



NHS South, Central and West Commissioning Support Service Level Agreement

NON NHS ORGANISATION NAME

TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES – NHS SOUTH CENTRAL AND WEST COMMISSIONING SUPPORT UNIT CONTRACT

The Customer	[Insert name and address of the Customer]
The Supplier	NHS England (of Quarry House, Quarry Hill Leeds LS2 7UE) as host for NHS South, Central and West Commissioning Support Unit
Date	[Insert date when signed by both parties]
Type of Services	[]

This Contract is made on the date set out above subject to the terms set out in the schedules listed below (“**Schedules**”). The Customer and the Supplier undertake to comply with the provisions of the Schedules in the performance of this Contract.

The Supplier shall supply to the Customer, and the Customer shall receive and pay for, the Services on the terms of this Contract.

The Definitions in Schedule 4 apply to the use of all capitalised terms in this Contract.

Schedules

Schedule 1	Key Provisions
Schedule 2	General Terms and Conditions
Schedule 3	Information and Data Provisions
Schedule 4	Definitions and Interpretations
Schedule 5	Specification and Tender Response Document
Schedule 6	Commercial Schedule
Schedule 7	Staff Transfer
Schedule 8	[Insert title of schedule]
Schedule 9	[Insert title of schedule]

Signed by the authorised representative of THE CUSTOMER

Name:	Signature:
Position:		

Signed by the authorised representative of THE SUPPLIER

Name:	Signature
Position:		

Unique Contract ID		
Order Number		

Schedule 1

Key Provisions

Standard Key Provisions

1 Application of the Key Provisions

- 1.1 The standard Key Provisions at Clauses 1 to 7 of this Schedule 1 shall apply to this Contract.
- 1.2 The optional Key Provisions at Clauses 8 to 23 of this Schedule 1 shall only apply to this Contract where they have been checked and information completed as applicable.
- 1.3 Extra Key Provisions shall only apply to this Contract where such provisions are set out at the end of this Schedule 1.

2 Term

- 2.1 This Contract shall commence on the Commencement Date and the Term of this Contract shall expire **[insert date]** years from the Actual Services Commencement Date. The Term may be extended in accordance with Clause 15.2 of Schedule 2 provided that the duration of this Contract shall be no longer than **[insert number of years]** years in total.

3 Contract Managers

- 3.1 The Contract Managers at the commencement of this Contract are:

- 3.1.1 for the Customer:

[insert role]

- 3.1.2 for the Supplier:

[insert role].

Guidance: This Clause sets out the name of the contract manager for each party. Each Party should insert the role of its contract manager.

4 Names and addresses for notices

- 4.1 Notices served under this Contract are to be delivered to:

- 4.1.1 for the Customer:

[complete role and address]

- 4.1.2 for the Supplier:

[complete role and address].

5 Management levels for escalation and dispute resolution



- 5.1 The management levels at which a Dispute may be dealt with as referred to as part of the Dispute Resolution Procedure are as follows:

Level	Customer representative	Supplier representative
1	[Contract Manager]	[Contract Manager]
[2]	[insert role]	[insert role]
[3]	[insert role]	[insert role]

6 Order of precedence

- 6.1 Subject always to Clause **Error! Reference source not found.** of Schedule 4, should there be a conflict between any other parts of this Contract the order of priority for construction purposes shall be:

- 6.1.1 the provisions on the front page of this Contract for the Provision of Services;
- 6.1.2 Schedule 1: Key Provisions;
- 6.1.3 Schedule 2: General Terms and Conditions;
- 6.1.4 Schedule 5: Specification and Tender Response Document;
- 6.1.5 Schedule 6: Commercial Schedule;
- 6.1.6 Schedule 3: Information Governance Provisions;
- 6.1.7 Schedule 7: Staff Transfer;
- 6.1.8 Schedule 4: Definitions and Interpretations;
- 6.1.9 the order in which all subsequent schedules, if any, appear; and
- 6.1.10 any other documentation forming part of the Contract in the date order in which such documentation was created with the more recent documentation taking precedence over older documentation to the extent only of any conflict.

7 Application of TUPE at the commencement of the provision of Services

- 7.1 [The Parties agree that at the commencement of the provision of Services by the Supplier, TUPE and the Cabinet Office Statement shall not apply so as to transfer the employment of any employees of the Customer or a Third Party to the Supplier and the provisions of Schedule 7 shall apply.] [The Parties agree that the commencement of the provision of the Services under this Contract shall give rise to a relevant transfer as defined in TUPE and the provisions of Schedule 7 shall apply to such transfer.]

Optional Key Provisions

- 8 Implementation phase ☐ (only applicable to the Contract if this box is checked and the Schedule inserted)

- 8.1 Prior to commencement of delivery of the Services, there is an implementation phase and therefore all references in Schedule 2 to the Implementation Plan shall apply and the Implementation Plan is set out in Schedule **[insert schedule number]**.
- 9 Services Commencement Date (where the Services are to start at a date after the Commencement Date) ☐ (only applicable to the Contract if this box is checked and the dates are inserted in Clause 9.1 of this Schedule 1)**
- 9.1 The Services Commencement Date shall be **[insert date]**.
- 10 Induction training ☐ (only applicable to the Contract if this box is checked)**
- 10.1 If applicable, the Supplier shall ensure that all Staff complete the Customer's induction training as notified to the Supplier. All Staff shall complete the training prior to the Actual Services Commencement Date (or immediately following the Services Commencement Date where this date is the date of this Contract) and all new Staff appointed throughout the Term shall also complete the training as notified to the Supplier. The Supplier shall further ensure that all Staff complete any extra training that the Customer makes available to its own staff and notifies the Supplier in writing that it is appropriate for the Staff.
- 11 Quality assurance standards ☐ (only applicable to the Contract if this box is checked and the standards are listed)**
- 11.1 The following quality assurance standards shall apply, as appropriate, to the provision of the Services: **[insert standards]**.
- 12 NOT USED**
- 13 Further Customer obligations ☐ (only applicable to the Contract if this box is checked and the Schedule inserted)**
- 13.1 The Customer's Obligations are set out in Schedule **[insert schedule number]**.
- 14 NOT USED**
- 15 Inclusion of a Change Control Process ☐ (only applicable to the Contract if this box is checked and the Schedule inserted)**
- 15.1 Any changes to this Contract, including to the Services, may only be agreed in accordance with the Change Control Process set out in Schedule **[insert schedule number]**.
- 16 NOT USED**
- 17 Grant of lease or licence ☐ (only applicable to the Contract if this box is checked)**
- 17.1 Promptly following execution of this Contract, the Supplier shall enter into the **[lease/licence]** as agreed with the Customer.
- 18 NOT USED**
- 19 Supplier as Data Processor ☐ (only applicable to the Contract if this box is checked)**

- 19.1 The Parties acknowledge that the Customer is the Controller and the Supplier is the Processor in respect of Personal Data Processed under this Contract and that paragraph 2.2 of Schedule 3 and the provisions of the Data Protection Protocol must be complied with by the Parties as a term of this Contract.
- 20 Purchase Orders ☐ (only applicable to the Contract if this box is checked)**
- 20.1 The Customer shall issue a Purchase Order to the Supplier in respect of any Services to be supplied to the Customer under this Contract. The Supplier shall comply with the terms of such Purchase Order as a term of this Contract. For the avoidance of doubt, any actions or work undertaken by the Supplier under this Contract prior to the receipt of a Purchase Order covering the relevant Services shall be undertaken at the Supplier's risk and expense and the Supplier shall only be entitled to invoice for Services covered by a valid Purchase Order.
- 21 Monthly payment profile ☐ (only applicable to the Contract if this box is checked)**
- 21.1 The payment profile for this Contract shall be monthly in arrears.
- 22 Termination for convenience ☐ (only applicable to the Contract if this box is checked and Clause 22.1 of this Schedule 1 is completed)**
- 22.1 Either Party may terminate this Contract by issuing a Termination Notice to the other Party at any time on **[one (1)/three (3)/six (6) months']** written notice. **[Such notice shall not be served within one (1) year of the Actual Services Commencement Date].**
- 22.2 **[Should the Customer terminate this Contract in accordance with Clause 22.1 of this Schedule 1, then the Customer shall pay to the Supplier the termination sum calculated in accordance with Schedule [6]].**
- 23 Right to terminate following a specified number of material breaches ☐ (only applicable to the Contract if this box is checked and Clause 23.1 of this Schedule 1 is completed)**
- 23.1 Either Party may terminate this Contract by issuing a Termination Notice to the other Party if such other Party commits a material breach of this Contract in circumstances where it is served with a valid Breach Notice having already been served with at least **[two (2)]** previous valid Breach Notices within the last twelve (12) calendar month rolling period as a result of any previous material breaches of this Contract which are capable of remedy (whether or not the Party in breach has remedied the breach in accordance with a Remedial Proposal). The twelve (12) month rolling period is the twelve (12) months immediately preceding the date of the **[third]** Breach Notice.

Extra Key Provisions

Schedule 2

General Terms and Conditions

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1 Provision of Services

- 1.1 The Customer appoints the Supplier and the Supplier agrees to provide the Services:
 - 1.1.1 within any time limits as may be set out in this Contract;
 - 1.1.2 in accordance with all other provisions of this Contract;
 - 1.1.3 with reasonable skill and care and in accordance with any quality assurance standards as set out in the Key Provisions and/or the Specification and Tender Response Document;
 - 1.1.4 in accordance with the Law and with Guidance;
 - 1.1.5 in accordance with Good Industry Practice;
 - 1.1.6 in accordance with the Policies; and
 - 1.1.7 in a professional and courteous manner.
- 1.2 The Supplier shall comply with the Implementation Requirements (if any) in accordance with any timescales as may be set out in the Specification and Tender Response Document., Without limitation to the foregoing provisions of this Clause 1.2 of this Schedule 2, the Supplier shall, if specified in the Key Provisions, implement the Services fully in accordance with the Implementation Plan. If the Implementation Plan is an outline plan, the Supplier shall, as part of implementation, develop the outline plan into a full plan and agree this with the Customer. Once this is agreed, the Supplier shall comply with the full Implementation Plan.
- 1.3 The Supplier shall commence delivery of the Services on the Services Commencement Date.
- 1.4 The Supplier shall comply with its obligations set out in the Specification and Tender Response Document.
- 1.5 The Parties shall ensure that all relevant consents, authorisations, licences and accreditations required in connection with the provision of the Services are in place at the Actual Services Commencement Date and are maintained throughout the Term.
- 1.6 If the Services, or any part of them, are regulated by any regulatory body, the Supplier shall ensure that at the Actual Services Commencement Date it has in place all relevant registrations and shall maintain such registrations during the Term. The Supplier shall notify the Customer in writing of any changes to such registration or any other matter relating to its registration that would affect the delivery or the quality of Services.
- 1.7 The Supplier shall notify the Customer in writing:
 - 1.7.1 of any pending inspection of the Services, or any part of them, by a regulatory body as soon as reasonable practicable after the Supplier becomes aware of such inspection; and
 - 1.7.2 of any failure of the Services, or any part of them, to meet the quality standards required by a regulatory body, as soon as reasonable practicable after the Supplier becomes aware of any such failure. This shall include

without limitation any informal feedback received during or following an inspection raising concerns of any nature regarding the provision of the Services.

- 1.8 Following any inspection of the Services, or any part of them, by a regulatory body, the Supplier shall provide the Customer with a copy of any report or other communication published or provided by the relevant regulatory body in relation to the provision of the Services.
- 1.9 Upon receipt of notice pursuant to Clause 1.7 of this Schedule 2 or any report or communication pursuant to Clause 1.8 of this Schedule 2, the Customer shall, acting reasonably, be entitled to request further information from the Supplier and/or a meeting with the Supplier, and the Supplier shall cooperate with any such request.
- 1.10 Where applicable, the Supplier shall implement and comply with the Policies on reporting and responding to all incidents and accidents, including serious incidents requiring investigation, shall complete the Customer's incident and accident forms in accordance with the Policies and provide reasonable support and information as requested by the Customer (acting reasonably) to help the Customer deal with any incident or accident relevant to the Services. The Supplier shall ensure that its Contract Manager informs the Customer's Contract Manager in writing forthwith upon (a) becoming aware that any serious incidents requiring investigation and/or notifiable accidents have occurred; or (b) the Supplier's Contract Manager having reasonable cause to believe any serious incidents and/or notifiable accidents requiring investigation have occurred. The Supplier shall ensure that its Contract Manager informs the Customer's Contract Manager in writing within forty eight (48) hours of all other incidents and/or accidents that have or may have an impact on the Services.
- 1.11 The Supplier shall be relieved from its obligations under this Contract to the extent that it is prevented from complying with any such obligations due to any acts, omissions or defaults of the Customer. To qualify for such relief, the Supplier must notify the Customer promptly (and in any event within ten (10) Business Days) in writing of the occurrence of such act, omission, or default of the Customer together with the potential impact on the Supplier's obligations.

2 Premises, locations and access

- 2.1 The Services shall be provided at such Customer premises and at such locations within those premises, as may be set out in the Specification and Tender Response Document or as otherwise agreed by the Parties in writing ("**Premises and Locations**").
- 2.2 Subject to the Supplier and its Staff complying with all relevant Policies applicable to such Premises and Locations, the Customer shall grant reasonable access to the Supplier and its Staff to such Premises and Locations to enable the Supplier to provide the Services.
- 2.3 Subject to Clause 2.4 of this Schedule 2, any access granted to the Supplier and its Staff under Clause 2.2 of this Schedule 2 shall be non-exclusive and revocable. Such access shall not be deemed to create any greater rights or interest than so granted (to include, without limitation, any relationship of landlord and tenant) in the Premises and Locations. The Supplier warrants that it shall carry out all such reasonable further acts to give effect to this Clause 2.3 of this Schedule 2.

2.4 Where, in order to provide the Services, the Supplier requires any greater rights to use or occupy any specific Premises and Locations over and above such reasonable access rights granted in accordance with Clause 2.2 and Clause 2.3 of this Schedule 2, such further rights shall be limited to any rights granted to the Supplier by the Customer in accordance with any licence and/or lease entered into by the Supplier in accordance with the Key Provisions.

2.5 Any variations to the Premises and Locations where the Services are to be provided shall be agreed by the Parties in accordance with Clause 21 of this Schedule 2. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the Dispute Resolution Procedure.

3 Cooperation with third parties

3.1 The Supplier shall, as reasonably required by the Customer, cooperate with any other service providers to the Customer and/or any other third parties as may be relevant and proportionate in the provision of the Services.

4 Use of Customer equipment

4.1 Unless otherwise set out in the Specification and Tender Response Document or otherwise agreed by the Parties in writing, any equipment or other items provided by the Customer for use by the Supplier:

4.1.1 shall be provided at the Customer's sole discretion;

4.1.2 shall be inspected by the Supplier in order that the Supplier can confirm to its reasonable satisfaction that such equipment and/or item is fit for its intended use and shall not be used by the Supplier until it has satisfied itself of this;

4.1.3 must be returned to the Customer within any agreed timescales for such return or otherwise upon the request of the Customer (acting reasonably); and

4.1.4 shall be used by the Supplier at the Supplier's risk and the Supplier shall upon written request by the Customer (acting reasonably) reimburse the Customer for any reasonable loss or damage relating to such equipment or other items caused by the Supplier (fair wear and tear exempted).

5 Staff

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

5.2 The Supplier will employ sufficient Staff to ensure that it complies with its obligations under this Contract. This will include, but not be limited to, the Supplier providing a sufficient reserve of trained and competent Staff to provide the Services during Staff holidays or absence.

5.3 The Supplier shall use reasonable endeavours to ensure the continuity of all Staff in the provision of the Services and, where any member of Staff is designated as key to the provision of the Services as set out in the Specification and Tender Response

Document or as otherwise agreed between the Parties in writing, the Supplier shall notify the Customer of any redeployment and/or replacement of such member of Staff..

- 5.4 The Supplier shall ensure that all Staff are aware of, and at all times comply with, the Policies.
- 5.5 The Supplier shall:
 - 5.5.1 employ only those Staff who are careful, skilled and experienced in the duties required of them;
 - 5.5.2 ensure that every member of Staff is properly and sufficiently trained and instructed;
 - 5.5.3 ensure all Staff have the qualifications to carry out their duties;
 - 5.5.4 maintain throughout the Term all appropriate licences and registrations with any relevant bodies (at the Supplier's expense) in respect of the Staff; and
 - 5.5.5 ensure all Staff comply with such registration, continuing professional development and training requirements or recommendations appropriate to their role including those from time to time issued by the Department of Health or any relevant regulatory body or any industry body in relation to such Staff.
- 5.6 The Supplier shall not deploy in the provision of the Services any person who has suffered from, has signs of, is under treatment for, or who is suffering from any medical condition which is known to, or does potentially, place the health and safety of the Customer's staff, patients, service users or visitors at risk unless otherwise agreed in writing with the Customer.
- 5.7 The Supplier shall ensure that all potential Staff or persons performing any of the Services during the Term who may reasonably be expected in the course of performing any of the Services under this Contract to have access to or come into contact with children or other vulnerable persons and/or have access to or come into contact with persons receiving health care services:
 - 5.7.1 are questioned concerning their Convictions; and
 - 5.7.2 obtain appropriate disclosures from the Disclosure and Barring Service (or other appropriate body) as required by Law and/or the Policies before the Supplier engages the potential staff or persons in the provision of the Services.
- 5.8 The Supplier shall take all necessary steps to ensure that such potential staff or persons obtain standard and enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) and shall ensure all such disclosures are kept up to date. The obtaining of such disclosures shall be at the Supplier's cost and expense.
- 5.9 The Supplier shall ensure that no person is employed or otherwise engaged in the provision of the Services without the Customer's prior written consent if:
 - 5.9.1 the person has disclosed any Convictions upon being questioned about their Convictions in accordance with Clause 5.7.1 of this Schedule 2;

- 5.9.2 the person is found to have any Convictions following receipt of standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) in accordance with Clause 5.7.2 of this Schedule 2; or
- 5.9.3 the person fails to obtain standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) upon request by the Supplier in accordance with Clause 5.7.2 of this Schedule 2.
- 5.10 In addition to the requirements of Clause 5.7 to Clause 5.9 of this Schedule 2, where the Services are or include regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 the Supplier:
 - 5.10.1 warrants that it shall comply with all requirements placed on it by the Safeguarding Vulnerable Groups Act 2006;
 - 5.10.2 warrants that at all times it has and will have no reason to believe that any member of Staff is barred in accordance with the Safeguarding Vulnerable Groups Act 2006; and
 - 5.10.3 shall ensure that no person is employed or otherwise engaged in the provision of the Services if that person is barred from carrying out, or whose previous conduct or records indicate that they would not be suitable to carry out, any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person.
- 5.11 The Supplier shall ensure that the Customer is kept advised at all times of any member of Staff who, subsequent to their commencement of employment as a member of Staff receives a Conviction or whose previous Convictions become known to the Supplier or whose conduct or records indicate that they are not suitable to carry out any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person. The Supplier shall only be entitled to continue to engage or employ such member of Staff with the Customer's written consent and with such safeguards being put in place as the Customer may reasonably request. Should the Customer withhold consent the Supplier shall remove such member of Staff from the provision of the Services forthwith.
- 5.12 The Supplier shall provide to the Customer any information that the Customer reasonably requests to enable the Customer to satisfy itself that the obligations set out in Clause 5.7 to Clause 5.11 of this Schedule 2 have been met.
- 5.13 The Customer may at any time request that the Supplier remove and replace any member of Staff from the provision of the Services, provided always that the Customer will act reasonably in making such a request. Prior to making any such request the Customer shall raise with the Supplier the Customer's concerns regarding the member of Staff in question with the aim of seeking a mutually agreeable resolution. The Customer shall be under no obligation to have such prior discussion should the Customer have concerns regarding patient or service user safety.

6 **Business continuity**

- 6.1 The Supplier shall use reasonable endeavours to ensure its Business Continuity Plan operates effectively alongside the Customer's business continuity plan where

relevant to the provision of the Services. The Supplier shall also use reasonable endeavours to ensure that its Business Continuity Plan complies on an ongoing basis with any specific business continuity requirements, as may be set out in the Specification and Tender Response Document.

- 6.2 Throughout the Term, the Supplier will use reasonable endeavours to ensure its Business Continuity Plan provides for continuity during a Business Continuity Event. The Supplier confirms and agrees such Business Continuity Plan details and will continue to detail robust arrangements that are reasonable and proportionate to:

6.2.1 the criticality of this Contract to the Customer; and

6.2.2 the size and scope of the Supplier's business operations,

regarding continuity of the provision of the Services during and following a Business Continuity Event.

- 6.3 The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Contract to the Customer and the size and scope of the Supplier's business operations. The Supplier shall within a reasonable period provide to the Customer, at the Customer's written request, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that the Supplier tests its Business Continuity Plan in accordance with the requirements of this Clause 6.3 of this Schedule 2 and reasonable and proportionate information regarding the outcome of such tests. The Supplier shall provide to the Customer a copy of any updated or revised Business Continuity Plan within a reasonable period of any material update or revision to the Business Continuity Plan.

- 6.4 The Customer may suggest reasonable and proportionate amendments to the Supplier regarding the Business Continuity Plan at any time. Where the Supplier, acting reasonably, deems such suggestions made by the Customer to be relevant and appropriate, the Supplier will incorporate into the Business Continuity Plan all such suggestions made by the Customer in respect of such Business Continuity Plan. Should the Supplier not incorporate any suggestion made by the Customer into such Business Continuity Plan it will explain the reasons for not doing so to the Customer.

- 6.5 Should a Business Continuity Event occur at any time, the Supplier shall implement and comply with its Business Continuity Plan and provide regular written reports to the Customer on such implementation.

- 6.6 During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to provide the Services in accordance with this Contract.

7 The Customer's obligations

- 7.1 Subject to the Supplier providing the Services in accordance with this Contract, the Customer will pay the Supplier for the Services in accordance with Clause 9 of this Schedule 2.

- 7.2 The Customer shall, as appropriate, provide copies of or give the Supplier access to such of the Policies that are relevant to the provision of the Services.

- 7.3 The Customer shall comply with the Customer's Obligations, as may be referred to in the Key Provisions.
- 7.4 The Customer shall provide the Supplier with any reasonable and proportionate cooperation necessary to enable the Supplier to comply with its obligations under this Contract. The Supplier shall at all times provide reasonable advance written notification to the Customer of any such cooperation necessary in circumstances where such cooperation will require the Customer to plan for and/or allocate specific resources in order to provide such cooperation.

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 Contract. Should the Contract Manager be replaced, the Party replacing the Contract Manager shall promptly inform the other Party in writing of the name and contact details for the new Contract Manager. Any Contract Manager appointed shall be of sufficient seniority and experience to be able to make decisions on the day to day operation of the Contract. The Supplier confirms and agrees that it will be expected to work closely and cooperate fully with the Customer's Contract Manager.
- 8.2 Each Party shall ensure that its representatives (to include, without limitation, its Contract Manager) shall attend review meetings on a regular basis to review the performance of the Supplier under this Contract and to discuss matters arising generally under this Contract. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day to day operation of the Contract. Review meetings shall take place at the frequency specified in the Specification and Tender Response Document. Should the Specification and Tender Response Document not state the frequency, then the first such meeting shall take place on a date to be agreed on or around the end of the first month after the Commencement Date. Subsequent meetings shall take place at monthly intervals or as may otherwise be agreed in writing between the Parties.
- 8.3 [Two weeks prior to each review meeting (or at such time and frequency as may be specified in the Specification and Tender Response Document) the Supplier shall provide a written contract management report to the Customer regarding the provision of the Services and the operation of this Contract. Unless otherwise agreed by the Parties in writing, such contract management report shall contain:
- 8.3.1 details of the performance of the Supplier when assessed in accordance with the KPIs since the last such performance report;
 - 8.3.2 details of any complaints from or on behalf of patients or other service users, their nature and the way in which the Supplier has responded to such complaints since the last review meeting written report;
 - 8.3.3 the information specified in the Specification and Tender Response Document;
 - 8.3.4 a status report in relation to the implementation of any current Remedial Proposals by either Party; and
 - 8.3.5 such other information as reasonably required by the Customer.]

- 8.4 Unless specified otherwise in the Specification and Tender Response Document (if applicable), the Customer shall take minutes of each review meeting and shall circulate draft minutes to the Supplier within a reasonable time following such review meeting. The Supplier shall inform the Customer in writing of any suggested amendments to the minutes within ten (10) Business Days of receipt of the draft minutes. If the Supplier does not respond to the Customer within such ten (10) 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 Procedure.
- 8.5 The Supplier shall provide such management information as the Customer may request from time to time within ten (10) Business Days of the date of the request. The Supplier shall supply the management information to the Customer in such form as may be agreed between the Parties.
- 8.6 The Customer may make changes to the type of management information which the Supplier is required to supply and shall give the Supplier at least one (1) month's written notice of any changes.

9 Price and payment

- 9.1 The Contract Price shall be calculated as set out in the Commercial Schedule.
- 9.2 Unless otherwise stated in the Commercial Schedule the Contract Price:
- 9.2.1 shall be payable from the Actual Services Commencement Date;
 - 9.2.2 shall be varied during the Term in accordance with the principles set out in Schedule 6; and
 - 9.2.3 is the entire price payable by the Customer to the Supplier in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses, the cost of Staff and all appropriate taxes (excluding VAT), duties and tariffs and any expenses arising from import and export administration.
- 9.3 Unless stated otherwise in the Commercial Schedule:
- 9.3.1 where the Key Provisions confirm that the payment profile for this Contract is monthly in arrears, the Supplier shall invoice the Customer, within fourteen (14) days of the end of each calendar month, the Contract Price in respect of the Services provided in compliance with this Contract in the preceding calendar month; or
 - 9.3.2 where Clause 9.3.1 of this Schedule 2 does not apply, the Supplier shall invoice the Customer for Services at any time following completion of the provision of the Services in compliance with this Contract.

Each invoice shall contain such information and be addressed to such individual as the Customer may inform the Supplier from time to time.

- 9.4 The Contract Price is exclusive of VAT, which, if properly chargeable, the Customer shall pay at the prevailing rate subject to receipt from the Supplier of a valid and

accurate VAT invoice. Such VAT invoices shall show the VAT calculations as a separate line item.

- 9.5 The Customer shall verify and pay each valid invoice received in accordance with Clause 9.3 of this Schedule 2 within thirty (30) days of receipt of such invoice at the latest. However, the Customer shall use its reasonable endeavours to pay such invoices sooner in accordance with any applicable government prompt payment targets. If there is undue delay in verifying the invoice in accordance with this Clause 9.5 of this Schedule 2, the invoice shall be regarded as valid for the purposes this Clause 9.5 after a reasonable time has passed.
- 9.6 Where the Customer raises a query with respect to an invoice the Parties shall liaise with each other and agree a resolution to such query within thirty (30) days of the query being raised. To avoid doubt, the Customer shall pay the disputed invoice in accordance with Clause 9.5 pending resolution of the dispute. If the Parties are unable to agree a resolution within thirty (30) days the query shall be referred to dispute resolution in accordance with the Dispute Resolution Procedure. In the event the process in this Clause 9.6 of this Schedule 2 has been followed and it has been determined that the queried or disputed invoice amount should be refunded to the Customer, the Supplier shall reimburse such sum within a reasonable period following such determination.
- 9.7 [The Supplier shall pay to the Customer any service credits and/or other sums and/or deductions (to include, without limitation, deductions relating to a reduction in the Contract Price) that may become due in accordance with the provisions of the Specification and Tender Response Document.]
- 9.8 Each Party reserves the right to set off any liability it has to the other Party against any liability of the other Party to it, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Contract.
- 9.9 Where the Customer is entitled to receive any sums (including, without limitation, any costs, charges or expenses) from the Supplier under this Contract, the Customer may invoice the Supplier for such sums. The Supplier shall verify and pay each valid invoice within 30 days of receipt of such invoice. Each invoice shall contain such information and be addressed to such individual as the Supplier may inform the Customer from time to time.
- 9.10 If a Party fails to pay any sum properly due to the other Party under this Contract, the Party due such sum shall have the right to charge interest on the overdue amount 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.
- 9.11 Without prejudice to any other right or remedy that the Supplier may have, if the Customer fails to pay the Supplier any sum properly due under this Contract within the timeframes set out in this Clause 9 of this Schedule 2, the Supplier may suspend all or part of the Services until payment has been made in full.

10 Warranties

- 10.1 The Supplier warrants that:

- 10.1.1 it has, and shall ensure its Staff shall have, and shall maintain throughout the Term, all appropriate licences and registrations with the relevant bodies to fulfil its obligations under this Contract;
- 10.1.2 it has all rights, consents, authorisations, licences and accreditations required to provide the Services and shall maintain such consents, authorisations, licences and accreditations throughout the Term;
- 10.1.3 where any act of the Supplier requires the notification to and/or approval by any regulatory or other competent body in accordance with any Law and Guidance, the Supplier shall comply fully with such notification and/or approval requirements;
- 10.1.4 receipt of the Services by or on behalf of the Customer and use of the deliverables or of any other item or information supplied or made available to the Customer as part of the Services will not infringe any third party rights, to include without limitation any Intellectual Property Rights;
- 10.1.5 it will comply with all Law, Guidance, Policies and the Supplier Code of Conduct in so far as is relevant to the provision of the Services;
- 10.1.6 it will provide the Services using reasonable skill and care and in accordance with Good Industry Practice and shall fulfil all requirements of this Contract using appropriately skilled, trained and experienced staff;
- 10.1.7 unless otherwise confirmed by the Customer in writing (to include, without limitation, as part of the Specification and Tender Response Document), it will ensure that any products purchased by the Supplier partially or wholly for the purposes of providing the Services will comply with requirements five (5) to eight (8), as set out in Annex 1 of the Cabinet Office Procurement Policy Note - Implementing Article 6 of the Energy Efficiency Directive (Action Note 07/14 3rd June 2014), to the extent such requirements apply to the relevant products being purchased;
- 10.1.8 it shall: (i) comply with all relevant Law and Guidance and shall use Good Industry Practice to ensure that there is no slavery or human trafficking in its supply chains; and (ii) notify the Customer immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains;
- 10.1.9 it shall at all times conduct its business in a manner that is consistent with any anti-slavery Policy of the Customer and shall provide to the Customer any reports or other information that the Customer may request as evidence of the Supplier's compliance with this Clause 10.1.9 and/or as may be requested or otherwise required by the Customer in accordance with its anti-slavery Policy;
- 10.1.10 it has the right and authority to enter into this Contract and that it has the capability and capacity to fulfil its obligations under this Contract;
- 10.1.11 it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Contract and the documents referred to in this Contract;

- 10.1.12 all necessary actions to authorise the execution of and performance of its obligations under this Contract have been taken before such execution; and
- 10.2 The Supplier acknowledges that a failure by the Supplier following the Actual Services Commencement Date to submit accurate invoices and other information on time to the Customer may result in the commissioner of health services, or other entity responsible for reimbursing costs to the Customer, delaying or failing to make relevant payments to the Customer. Accordingly, the Supplier warrants that, from the Actual Services Commencement Date, it shall submit accurate invoices and other information on time to the Customer.
- 10.3 The Supplier further warrants and undertakes to the Customer that it will inform the Customer in writing upon becoming aware that any of the warranties set out in Clause 10 of this Schedule 2 have been breached or there is a risk that any warranties may be breached.
- 10.4 Any warranties provided under this Contract are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.

11 Intellectual property

- 11.1 The Supplier warrants to the Customer that either it owns or is entitled to use and will continue to own or be entitled to use all Intellectual Property Rights used in the development and provision of the Services and/or necessary to give effect to the Services and/or to use any deliverables, matter or any other output supplied to the Customer as part of the Services.
- 11.2 Unless specified otherwise in the Key Provisions and/or in the Specification and Tender Response Document, the Supplier hereby grants to the Customer, for the life of the use by the Customer of any deliverables, material or any other output supplied to the Customer in any format as part of the Services, an irrevocable, royalty-free, non-exclusive licence to use, modify, adapt or enhance such items in the course of the Customer's normal business operations. For the avoidance of doubt, unless specified otherwise in the Key Provisions and/or in the Specification and Tender Response Document, the Customer shall have no rights to commercially exploit (e.g. by selling to third parties) any deliverables, matter or any other output supplied to the Customer in any format as part of the Services.

12 Indemnity

- 12.1 Each Party shall be liable to the other Party for, and shall indemnify and keep the other Party indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings in respect of:
- 12.1.1 any injury or allegation of injury to any person, including injury resulting in death; and/or
- 12.1.2 any loss of or damage to property (whether real or personal),
- that arise or result from the breaching Party's negligent acts or omissions or breach of contract in connection with the performance of this Contract including the provision of the Services, except to the extent that such loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings have been caused

by any act or omission by, or on behalf of, or in accordance with the instructions of, the non-breaching Party.

- 12.2 Liability under Clauses 12.1.1 of this Schedule 2 and **[Clause Error! Reference source not found. of Schedule 3]** shall be unlimited. Liability under Clauses 12.1.2 of this Schedule 2 shall be subject to the limitation of liability set out in Clause 13 of this Schedule 2.
- 12.3 In relation to all third party claims against a Party, which are the subject of any indemnity given by the other Party under this Contract, the non-breaching Party shall use its reasonable endeavours, upon a written request from the other Party, to transfer the conduct of such claims to that Party unless restricted from doing so. Such restrictions may include, without limitation, any restrictions:
- 12.3.1 relating to any legal, regulatory, governance, information governance, or confidentiality obligations on the non-breaching Party; and/or
 - 12.3.2 relating to the Customer's membership of any indemnity and/or risk pooling arrangements.

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

13 **Limitation of liability**

- 13.1 Nothing in this Contract shall exclude or restrict the liability of either Party:
- 13.1.1 for death or personal injury resulting from its negligence;
 - 13.1.2 for fraud or fraudulent misrepresentation; or
 - 13.1.3 in any other circumstances where liability may not be limited or excluded under any applicable law.
- 13.2 Subject to Clauses 13.1, 13.3 and **Error! Reference source not found.** of this Schedule 2, the total liability of each Party to the other under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to the greater of: % **[choose correct percentage dependent of contract value]** of the total Contract Price paid or payable by the Customer to the Supplier for the Services.
- 13.3 There shall be no right to claim losses, damages and/or other costs and expenses under or in connection with this Contract whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged. For the avoidance of doubt, without limitation, the Parties agree that for the purposes of this Contract the following costs, expenses and/or loss of income shall be direct recoverable losses (to include under any relevant indemnity) provided such costs, expenses and/or loss of income are properly evidenced by the claiming Party:

- 13.3.1 extra costs incurred purchasing replacement or alternative services;
 - 13.3.2 costs associated with advising, screening, testing, treating, retreating or otherwise providing healthcare to patients;
 - 13.3.3 the costs of extra management time; and/or
 - 13.3.4 loss of income due to an inability to provide health care services,
- in each case to the extent to which such costs, expenses and/or loss of income arise or result from the other Party's breach of contract, negligent act or omission, breach of statutory duty, and/or other liability under or in connection with this Contract.
- 13.4 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which that Party is entitled to bring a claim against the other pursuant to this Contract.
 - 13.5 Clause 13 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.

14 Insurance

- 14.1 Unless otherwise confirmed in writing by the Customer, as a minimum level of protection, the Supplier shall put in place and/or maintain in force at its own cost indemnity 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 five million pounds (£5,000,000) or any sum as required by Law unless otherwise agreed with the Customer in writing. These requirements shall not apply to the extent that the Supplier is a member and maintains membership of each of the indemnity schemes run by NHS Resolution.
- 14.2 The amount of any indemnity cover shall not relieve the Supplier of any liabilities under this Contract. It shall be the responsibility of the Supplier to determine the amount of indemnity cover that will be adequate to enable it to satisfy its potential liabilities under this Contract. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover is insufficient to cover the settlement of any claim.
- 14.3 The Supplier warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which its insurance cover 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 repayable in whole or in part.
- 14.4 The Supplier shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to the Customer that insurance arrangements taken out by the Supplier pursuant to Clause 14 of this Schedule 2 are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
- 14.5 Upon the expiry or earlier termination of this Contract, the Supplier shall ensure that any ongoing liability it has or may have arising out of this Contract shall continue to be the subject of appropriate indemnity arrangements for the period of twenty one (21) years from termination or expiry of this Contract or until such earlier date as that liability may reasonably be considered to have ceased to exist.

15 Term and termination

- 15.1 This Contract shall commence on the Commencement Date and, unless terminated earlier in accordance with the terms of this Contract or the general law, shall continue until the end of the Term.
- 15.2 The Parties may agree to extend the Term on one or more occasions no less than three (3) months prior to the date on which this Contract would otherwise have expired, provided that the duration of this Contract shall be no longer than the total term specified in the Key Provisions.
- 15.3 In the case of a breach of any of the terms of this Contract by either Party that is capable of remedy (including, without limitation any breach of any KPI and, subject to Clause 9.6 of this Schedule 2, any breach of any payment obligations under this Contract), the non-breaching Party may, without prejudice to its other rights and remedies under this Contract, issue a Breach Notice and shall allow the Party in breach the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Party in breach ("**Remedial Proposal**") before exercising any right to terminate this Contract in accordance with Clause 15.4(ii) 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. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Party in breach to:
- 15.3.1 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;
 - 15.3.2 comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be thirty (30) days unless otherwise agreed between the Parties); and/or
 - 15.3.3 remedy the default or breach notwithstanding the implementation of such Remedial Proposal in accordance with the agreed timescales for implementation,
- shall be deemed, for the purposes of Clause 15.4(ii) of this Schedule 2, a material breach of this Contract by the Party in breach not remedied in accordance with an agreed Remedial Proposal.
- 15.4 Either Party may terminate this Contract by issuing a Termination Notice to the other Party if such other Party commits a material breach of any of the terms of this Contract which is:
- (i) not capable of remedy; or
 - (ii) in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal.
- 15.5 Either Party may terminate this Contract forthwith by issuing a Termination Notice to the other Party if the Other Party:

- 15.5.1 suffers an Insolvency Event; and
 - 15.5.2 undergoes a Change of Control without the prior written consent of the other Party (not to be unreasonably withheld or delayed) and the other Party shall be entitled to withhold such consent if, in the reasonable opinion of that Party, the proposed Change of Control will have a material impact on the performance of this Contract or the reputation of the other Party.
- 15.6 Within [three (3) months] of the Commencement Date the Supplier shall develop and agree an exit plan with the Customer consistent with the Exit Requirements, which shall ensure continuity of the Services on expiry or earlier termination of this Contract. The Supplier shall provide the Customer with the first draft of an exit plan within [one (1) month] of the Commencement Date. The Parties shall review and, as appropriate, update the exit plan on each anniversary of the Commencement Date of this Contract. If the Parties cannot agree an exit plan in accordance with the timescales set out in this Clause 15.6 of this Schedule 2 (such agreement not to be unreasonably withheld or delayed), such failure to agree shall be deemed a Dispute, which shall be referred to and resolved in accordance with the Dispute Resolution Procedure.

16 Consequences of expiry or early termination of this Contract

- 16.1 Upon expiry or earlier termination of this Contract, the Customer agrees to pay the Supplier for the Services which have been completed by the Supplier in accordance with this Contract prior to expiry or earlier termination of this Contract.
- 16.2 Immediately following expiry or earlier termination of this Contract and/or in accordance with any timescales as set out in the agreed exit plan:
 - 16.2.1 the Supplier shall comply with its obligations under any agreed exit plan;
 - 16.2.2 all data, excluding Personal Data, documents and records (whether stored electronically or otherwise) relating in whole or in part to the Services, including without limitation relating to patients or other service users, and all other items provided on loan or otherwise to the Supplier by the Customer shall be delivered by the Supplier to the Customer provided that the Supplier shall be entitled to keep copies to the extent that: (a) the content does not relate solely to the Services; (b) the Supplier is required by Law and/or Guidance to keep copies; or (c) the Supplier was in possession of such data, documents and records prior to the Commencement Date; and
 - 16.2.3 any Personal Data Processed by the Supplier on behalf of the Customer shall be returned to the Customer or destroyed in accordance with the relevant provisions of the Data Protection Protocol.
- 16.3 The Supplier shall retain all data relating to the provision of the Services that are not transferred or destroyed pursuant to Clause 16.2 of this Schedule 2 for the period set out in Clause 24.1 of this Schedule 2.
- 16.4 The Supplier shall provide reasonable co-operation to the Customer or, as the case may be, any replacement supplier during any re-procurement and handover period prior to and following the expiry or earlier termination of this Contract. This cooperation shall extend to providing access to all information relevant to the operation of this Contract, as reasonably requested and required by the Customer to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements.

- 16.5 Immediately upon expiry or earlier termination of this Contract any licence or lease entered into in accordance with the Key Provisions shall automatically terminate.
- 16.6 The expiry or earlier termination of this Contract for whatever reason shall not affect any rights or obligations of either Party which accrued prior to such expiry or earlier termination.
- 16.7 The expiry or earlier termination of this Contract shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.

17 Staff information and the application of TUPE at the end of the Contract

- 17.1 Upon the day which is no greater than nine (9) months before the expiry of this Contract or as soon as the Supplier is aware of the proposed termination of the Contract, the Supplier shall, within twenty eight (28) days of receiving a written request from the Customer and to the extent permitted by Law, supply to the Customer and keep updated all information required by the Customer as to the terms and conditions of employment and employment history of any Supplier Personnel (including all employee liability information identified in regulation 11 of TUPE) and the Supplier shall warrant such information is full, complete and accurate.
- 17.2 No later than twenty eight (28) days prior to the Subsequent Transfer Date, the Supplier shall or shall procure that any Sub-contractor shall provide a final list to the Successor and/or the Customer, as appropriate, containing the names of all the Subsequent Transferring Employees whom the Supplier or Sub-contractor expects will transfer to the Successor or the Customer and all employee liability information identified in regulation 11 of TUPE in relation to the Subsequent Transferring Employees.
- 17.3 If the Supplier shall, in the reasonable opinion of the Customer, deliberately not comply with its obligations under Clauses 17.1 and 17.2 of this Schedule 2, the Customer may withhold payment under Clause 9 of this Schedule 2.
- 17.4 The Supplier shall be liable to the Customer for, and shall indemnify and keep the Customer indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any deficiency or inaccuracy in the information which the Supplier is required to provide under Clauses 17.1 and 17.2 of this Schedule 2.
- 17.5 Subject to Clauses 17.6 and **Error! Reference source not found.** of this Schedule 2, during the period of nine (9) months preceding the expiry of this Contract or after notice of termination of this Contract has been served by either Party, the Supplier shall not, and shall procure that any Sub-contractor shall not, without the prior written consent of the Customer, such consent not to be unreasonably withheld or delayed:
 - 17.5.1 make, propose or permit any material changes to the terms and conditions of employment or other arrangements of any of the Supplier Personnel;
 - 17.5.2 increase or seek to increase the emoluments (excluding cost of living increases awarded in the ordinary course of business) payable to any of the Supplier Personnel;
 - 17.5.3 replace any of the Supplier Personnel or increase the total number of employees providing the Services;

- 17.5.4 deploy any person other than the Supplier Personnel to perform the Services;
 - 17.5.5 terminate or give notice to terminate the employment or arrangements of any of the Supplier Personnel;
 - 17.5.6 increase the proportion of working time spent on the Services by any of the Supplier Personnel; or
 - 17.5.7 introduce any new contractual term or customary practice concerning the making of any lump sum payment on the termination of employment of any of the Supplier Personnel.
- 17.6 Clause 17.5 of this Schedule 2 shall not prevent the Supplier or any Sub-contractor from taking any of the steps prohibited in that Clause in circumstances where the Supplier or Sub-contractor is required to take such a step pursuant to any changes in legislation or pursuant to a collective agreement in force at that time.
- 17.7 Not Used.
- 17.8 Having as appropriate gained permission from any Sub-contractor, the Supplier hereby permits the Customer to disclose anonymised information about the Supplier Personnel to any Interested Party provided that the Customer informs the Interested Party in writing of the confidential nature of the information.
- 17.9 The Parties agree that where a Successor or the Customer provides the Services or services which are fundamentally the same as the Services in the immediate or subsequent succession to the Supplier or Sub-contractor (in whole or in part) on expiry or early termination of this Contract (howsoever arising) TUPE may apply in respect of the subsequent provision of the Services or services which are fundamentally the same as the Services. If TUPE applies then Clause 17.11 to Clause 17.14 of this Schedule 2 and (where relevant) the provisions of Clause **Error! Reference source not found.** of Part D of Schedule 7 shall apply.
- 17.10 If on the termination or at the end of the Contract TUPE does not apply, then all Employment Liabilities and any other liabilities in relation to the Supplier Personnel shall remain with the Supplier or Sub-contractor as appropriate. The Supplier will, and shall procure that any Sub-contractor shall, indemnify and keep indemnified the Customer in relation to any Employment Liabilities arising out of or in connection with any allegation or claim raised by any Supplier Personnel.
- 17.11 In accordance with TUPE, the Supplier shall, and will procure that any Sub-contractor shall, comply with its obligations to inform and consult with the appropriate representatives of any of its employees affected by the subsequent transfer of the Services or services which are fundamentally the same as the Services.
- 17.12 The Supplier will and shall procure that any Sub-contractor will on or before any Subsequent Transfer Date:
- 17.12.1 pay all wages, salaries and other benefits of the Subsequent Transferring Employees and discharge all other financial obligations (including reimbursement of any expenses and any contributions to retirement benefit schemes) in respect of the period between the Transfer Date and the Subsequent Transfer Date;

- 17.12.2 account to the proper authority for all PAYE, tax deductions and national insurance contributions payable in respect of the Subsequent Transferring Employees in the period between the Transfer Date and the Subsequent Transfer Date;
 - 17.12.3 pay any Successor or the Customer, as appropriate, the amount which would be payable to each of the Subsequent Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Subsequent Transfer Date;
 - 17.12.4 Not Used.
 - 17.12.5 subject to any legal requirement, provide to the Successor or the Customer, as appropriate, all personnel records relating to the Subsequent Transferring Employees including, without prejudice to the generality of the foregoing, all records relating to national insurance, PAYE and income tax. The Supplier shall for itself and any Sub-contractor warrant that such records are accurate and up to date.
- 17.13 The Supplier will and shall procure that any Sub-contractor will indemnify and keep indemnified the Customer and/or a Successor in relation to any Employment Liabilities arising out of or in connection with any claim arising from:
- 17.13.1 the Supplier's or Sub-contractor's failure to perform and discharge its obligations under Clause 17.12 of this Schedule 2;
 - 17.13.2 any act or omission by the Supplier or Sub-contractor in respect of the Subsequent Transferring Employees occurring on or before the Subsequent Transfer Date;
 - 17.13.3 any allegation or claim by any person who is not a Subsequent Transferring Employee but who alleges that their employment should transfer or has transferred to the Successor or the Customer, as appropriate;
 - 17.13.4 any emoluments payable to a person employed or engaged by the Supplier or Sub-contractor (including without limitation all wages, accrued holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and other contributions) payable in respect of any period on or before the Subsequent Transfer Date;
 - 17.13.5 any allegation or claim by any of the Subsequent Transferring Employees on the grounds that the Successor or Customer, as appropriate, has failed to continue a benefit provided by the Supplier or Sub-contractor as a term of such Subsequent Transferring Employee's contract as at the Subsequent Transfer Date where it was not reasonably practicable for the Successor or Customer, as appropriate, to provide an identical benefit but where the Successor or Customer, as appropriate, has provided (or offered to provide where such benefit is not accepted by the Subsequent Transferring Employee) an alternative benefit which, taken as a whole, is no less favourable to such Subsequent Transferring Employee; and
 - 17.13.6 any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the Successor's or Customer's failure to comply with regulation 13(4) of TUPE.

- 17.14 The Supplier will, or shall procure that any Sub-contractor will, on request by the Customer provide a written and legally binding indemnity in the same terms as set out in Clause 17.13 of this Schedule 2 to any Successor in relation to any Employment Liabilities arising up to and including the Subsequent Transfer Date.
- 17.15 The Supplier will indemnify and keep indemnified the Customer and/or any Successor in respect of any Employment Liabilities arising from any act or omission of the Supplier or Sub-contractor in relation to any other Supplier Personnel who is not a Subsequent Transferring Employee arising during any period whether before, on or after the Subsequent Transfer Date.
- 17.16 If any person who is not a Subsequent Transferring Employee claims or it is determined that their contract of employment has been transferred from the Supplier or any Sub-contractor to the Customer or Successor pursuant to TUPE or claims that their employment would have so transferred had they not resigned, then:
- 17.16.1 the Customer will, or shall procure that the Successor will, within seven (7) days of becoming aware of that fact, give notice in writing to the Supplier;
 - 17.16.2 the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within twenty eight (28) days of the notification by the Customer or Successor;
 - 17.16.3 if such offer of employment is accepted, the Customer will, or shall procure that the Successor will, immediately release the person from their employment;
 - 17.16.4 if after the period in Clause 17.16.2 of this Schedule 2 has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the Customer will, or shall procure that the Successor will (whichever is the provider of the Services or services of the same or similar nature to the Services), employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person after the Subsequent Transfer Date.
 - 17.16.5 The Customer shall, and shall procure that a Successor shall, indemnify the Supplier (or its Sub-Contractor, as applicable) for:
 - (i) Failure by the Authority or Successor to comply with Regulation 13 of TUPE; and/or
 - (ii) Any claims that arise after the Subsequent Transfer Date.

18 Complaints

- 18.1 Each Party shall inform the other of all complaints from or on behalf of patients or other service users arising out of or in connection with the provision of the Services within twenty four (24) hours of receipt of each complaint and shall keep the other Party updated on the manner of resolution of any such complaints.

19 Sustainable development

- 19.1 The Supplier shall comply in all material respects with applicable environmental and social and labour Law requirements in force from time to time in relation to the Services. Where the provisions of any such Law are implemented by the use of

voluntary agreements, the Supplier shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Specification and Tender Response Document. Without prejudice to the generality of the foregoing, the Supplier shall:

- 19.1.1 comply with all Policies and/or procedures and requirements set out in the Specification and Tender Response Document in relation to any stated environmental and social and labour requirements, characteristics and impacts of the Services and the Supplier's supply chain;
 - 19.1.2 maintain relevant policy statements documenting the Supplier's significant labour, social and environmental aspects as relevant to the Services being provided and as proportionate to the nature and scale of the Supplier's business operations; and
 - 19.1.3 maintain plans and procedures that support the commitments made as part of the Supplier's significant labour, social and environmental policies, as referred to at Clause 19.1.2 of this Schedule 2.
- 19.2 The Supplier shall meet reasonable requests by the Customer for information evidencing the Supplier's compliance with the provisions of Clause 19 of this Schedule 2.

20 Non-Solicitation

- 20.1 The Customer shall not, without the prior written consent of the Supplier, at any time from the Commencement Date to the expiry of **12** months after the termination or expiry of this Agreement, solicit or entice away (or attempt to solicit or entice away) from the Supplier any person who is, or has been, employed or engaged by the Supplier in the provision of the Services.

21 Change management

- 21.1 The Supplier acknowledges to the Customer that the Customer's requirements for the Services may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification and Tender Response Document, as may be requested by the Customer from time to time.
- 21.2 Subject to Clause 21.3 of this Schedule 2, any change to the Services or other variation to this Contract shall only be binding once it has been agreed either: (a) in accordance with the Change Control Process if the Key Provisions specify that changes are subject to a formal change control process; or (b) if the Key Provisions make no such reference, in writing and signed by an authorised representative of both Parties.
- 21.3 Any change to the Data Protection Protocol shall be made in accordance with the relevant provisions of that protocol.

22 Dispute resolution

- 22.1 During any Dispute, including a Dispute as to the validity of this Contract, it is agreed that the Supplier shall continue its performance of the provisions of the Contract (unless the Customer requests in writing that the Supplier does not do so).

- 22.2 In the case of a Dispute arising out of or in connection with this Contract the Supplier and the Customer shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the Dispute and 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 Contract either 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 ten (10) Business Days at each level during which they will use their reasonable endeavours to resolve the Dispute before escalating the matter to the next levels until all level 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 ten (10) 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 by the Centre for Effective Dispute Resolution which will determine it in accordance with any CEDR model rules for mediation as may be proposed by CEDR from time to time in respect of any dispute under this Agreement.
- 22.5 Nothing in this Contract shall prevent:
- 22.5.1 the Customer taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the provision of the Services; or
 - 22.5.2 either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party or that relates to the safety of patients and other service users or the security of Confidential Information, pending resolution of the relevant Dispute in accordance with the Dispute Resolution Procedure.
- 22.6 Clause 22 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.

23 Force majeure

- 23.1 Neither Party shall be liable to the other for any failure to perform all or any of its obligations under this Contract nor liable to the other 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 Not Used
- 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 Contract, 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 the Supplier's ability to perform part of its obligations under the Contract the 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 either Party is prevented or delayed in the performance of its obligations under this Contract by a Force Majeure Event, that Party shall as soon as reasonably practicable serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.
- 23.6 Subject to service of such notice, 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 its best endeavours, to recommence its affected operations in order for it to perform its obligations.
- 23.7 The Party claiming relief shall notify the other 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 and shall resume performance of its obligations under this Agreement.
- 23.8 If a Party is prevented from performance of its obligations as a result of a Force Majeure Event, the other Party may at any time, if the Force Majeure Event subsists for thirty (30) days or more, terminate the Services affected by the Force Majeure Event by issuing a Termination Notice to the affected Party.
- 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, neither Party shall have any liability to the other.
- 23.10 Any rights and liabilities of either Party which have 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 Contract.

24 Records retention and right of audit

- 24.1 Subject to any statutory requirement and Clause 24.2 of this Schedule 2, the Supplier shall keep secure and maintain for the Term and six (6) years afterwards, or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to this Contract.
- 24.2 Where any records could be relevant to a claim for personal injury such records shall be kept secure and maintained for a period of twenty one (21) years from the date of expiry or earlier termination of this Contract.
- 24.3 The Customer shall have the right to audit the Supplier's compliance with this Contract. The Supplier shall permit or procure permission for the Customer or its authorised representative during normal business hours having given advance written notice of [no less than five (5) Business Days], access to any premises and facilities, books and records reasonably required to audit the Supplier's compliance with its obligations under this Contract.
- 24.4 Should the Supplier Sub-contract any of its obligations under this Contract, the Customer shall have the right to audit and inspect such third party. The Supplier shall

procure permission for the Customer or its authorised representative 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 records used in the performance of the Supplier's obligations under this Contract that are Sub-contracted to such third party. The Supplier shall cooperate with such audit and inspection and accompany the Customer or its authorised representative if requested.

24.5 The Supplier shall grant to the Customer or its authorised representative, such access to those records as they may reasonably require in order to check the Supplier's compliance with this Contract for the purposes of:

24.5.1 the examination and certification of the Customer'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 Customer 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 Supplier and may require the Supplier 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 Supplier under sections 6(3)(d) and 6(5) of the National Audit Act 1983.

24.7 The Supplier shall provide reasonable cooperation to the Customer, 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 Contract.

24.8 The Supplier shall provide all reasonable information as may be reasonably requested by the Customer to evidence the Supplier's compliance with the requirements of this Contract.

25 Conflicts of interest and the prevention of fraud

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

25.2 Each Party shall take all reasonable steps to prevent Fraud by its staff. A Party shall notify the other Party immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

26 Equality and human rights

26.1 The Supplier shall:

26.1.1 ensure that (a) it does not, whether as employer or as provider of the Services, engage in any act or omission that would contravene the Equality Legislation, and (b) it complies with all its obligations as an employer or provider of the Services as set out in the Equality Legislation and take

reasonable endeavours to ensure its Staff do not unlawfully discriminate within the meaning of the Equality Legislation;

- 26.1.2 in the management of its affairs and the development of its equality and diversity policies, cooperate with the Customer in light of the Customer's obligations to comply with its statutory equality duties whether under the Equality Act 2010 or otherwise. The Supplier shall take such reasonable and proportionate steps as the Customer 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
- 26.1.3 the Supplier shall impose on all its Sub-contractors and suppliers, obligations substantially similar to those imposed on the Supplier by Clause 26 of this Schedule 2.
- 26.2 The Supplier shall meet reasonable requests by the Customer for information evidencing the Supplier's compliance with the provisions of Clause 26 of this Schedule 2.

27 Notice

- 27.1 Subject to Clause 22.5 of Schedule 2, any notice required to be given by either Party under this Contract shall be in writing quoting the date of the Contract and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the Key Provisions or such other person as one Party may inform the other Party in writing from time to time.
- 27.2 A notice shall be treated as having been received:
 - 27.2.1 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
 - 27.2.2 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
 - 27.2.3 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.

28 Assignment, novation and Sub-contracting

- 28.1 Subject to Clauses 28.2 to 28.4 below, and save as expressly provided in this Contract, neither Party may assign, charge or dispose of (whether in whole or in part) any of its rights or obligations under this Contract.
- 28.2 Each Party may assign all or any part of its rights and obligations hereunder to a statutory successor.

- 28.3 Neither Party may assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Contract to another body only without the prior written consent of the other Party (such consent not to be unreasonably withheld, delayed or conditioned).
- 28.4 The Supplier may sub-contract the whole or any part or parts of the Services with the prior written consent of the Customer (such consent not to be unreasonably withheld or delayed).

29 **Prohibited Acts**

- 29.1 The Parties warrant and represent that they have not committed any offence under the Bribery Act 2010 or done any of the following ("**Prohibited Acts**"):
- (i) offered, given or agreed to give any officer or employee of the Customer any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with the other Party or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the other Party; or
 - (ii) in connection with this Contract paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the other Party; and
 - (iii) it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.
- 29.2 If either Party is in breach of this Clause 29 of this Schedule 2, the other Party may terminate this Contract in accordance with Clause 15.4(i) of this Schedule 2 and recover the amount of any loss resulting from the termination.

30 **General**

- 30.1 Each of the Parties is independent of the other and nothing contained in this Contract shall be construed to imply that there is any relationship between the Parties of partnership or of principal/agent or of employer/employee nor are the Parties hereby engaging in a joint venture and accordingly neither of the Parties shall have any right or Customer to act on behalf of the other nor to bind the other by agreement or otherwise, unless expressly permitted by the terms of this Contract.
- 30.2 Failure or delay by either Party to exercise an option or right conferred by this Contract shall not of itself constitute a waiver of such option or right.
- 30.3 The delay or failure by either Party to insist upon the strict performance of any provision, term or condition of this Contract or to exercise any right or remedy consequent upon such breach shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.
- 30.4 Any provision of this Contract which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Contract and

any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

- 30.5 Each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this Contract and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in this Contract or unless such representation, undertaking or warranty was made fraudulently.
- 30.6 Each Party shall bear its own expenses in relation to the preparation and execution of this Contract including all costs, legal fees and other expenses so incurred.
- 30.7 The rights and remedies provided in this Contract are independent, cumulative and not exclusive of any rights or remedies provided by general law, any rights or remedies provided elsewhere under this Contract or by any other contract or document. In this Clause 30.7 of this Schedule 2, right includes any power, privilege, remedy, or proprietary or security interest.
- 30.8 Unless otherwise expressly stated in this Contract, a person who is not a party to this Contract shall have no right to enforce any terms of it which confer a benefit on such person except that a Successor and/or a Third Party may directly enforce any indemnities or other rights provided to it under this Contract. No such person shall be entitled to object to or be required to consent to any amendment to the provisions of this Contract.
- 30.9 This Contract, any variation in writing signed by an authorised representative of each Party and any document referred to (explicitly or by implication) in this Contract or any variation to this Contract, contain the entire understanding between the Supplier and the Customer relating to the Services to the exclusion of all previous agreements, confirmations and understandings and there are no promises, terms, conditions or obligations whether oral or written, express or implied other than those contained or referred to in this Contract. Nothing in this Contract seeks to exclude either Party's liability for Fraud. Any tender conditions and/or disclaimers set out in the Customer's procurement documentation leading to the award of this Contract shall form part of this Contract.
- 30.10 This Contract, and any Dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.
- 30.11 Subject to Clause 22 of this Schedule 2, the Parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any Dispute or claim that arises out of or in connection with this Contract or its subject matter.
- 30.12 All written and oral communications and all written material referred to under this Contract shall be in English.

Schedule 3

Information and Data 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 3, 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 Commencement Date;
- 1.1.2 the provisions of Clause 1 of this Schedule 3 shall not apply to any Confidential Information:
- (i) which is in or enters the public domain other than by breach of this Contract or other act or omissions of the Recipient;
 - (ii) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
 - (iii) which is authorised for disclosure by the prior written consent of the Discloser;
 - (iv) 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
 - (v) which the Recipient is required to disclose purely to the extent to comply with the requirements of any relevant stock exchange.
- 1.2 Nothing in Clause 1 of this Schedule 3 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**").
- 1.3 A Party may disclose the other Party's Confidential Information:
- 1.3.1 on a confidential basis, to any consultant, contractor or other person engaged by the ;
- 1.3.2 to any relevant party for the purpose of the examination and certification of the Customer's accounts;
- 1.3.3 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 Customer has used its resources;

- 1.3.4 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirements; or
- 1.3.5 on a confidential basis to a proposed successor body in connection with any proposed or actual, assignment, novation or other disposal of rights, obligations, liabilities or property in connection with this Contract;

and for the purposes of this Contract, references to disclosure "on a confidential basis" shall mean the relevant Party making clear the confidential nature of such information and that it must not be further disclosed except in accordance with Law or this Clause 1.3 of this Schedule 3.

- 1.4 Each Party shall not, and shall ensure that its staff do not, use any of the other Party's Confidential Information received otherwise than for the purposes of performing its obligations in this Contract.
- 1.5 For the avoidance of doubt, save as required by Law or as otherwise set out in this Schedule 3, neither Party shall, without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), announce that it has entered into this Contract and/or make any other announcements about this Contract.
- 1.6 Clause 1 of this Schedule 3 shall remain in force:
 - 1.6.1 without limit in time in respect of Confidential Information which comprises Personal Data or which relates to national security; and
 - 1.6.2 for all other Confidential Information for a period of three (3) years after the expiry or earlier termination of this Contract unless otherwise agreed in writing by the Parties.

2 Data protection

- 2.1 The Parties acknowledge their respective duties under Data Protection Legislation and shall give each other all reasonable assistance as appropriate or necessary to enable each other to comply with those duties. For the avoidance of doubt, the Supplier shall take reasonable steps to ensure it is familiar with the Data Protection Legislation and any obligations it may have under such Data Protection Legislation and shall comply with such obligations.
- 2.2 Where the Supplier is Processing Personal Data under or in connection with this Contract, the Parties shall comply with the Data Protection Protocol.
- 2.3 The Supplier and the Customer shall ensure that Personal Data is safeguarded at all times in accordance with the Law, and this obligation will include (if transferred electronically) only transferring Personal Data (a) if essential, having regard to the purpose for which the transfer is conducted; and (b) that is encrypted in accordance with any international data encryption standards for healthcare, and as otherwise required by those standards applicable to the Customer under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).
- 2.4 Where, as a requirement of this Contract, the Supplier is Processing Personal Data relating to patients and/or service users as part of the Services, the Supplier shall:

- 2.4.1 nominate an information governance lead able to communicate with the Supplier's board of directors or equivalent governance body, who will be responsible for information governance and from whom the Supplier'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;
 - 2.4.2 put in place and maintain policies that describe individual personal responsibilities for handling Personal Data and apply those policies vigorously;
 - 2.4.3 put in place and maintain agreed protocols for the lawful sharing of Personal Data with non-NHS organisations in circumstances in which sharing of that data is required under this Contract;
 - 2.4.4 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;
 - 2.4.5 at all times comply with any information governance requirements and/or processes as may be set out in the Specification and Tender Response Document; and
 - 2.4.6 comply with any new and/or updated requirements, Guidance and/or Policies notified to the Supplier by the Customer from time to time (acting reasonably) relating to the Processing and/or protection of Personal Data.
- 2.5 Where any Personal Data is Processed by any Sub-contractor of the Supplier in connection with this Contract, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 2 of this Schedule 3, as if such Sub-contractor were the Supplier.
- 3 Freedom of Information and Transparency**
- 3.1 The Customer shall assist and cooperate with the Supplier as appropriate or necessary to enable it to comply with its obligations under the FOIA, Codes of Practice and Environmental Regulations. The Customer agrees:
- 3.1.1 that this Agreement and any recorded information held by the Customer on the Supplier's behalf for the purposes of this Agreement are subject to the obligations of the Supplier under the FOIA, Codes of Practice and Environmental Regulations;
 - 3.1.2 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/or Environmental Regulations is a decision solely for the Supplier;
 - 3.1.3 that where the Customer receives a request for information under the FOIA, Codes of Practice and/or Environmental Regulations, it will not respond to that request (unless directed to do so by the Supplier) and will promptly (and in any event within two (2) Business Days) transfer the request to the Supplier;

- 3.1.4 that the Supplier, acting in accordance with the FOIA, Codes of Practice and/or Environmental Regulations, may disclose information concerning the Customer and this Agreement; and
- 3.1.5 to assist the Supplier in responding to a request for information, by processing information or environmental information (as the same are defined in the FOIA, Codes of Practice and/or Environmental Regulations) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under the FOIA, Codes of Practice and/or Environmental Regulations, and providing copies of all information requested by the Supplier within five (5) Business Days of that request and without charge.
- 3.2 Notwithstanding any other term of this Agreement, the Customer consents to the publication of this 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/or Environmental Regulations. In preparing a copy of this Agreement for publication under this Clause 3.2, the Supplier may consult with the Customer to inform decision making regarding any redactions but the final decision in relation to the redaction of information will be at the Supplier's absolute discretion. The Customer shall assist and cooperate with the Supplier to enable the Supplier to publish this Agreement.
- 4 Information Security
 - 4.1 Without limitation to any other information governance requirements set out in this Schedule 3, the Supplier shall:
 - 4.1.1 notify the Customer forthwith of 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 Customer's information governance Policies; and
 - 4.1.2 provide reasonable cooperation with any audits or investigations relating to information security and any privacy impact assessments undertaken by the Customer and shall provide full information as may be reasonably requested by the Customer in relation to such audits, investigations and assessments.
 - 4.2 Where required in accordance with the Specification and Tender Response Document, the Supplier will ensure that it puts in place and maintains an information security management plan appropriate to this Contract, the type of Services being provided and the obligations placed on the Supplier. The Supplier shall use reasonable endeavours to 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 Key Provisions and/or the Specification and Tender Response Document.
 - 4.3 Where required in accordance with the Specification and Tender Response Document, the Supplier shall obtain and maintain certification under the HM Government Cyber Essentials Scheme at the level set out in the Specification and Tender Response Document.

Schedule 4

Definitions and Interpretations

5 Definitions

5.1 In this Contract the following words shall have the following meanings unless the context requires otherwise:

“Actual Services Commencement Date”	means the date the Supplier actually commences delivery of the Services;
“Actuary”	means a Fellow of the Institute and Faculty of Actuaries;
“Customer”	means the organisation named on the form of Contract on the first page;
“Authority’s Actuary”	means the Government Actuaries Department;
“Customer’s Obligations”	means the Customer’s further obligations, if any, referred to in the Key Provisions;
“Breach Notice”	means a written notice of breach given by one Party to the other, notifying the Party receiving the notice of its breach of this Contract;
“Broadly Comparable”	means certified by an Actuary as satisfying the condition that there are no identifiable Eligible Employees who would overall suffer material detriment in terms of their future accrual of Pension Benefits under the scheme compared with the NHS Pension Scheme assessed in accordance with Annex A of Fair Deal for Staff Pensions;
“Business Continuity Event”	means any event or issue that could impact on the operations of the Supplier and its ability to provide the Services including an influenza pandemic and any Force Majeure Event;
“Business Continuity Plan”	means the Supplier’s business continuity plan which includes its plans for continuity of the Services during a Business Continuity Event;
“Business Day”	means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales;
“Cabinet Office Statement”	the Cabinet Office Statement of Practice – Staff Transfers in the Public Sector 2000 (as revised 2013) as may be amended or replaced;
“Change Control Process”	means the change control process, if any, referred to in the Key Provisions;

“Change of Control”	<p>means:</p> <p>(i) any sale or other disposal of any legal, beneficial or equitable interest in any or all of the equity share capital of a corporation (the effect of which is to confer on any person (when aggregated with any interest(s) already held or controlled) the ability to control the exercise of 50% or more of the total voting rights exercisable at general meetings of that corporation on all, or substantially all, matters), provided that a Change of Control will be deemed not to have occurred if after any such sale or disposal the same entities directly or indirectly exercise the same degree of control over the relevant corporation; or</p> <p>(ii) where the Party is a NHS Trust, NHS Foundation Trust or NHS body, any change in the ability to control that NHS Foundation Trust, NHS Trust or NHS body by virtue of the Party entering into any franchise, management or other agreement or arrangement, including any statutory or non-statutory merger or acquisition, under the terms of which the control over the management of the relevant NHS Foundation Trust, NHS Trust or NHS body is conferred on another person;</p>
“Codes of Practice”	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
“Commencement Date”	means the date of this Contract;
“Commercial Schedule”	means the document set out at Schedule 6;
“Confidential Information”	<p>means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the Contract including any procurement process which is:</p> <p>(a) Personal Data including without limitation which relates to any patient or other service user or his or her treatment or clinical or care history;</p> <p>(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</p> <p>(c) Policies and such other documents which the Supplier may obtain or have access to through the Customer’s intranet;</p>
“Contract”	means the form of contract at the front of this document and all schedules attached to the form of contract;
“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 Customer and for the Supplier 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 Supplier by the Customer under the Contract for the full and proper performance by the Supplier of its obligations under the Contract;
“Controller”	shall have the same meaning as set out in the UK GDPR;
“Convictions”	means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 or any replacement or amendment to that Act);
“Cost Increase”	shall have the meaning given to the term in Clause Error! Reference source not found. of Part D of Schedule 7;
“Cost Saving”	shall have the meaning given to the term in Clause Error! Reference source not found. of Part D of Schedule 7;
“Data Protection Legislation”	means all applicable data protection and privacy legislation in force from time to time in the UK including (i) the Data Protection Act 2018 (ii) the UK GDPR; and (iii) all other applicable Law in force from time to time which apply to a Party relating to the processing of personal data and privacy(including, without limitation, the privacy of electronic communications and (to the extent that it applies) the EU GDPR);
“Data Protection Protocol”	means any document of that name as provided to the Supplier by the Customer (as amended from time to time in accordance with its terms), which shall include, without limitation, any such document appended to Schedule 3 (Information and Data Provisions) of this Contract;
“Direction Letter”	means an NHS Pensions Direction letter issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 and issued to the Supplier or a Sub-contractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Sub-contractor in the NHS Pension Scheme in respect of the Eligible Employees;
“Dispute(s)”	means any dispute, difference or question of interpretation or construction arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, any matters of contractual construction and interpretation relating to the Contract, or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;

“Dispute Notice”	means a written notice served by one Party to the other stating that the Party serving the notice believes there is a Dispute;
“Dispute Resolution Procedure”	means the process for resolving Disputes as set out in Clause 22 of Schedule 2 or, where Clause Error! Reference source not found. of Schedule 1 of the Contract applies, the process for resolving Disputes as set out in Schedule 8. For the avoidance of doubt, the Dispute Resolution Procedure is subject to Clause Error! Reference source not found. of Schedule 2;
“Electronic Trading System(s)”	means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as the Customer may specify from time to time;
“Eligible Employees”	<p>means each of the Transferred Staff who immediately before the Employee Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to become a member of, either the NHS Pension Scheme or a Broadly Comparable scheme as a result of their employment or former employment with an NHS Body (or other employer which participates automatically in the NHS Pension Scheme) and being continuously engaged for more than 50% of their employed time with the Customer (in the case of Transferring Employees) or a Third Party (in the case of Third Party Employees) in the delivery of services the same as or similar to the Services.</p> <p>For the avoidance of doubt a member of Staff who is or is entitled to become a member of the NHS Pension Scheme as a result of being engaged in the Services and being covered by an “open” Direction Letter or other NHS Pension Scheme “access” facility but who has never been employed directly by an NHS Body (or other body which participates automatically in the NHS Pension Scheme) is not an Eligible Employee entitled to Fair Deal for Staff Pensions protection under Part D of Schedule 7;</p>
“Employee Transfer Date”	means the Transferred Staff’s first day of employment with the Supplier (or its Sub-contractor);
“Employment Liabilities”	means all claims, demands, actions, proceedings, damages, compensation, tribunal awards, fines, costs (including but not limited to reasonable legal costs), expenses and all other liabilities whatsoever;
“Environmental Regulations”	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
“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;
“EU GDPR”	means the General Data Protection Regulation (Regulation (EU) 2016/679);
“Exit Requirements”	means the Customer’s exit requirements, as set out in the Specification and Tender Response Document and/or otherwise as part of this Contract, which the Supplier must comply with during the Term and/or in relation to any expiry or early termination of this Contract;
“Fair Deal for Staff Pensions”	means guidance issued by HM Treasury entitled “Fair Deal for staff pensions: staff transfer from central government” issued in October 2013 (as amended, supplemented or replaced);
“FOIA”	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
“Force Majeure Event”	<p>means any event beyond the reasonable control of the Party in question to include, without limitation:</p> <ul style="list-style-type: none"> (a) war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict materially affecting either Party’s ability to perform its obligations under this Contract; (b) acts of terrorism; (c) flood, storm or other natural disasters; (d) fire; (e) unavailability of public utilities and/or access to transport networks to the extent no diligent supplier could reasonably have planned for such unavailability as part of its business continuity planning; (f) government requisition or impoundment to the extent such requisition or impoundment does not result from any failure by the Supplier 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 Supplier 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 applicable outside of England and Wales that could not have been reasonably foreseen; (h) industrial action which affects the ability of the Supplier to provide the Services, but which is not confined to the workforce of the Supplier or the workforce of any Sub-contractor of the Supplier;

	<p>(i) a failure in the Supplier's and/or Customer'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; and</p> <p>(j) epidemic or pandemic;</p>
"Fraud"	means any offence under any law in respect of fraud in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the government, parliament or any Contracting Authority;
"Good Industry Practice"	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 services similar to the Services under the same or similar circumstances as those applicable to this Contract, including in accordance with any codes of practice published by relevant trade associations;
"Guidance"	means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Customer and/or have been published and/or notified to the Supplier by the Department of Health, Monitor, NHS England, the Medicines and Healthcare Products Regulatory Agency, the European Medicine Agency, the European Commission, the Care Quality Commission and/or any other regulator or competent body;
"HM Government Cyber Essentials Scheme"	means the HM Government Cyber Essentials Scheme as further defined in the documents relating to this scheme published at: https://www.gov.uk/government/publications/cyber-essentials-scheme-overview ;
"Implementation Plan"	means the implementation plan, if any, referred to in the Key Provisions;
"Implementation Requirements"	means the Customer's implementation and mobilisation requirements (if any), as may be set out in the Specification and Tender Response Document and/or otherwise as part of this Contract, which the Supplier must comply with as part of implementing the Services;
"Insolvency Event"	<p>means the occurrence of any of the following events:</p> <p>(a) a petition being presented or an order being made or a meeting being convened to consider the passing of a</p>

	<p>resolution or any other action being taken for or with a view to the winding-up a Party;</p> <p>(b) an order being made for the administration of a Party;</p> <p>(c) a Party entering into liquidation whether compulsorily or voluntarily (except for the purposes of reconstruction of a solvent company);</p> <p>(d) a Party stopping or threatening to stop payments to its creditors generally;</p> <p>(e) a Party ceasing or threatening to cease trading;</p> <p>(f) a Party being deemed for the purpose of Section 123 of the Insolvency Act 1986 to be unable to pay its debts or admitting in writing its inability to pay its debts as they become due or otherwise becoming or being declared by any competent authority to be or declaring itself to be insolvent;</p> <p>(g) a Party convening a meeting of its creditors with a view to proposing or making any assignment, arrangement or composition with or for the benefit of its creditors or any class or group thereof; or</p> <p>(h) an administrative receiver or a receiver being appointed of all or any part of the undertaking, property or assets of a Party; or</p> <p>(i) a Party being subject to the Trust Special Administration process in Section 65 of the NHS Act 2006;</p>
“Intellectual Property Rights”	means all patents, copyright, design rights, registered designs, trade marks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trade marks and registered designs;
“Interested Party”	means any organisation which has a legitimate interest in providing services of the same or similar nature to the Services in immediate or proximate succession to the Supplier or any Sub-contractor and who had confirmed such interest in writing to the Customer;
“Key Provisions”	means the key provisions set out in Schedule 1;
“KPI”	means the key performance indicators as set out in Schedule 5;
“Law”	<p>means any applicable legal requirements including, without limitation,:</p> <p>(a) any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument as applicable in England and Wales;</p> <p>(b) any applicable European Union obligation, directive, regulation, decision, law or right (including any such</p>

	<p>obligations, directives, regulations, decisions, laws or rights that are incorporated into the law of England and Wales or given effect in England and Wales by any applicable statute, proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument);</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 as applicable in England and Wales;</p> <p>(f) any relevant code of practice as applicable in England and Wales; 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>
“Losses”	all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law;
“Measures”	means any measures proposed by the Supplier or any Sub-contractor within the meaning of regulation 13(2)(d) of TUPE;
“NHS”	means the National Health Service;
“NHS Body”	has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012;
“Party”	means the Customer or the Supplier as appropriate and Parties means both the Customer and the Supplier;
“Payment Date”	means twenty (20) Business Days after the last of the conditions in Clause Error! Reference source not found. of Part D of Schedule 7 has been satisfied;
“Pension Benefits”	any benefits (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor’s benefits provided under an occupational pension scheme;
“Personal Data”	shall have the same meaning as set out in the UK GDPR;
“Policies”	means the policies, rules and procedures of the Customer as provided to the Supplier from time to time;
“Premature Retirement Rights”	rights to which any Transferred Staff (had they remained in the employment of an NHS Body or other employer which participates automatically in the NHS Pension Scheme) would

	have been or is entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time;
“Premises and Locations”	has the meaning given under Clause 2.1 of Schedule 2;
“Process”	shall have the same meaning as set out in the UK GDPR. Processing and Processed shall be construed accordingly;
“Processor”	shall have the same meaning as set out in the UK GDPR;
“Purchase Order”	means the purchase order required by the Customer’s financial systems, if a purchase order is referred to in the Key Provisions;
“Remedial Proposal”	has the meaning given under Clause 15.3 of Schedule 2;
“Services”	means the services set out in this Contract (including, without limitation, Schedule 5 which sets out the requirements of the Customer as issued to tenderers as part of the procurement process and the Supplier’s response to these requirements);
“Services Commencement Date”	means the date delivery of the Services shall commence as specified in the Key Provisions. If no date is specified in the Key Provisions this date shall be the Commencement Date;
“Services Information”	means information concerning the Services as may be reasonably requested by the Customer and supplied by the Supplier to the Customer in accordance with Clause Error! Reference source not found. of Schedule 2 for inclusion in the Customer’s services catalogue from time to time;
“Specification and Tender Response Document”	means the document set out in Schedule 5 as amended and/or updated in accordance with this Contract;
“Staff”	means all persons employed or engaged by the Supplier to perform its obligations under this Contract including any Sub-contractors and person employed or engaged by such Sub-contractors;
“Sub-contract”	means a contract between two or more suppliers, at any stage of remoteness from the Supplier in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract;
Sub-contractor	means a party to a Sub-contract other than the Supplier;

“Subsequent Transfer Date”	means the point in time, if any, at which services which are fundamentally the same as the Services (either in whole or in part) are first provided by a Successor or the Customer, as appropriate, giving rise to a relevant transfer under TUPE;
“Subsequent Transferring Employees”	means any employee, agent, consultant and/or contractor who, immediately prior to the Subsequent Transfer Date, is wholly or mainly engaged in the performance of services fundamentally the same as the Services (either in whole or in part) which are to be undertaken by the Successor or Customer, as appropriate;
“Successor”	means any third party who provides services fundamentally the same as the Services (either in whole or in part) in immediate or subsequent succession to the Supplier upon the expiry or earlier termination of this Contract;
“Supplier”	means the supplier named on the form of Contract on the first page;
“Supplier Code of Conduct”	means the code of that name published by the Government Commercial Function originally dated September 2017, as may be amended, restated, updated, re-issued or re-named from time to time;
“Supplier Personnel”	means any employee, agent, consultant and/or contractor of the Supplier or Sub-contractor who is either partially or fully engaged in the performance of the Services;
“Term”	means the term as set out in the Key Provisions;
“Termination Notice”	means a written notice of termination given by one Party to the other notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;
“Third Party”	means any supplier of services fundamentally the same as the Services (either in whole or in part) immediately before the Transfer Date;
“Third Party Body”	has the meaning given under Clause 8.5 of Schedule 2;
“Third Party Employees”	means all those employees, if any, assigned by a Third Party to the provision of a service that is fundamentally the same as the Services immediately before the Transfer Date;
“Transfer Amount”	an amount paid in accordance with Clause Error! Reference source not found. of Part D of Schedule 7 and calculated in accordance with the assumptions, principles and timing adjustment referred to in Clause Error! Reference source not found. of Part D of Schedule 7 in relation to those Eligible Employees who have accrued defined benefit rights in the NHS Pension Scheme or a Third Party’s Broadly Comparable scheme and elected to transfer them to the Supplier’s Broadly

	Comparable scheme or the NHS Pension Scheme under the Transfer Option;
“Transfer Date”	means the Actual Services Commencement Date;
“Transfer Option”	an option given to each Eligible Employee with either: (a) accrued rights in the NHS Pension Scheme; or (b) accrued rights in a Broadly Comparable scheme, as at the Employee Transfer Date, to transfer those rights to the Supplier’s (or its Sub-contractor’s) Broadly Comparable scheme or back into the NHS Pension Scheme (as appropriate), to be exercised by the Transfer Option Deadline, to secure year-for-year day-for-day service credits in the relevant scheme (or actuarial equivalent, where there are benefit differences between the two schemes);
“Transfer Option Deadline”	the first Business Day to fall at least three (3) months after the notice detailing the Transfer Option has been sent to each Eligible Employee;
“Transferred Staff”	means those employees (including Transferring Employees and any Third Party Employees) whose employment compulsorily transfers to the Supplier or to a Sub-contractor by operation of TUPE or for any other reasons, as a result of the award of this Contract;
“Transferring Employees”	means all those employees, if any, assigned by the Customer to the provision of a service that is fundamentally the same as the Services immediately before the Transfer Date;
"TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006/246) and/or any other regulations or other legislation enacted for the purpose of implementing or transposing the Acquired Rights Directive (77/187/EEC, as amended by Directive 98/50 EC and consolidated in 2001/23/EC) into English law; and
“UK GDPR”	means the EU GDPR, as incorporated into UK legislation by way of the European Union (Withdrawal Agreement) Act 2020 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2020;
“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 Law shall be deemed to include a reference to that Law as amended, extended, consolidated, re-enacted, restated, implemented or transposed from time to time.

5.14 References to any legal entity shall include any body that takes over responsibility for the functions of such entity.

- 5.15 References in this Contract to a “Schedule”, “Appendix”, “Paragraph” or to a “Clause” are to schedules, appendices, paragraphs and clauses of this Contract.
- 5.16 References in this Contract to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.
- 5.17 The headings are for convenience only and shall not affect the interpretation of this Contract.
- 5.18 Words denoting the singular shall include the plural and vice versa.
- 5.19 Where a term of this Contract provides for a list of one or more items following the word “including” or “includes” then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.
- 5.20 Where a document is required under this Contract, the Parties may agree in writing that this shall be in electronic format only.
- 5.21 Where there is an obligation on the Customer to procure any course of action from any third party, this shall mean that the Customer shall use its reasonable endeavours to procure such course of action from that third party.
- 5.22 Any guidance notes in grey text do not form part of this Contract.
- 5.23 Any Breach Notice issued by a Party in connection with this Contract shall not be invalid due to it containing insufficient information. A Party receiving a Breach Notice (“**Receiving Party**”) may ask the Party that issued the Breach Notice (“**Issuing Party**”) to provide any further information in relation to the subject matter of the Breach Notice that it may reasonably require to enable it to understand the Breach Notice and/or to remedy the breach. The Issuing Party shall not unreasonably withhold or delay the provision of such further information as referred to above as may be requested by the Receiving Party but no such withholding or delay shall invalidate the Breach Notice.
- 5.24 Any terms defined as part of a Schedule or other document forming part of this Contract shall have the meaning as defined in such Schedule or document.

Schedule 5

Specification and Tender Response Document

[To be inserted as part of the final Contract]

Schedule 6

Commercial Schedule

[To be inserted as part of the final Contract]

Schedule 7

Staff transfer

The optional parts of this Schedule 7 below shall only apply to this Contract where such parts have been checked.

Part A ☐ No staff transfer to the Supplier under TUPE (only applicable to the Contract if this box is checked)

- 1.1 The Parties agree that at the commencement of the provision of Services by the Supplier TUPE shall not apply so as to transfer the employment of any employees of the Customer or a Third Party to the Supplier.
- 1.2 If any person who is an employee of the Customer or a Third Party claims, or it is determined, that their contract of employment has been transferred from the Customer or Third Party to the Supplier or a Sub-contractor pursuant to TUPE, or claims that their employment would have so transferred had they not resigned, then:
 - 1.2.1 the Supplier will, within seven (7) days of becoming aware of that fact, give notice in writing to the Customer;
 - 1.2.2 the Customer or Third Party may offer employment to such person within twenty-eight (28) days of the notification by the Supplier;
 - 1.2.3 if such offer of employment is accepted, the Supplier or a Sub-contractor shall immediately release the person from their employment;
 - 1.2.4 if after that period specified in Clause 1.2.2 of Part A of this Schedule 7 has elapsed, no offer of employment has been made by the Customer or Third Party, or such offer has been made by the Customer or Third Party but not accepted within a reasonable time, the Supplier or Sub-contractor shall employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person..

Part B ☐ Staff transfer from the Customer under TUPE (only applicable to the Contract if this box is checked)

- 1.1 The Parties agree that the commencement of the provision of Services under this Contract shall give rise to a relevant transfer as defined in TUPE. Accordingly the contracts of employment of the Transferring Employees will transfer on the Transfer Date to the Supplier or any Sub-contractor pursuant to TUPE.
- 1.2 The Supplier agrees, or shall ensure by written agreement that any Sub-contractor shall agree, to accept the Transferring Employees into its employment on the Transfer Date upon their then current terms and conditions of employment and with full continuity of employment.
- 1.3 The Supplier's agreement in Clause 1.2 of Part B of this Schedule 7 (and any subsequent agreement by any Sub-contractor), is subject to the right of any employee

identified as a Transferring Employee to object to being transferred to the Supplier or any Sub-contractor.

- 1.4 The Supplier will, or shall ensure by written agreement that any Sub-contractor will:
- 1.4.1 not later than twenty eight (28) days after issue of a written notice in writing to it from the Customer, provide the Customer with the information required under regulation 13(4) of TUPE. The Supplier shall be liable to the Customer for, and shall indemnify and keep the Customer indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any breach of this obligation;
 - 1.4.2 provide such assistance and information to the Customer as it may reasonably request to facilitate a smooth and efficient handover of the Transferring Employees to the Supplier or any Sub-contractor (including attendance at any meetings with Transferring Employees, trade unions and employee representatives);
 - 1.4.3 comply with its obligations to inform and, if necessary, consult with the appropriate representatives of any employees who are affected by the relevant transfer in accordance with regulation 13 of TUPE; and
 - 1.4.4 immediately following the Transfer Date comply with its obligation to consult with the appropriate representatives of the Transferring Employees about any Measures in accordance with regulation 13(6) of TUPE.
- 1.5 The Customer will on or before the Transfer Date:
- 1.5.1 pay all wages, salaries and other benefits of the Transferring Employees (including any contributions to retirement benefit schemes) and discharge all other financial obligations (including reimbursement of any expenses) owing to the Transferring Employees in respect of the period before the Transfer Date;
 - 1.5.2 procure that any loans or advances made to the Transferring Employees before the Transfer Date are repaid to it;
 - 1.5.3 account to the proper authority for all PAYE tax deductions and national insurance contributions payable in respect of the Transferring Employees in the period before the Transfer Date;
 - 1.5.4 pay the Supplier the amount which would be payable to each of the Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Transfer Date; and
 - 1.5.5 subject to any legal requirement, provide to the Supplier all personnel records relating to the Transferring Employees including, without prejudice to the generality of the foregoing, all records relating to national insurance, PAYE and income tax. The Customer shall for itself and any Sub-contractor warrant that such records are accurate and up to date.
- 1.6 The Customer will:

- 1.6.1 provide such assistance and information to the Supplier as it may reasonably request to facilitate a smooth and efficient handover of the Transferring Employees to the Supplier or any Sub-contractor, including the provision of all employee liability information identified in regulation 11 of TUPE in relation to the Transferring Employees; and
- 1.6.2 comply with its obligations to inform and, if necessary, consult with the appropriate representatives of any employees who are affected by the relevant transfer in accordance with regulation 13 of TUPE.
- 1.7 The Customer shall indemnify and keep indemnified the Supplier in relation to any Employment Liabilities arising out of or in connection with any claim which arises as a result of any act or omission of the Customer in relation to the Transferring Employees prior to the Transfer Date save for where such act or omission results from complying with the instructions of the Supplier or Sub-contractor, including the Supplier or Sub-contractor failing to comply with its obligations under regulation 13 of TUPE, but only to the extent that such claim is brought by:
 - 1.7.1 any of the Transferring Employees (whether on their own behalf or in their capacity as employee representatives); or
 - 1.7.2 any trade union, staff association or staff body recognised by the Customer in respect of any of the Transferring Employees or any employee representatives acting on behalf of any of the Transferring Employees.
- 1.8 The Supplier shall be responsible for or shall procure that any relevant Sub-contractor shall be responsible from the Transfer Date for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees and other Staff.
- 1.9 The Supplier shall indemnify and will keep indemnified the Customer in relation to any Employment Liabilities arising out of or in connection with:
 - 1.9.1 any act or omission of the Supplier or Sub-contractor on or after the Transfer Date (or any other event or occurrence after the Transfer Date) in respect of any Transferring Employee or Staff (including but not limited to any liability which arises because a Transferring Employee's employment with the Supplier or Sub-contractor is deemed to include their previous continuous employment with the Customer);
 - 1.9.2 any act or omission of the Supplier or Sub-contractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the Customer's failure to comply with regulation 13 of TUPE;
 - 1.9.3 any allegation or claim by a Transferring Employee or any other employee of the Customer that in consequence of the transfer of Services to the Supplier or Sub-contractor there has or will be a substantial change in such Transferring Employee's working conditions to their detriment within regulation 4(9) of TUPE; and
 - 1.9.4 any allegation or claim relating to the termination of employment of any of the Transferring Employees or any other employee of the Customer whether on or before the Transfer Date which arises as a result of any act or omission

by the Supplier or Sub-contractor save for where such act or omission results from complying with the instructions of the Customer.

- 1.10 If any person who is an employee of the Customer who is not a Transferring Employee claims or it is determined that their contract of employment has been transferred from the Customer to the Supplier or any Sub-contractor pursuant to TUPE, or claims that their employment would have so transferred had they not resigned:
- 1.10.1 the Supplier will, within seven (7) days of becoming aware of that fact, give notice in writing to the Customer;
 - 1.10.2 the Customer may offer employment to such person within twenty eight (28) days of the notification by the Supplier;
 - 1.10.3 if such offer of employment is accepted, the Supplier or Sub-contractor shall immediately release the person from their employment; and
 - 1.10.4 if after the period specified in Clause 1.10.2 of Part B of this Schedule 7 has elapsed, no offer of employment has been made by the Customer or such offer has been made by the Customer but not accepted within a reasonable time, the Supplier or Sub-contractor shall employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person from the Transfer Date.

Part C ☐ Staff transfer from a current provider under TUPE(only applicable to the Contract if this box is checked)

- 1.1 The Parties agree that the commencement of the provision of Services under this Contract shall give rise to a relevant transfer as defined in TUPE. Accordingly the contracts of employment of the Third Party Employees will transfer on the Transfer Date to the Supplier or a Sub-contractor pursuant to TUPE, the Cabinet Office Statement and (where relevant) Fair Deal for Staff Pensions.
- 1.2 The Supplier agrees, or shall ensure by written agreement that any Sub-contractor shall agree, to accept the Third Party Employees into its employment on the Transfer Date upon their then current terms and conditions of employment and with full continuity of employment.
- 1.3 The Supplier's agreement in Clause 1.2 of Part C of this Schedule 7 (and any subsequent agreement by any Sub-contractor), is subject to the right of any Third Party Employee to object to being transferred to the Supplier or any Sub-contractor.
- 1.4 The Supplier will, or shall ensure by written agreement that any Sub-contractor will:
 - 1.4.1 not later than twenty eight (28) days after issue of a written notice in writing to it from the Customer, provide the Third Party with the information required under regulation 13(4) of TUPE. The Supplier shall be liable to the Customer for, and shall indemnify and keep the Customer and any Third Party indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any breach of this obligation;
 - 1.4.2 provide such assistance and information to the Third Party as it may reasonably request to facilitate a smooth and efficient handover of the Third Party Employees to the Supplier or any Sub-contractor (including attendance

- at any meetings with Third Party Employees, trade unions and employee representatives);
- 1.4.3 comply with its obligations to inform and, if necessary, consult with the appropriate representatives of any employees who are affected by the relevant transfer in accordance with regulation 13 of TUPE; and
 - 1.4.4 immediately following the Transfer Date comply with its obligation to consult with the appropriate representatives of the Third Party Employees about any Measures in accordance with regulation 13(6) of TUPE.
- 1.5 The Supplier shall be responsible for, or shall procure that any relevant Sub-contractor shall be responsible from the Transfer Date, for all remuneration, benefits, entitlements and outgoings in respect of the Third Party Employees and other Staff.
- 1.6 The Customer will procure that the Third Party will on or before the Transfer Date:
- 1.6.1 pay all wages, salaries and other benefits of the Third Party Employees (including any contributions to retirement benefit schemes) and discharge all other financial obligations (including reimbursement of any expenses) owing to the Third Party Employees in respect of the period before the Transfer Date;
 - 1.6.2 procure that any loans or advances made to the Third Party Employees before the Transfer Date are repaid to it;
 - 1.6.3 account to the proper authority for all PAYE tax deductions and national insurance contributions payable in respect of the Third Party Employees in the period before the Transfer Date;
 - 1.6.4 pay the Supplier the amount which would be payable to each of the Third Party Employees in lieu of accrued but untaken holiday entitlement as at the Transfer Date; and
 - 1.6.5 subject to any legal requirement, provide to the Supplier all personnel records relating to the Third Party Employees including, without prejudice to the generality of the foregoing, all records relating to national insurance, PAYE and income tax. The Customer shall procure that the Third Party shall for itself and any Sub-contractor warrant that such records are accurate and up to date.
- 1.7 The Customer will procure that the Third Party will:
- 1.7.1 provide such assistance and information to the Supplier as it may reasonably request to facilitate a smooth and efficient handover of the Third Party Employees to the Supplier or any Sub-contractor, including the provision of all employee liability information identified in regulation 11 of TUPE in relation to the Third Party Employees; and
 - 1.7.2 comply with its obligations to inform and, if necessary, consult with the appropriate representatives of any employees who are affected by the relevant transfer in accordance with regulation 13 of TUPE.

- 1.8 The Customer shall procure that the Third Party will indemnify and keep indemnified the Supplier in relation to any Employment Liabilities arising out of or in connection with any claim which arises as a result of any act or omission of the Third Party in relation to the Third Party Employees prior to the Transfer Date save for where such act or omission results from complying with the instructions of the Supplier or Sub-contractor, including the Supplier or Sub-contractor failing to comply with its obligations under regulation 13 of TUPE, but only to the extent that such claim is brought by:
 - 1.8.1 any of the Third Party Employees (whether on their own behalf or in their capacity as employee representatives); or
 - 1.8.2 any trade union, staff association or staff body recognised by the Third Party in respect of any of the Transferring Employees or any employee representatives acting on behalf of any of the Transferring Employees.
- 1.9 The Supplier shall indemnify and will keep indemnified the Customer and any Third Party in relation to any Employment Liabilities arising out of or in connection with:
 - 1.9.1 any act or omission of the Supplier or a Sub-contractor on or after the Transfer Date (or any other event or occurrence after the Transfer Date) in respect of any Third Party Employee or Staff (including but not limited to any liability which arises because a Third Party Employee's employment with the Supplier or a Sub-contractor is deemed to include their previous continuous employment with the Third Party);
 - 1.9.2 any act or omission of the Supplier or a Sub-contractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the Third Party's failure to comply with regulation 13 of TUPE;
 - 1.9.3 any claim or allegation by a Third Party Employee or any other employee of the Customer or Third Party that in consequence of the transfer of Services to the Supplier or a Sub-contractor there has or will be a substantial change in their working conditions to their detriment within regulation 4(9) of TUPE; and
 - 1.9.4 any claim or allegation relating to the termination of employment of any of the Third Party Employees or any other employee of the Third Party whether on or before the Transfer Date or not which arise as a result of any act or omission by the Supplier or a Sub-contractor save for where such act or omission results from complying with the instructions of the Customer.
- 1.10 If any person who is an employee of the Third Party who is not a Third Party Employee claims or it is determined that their contract of employment has been transferred from the Third Party to the Supplier or any Sub-contractor pursuant to TUPE, or claims that their employment would have so transferred had they not resigned:
 - 1.10.1 the Supplier will, within seven (7) days of becoming aware of that fact, give notice in writing to the Third Party;
 - 1.10.2 the Customer will procure that the Third Party will offer employment to such person within twenty eight (28) days of the notification by the Supplier;

- 1.10.3 if such offer of employment is accepted, the Supplier or Sub-contractor shall immediately release the person from their employment; and
 - 1.10.4 if after the period specified in Clause 1.10.2 of Part C of this Schedule 7 has elapsed, no offer of employment has been made by the Third Party or such offer has been made by the Third Party but not accepted within a reasonable time, the Supplier or Sub-contractor shall employ that person in accordance with its obligations and duties under TUPE and
 - 1.10.5 shall be responsible for all liabilities arising in respect of any such person from the Transfer Date.
- 1.11 The Customer shall use reasonable endeavours to transfer to the Supplier or any Sub-contractor the benefit of any indemnity it has from the Third Party. This includes replacing Clause 1.10.4 of this Part C with a term more favourable to the Supplier where such terms can be procured from the Third Party.

Schedule 8

[Delete at final contract stage if not required. Insert extra schedules in following pages if required]

Schedule 9

[Delete at final contract stage if not required. Insert extra schedules in following pages if required]