terms;
"Service Level"	means the service levels (as set out in these Supplier Terms) which apply in respect of the Support and Maintenance Services;
"Service Pack"	means a version of the Supplier Software which consolidates all previous Patches and service packs. Under some

	circumstances Service Packs may also include minor functional enhancements;
"Service Period"	a service period shall be a calendar month;
"Service Request"	means a Buyer's Support Team request for information or advice and guidance;
"Software"	means the software itemised in the Particulars or other relevant part of this Agreement (together with any modifications and enhancements thereto plus any other computer programs supplied by the Supplier from time to time under this Agreement) which is licensed in accordance with these Supplier Terms;
"Supplier Software"	means the Supplier's proprietary software specified in the Agreement including any New Release, Service Pack and/or Patch provided pursuant to the Support Services;
"Support Charge"	means the fee specified in the Agreement which is payable by the Buyer for the provision of the Support Services;
"Support Services"	means the support and maintenance services which are provided by the Supplier as detailed in these Supplier Terms;
"Third Party Software"	means software which is proprietary to a party other than the Supplier and licensed to the Buyer by the Supplier;
"Use" or "Used"	means in relation to the machine readable portion of the Software, reproduction through any act of loading, displaying, running, transmitting or storage, in whole or in part for the purposes of processing the instructions contained in the Software and any data belonging to the Buyer's Support Team
"Version Number"	means a unique identifier associated with each new version of the Supplier Software, conforming to the format A.B.C.D where:

- "A" is the Major Release number;
- "B" is the Minor Release number;
- "C" is the Service Pack number; and
- "D" is the Patch number;

"Workaround"

means a method of avoiding an Incident or Problem either by a temporary fix or by a technique that means the Buyer's Support Team is not reliant on a particular aspect of the Supplier Software that is known to have an issue.



About NEC Software Solutions

Our customers change lives, so we create software and services that get them better outcomes. By innovating when it matters most, we help to keep people safer, healthier and better connected worldwide.

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