

A large, teal-colored circular graphic that is partially cut off on the left and bottom edges, framing the central text.

NEL Terms and Conditions

General Terms and Conditions

THIS AGREEMENT is made the [DD, MONTH, YEAR]

BETWEEN:

- (a) NEL Commissioning Support Unit, an arm's length service organisation of NHS England ("the Service Provider") whose principal and/or registered office is at Clifton House 75-77 Worship Street, London EC2A 2DU and
- (b) Clinical Commissioning Group (CCG) ("the Client") whose registered office is at [INSERT ADDRESS]

together "the Parties" and each a "Party".

WHEREAS:

- (c) Clinical commissioning groups are established under the Health and Social Care Act 2012 as statutory bodies which have the function of commissioning services for the purpose of the health service in England and are treated as NHS bodies for the purposes of the National Health Service Act 2006. The duties of clinical commissioning groups to commission certain health services are set out in Section 3 of the National Health Service Act 2006, as amended by section 13 of the Health and Social Care Act 2012, and the regulations made under that provision.
- (d) Between xxxx and xxxx NHS England will temporarily host the Service Provider.
- (e) The Service Provider is engaged in the business of providing services in relation to clinical commissioning support, and has reasonable skill, knowledge, qualifications and experience in that field.
- (f) The Client wishes to engage the Service Provider to provide the Services detailed in Schedule 3, subject to, and in accordance with, the terms and conditions of this Agreement.
- (g) The Service Provider has agreed to accept such engagement and shall provide the Services to the Client, subject to, and in accordance with, the terms and conditions of this Agreement.

IT IS AGREED as follows:

1. Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

Term	Definition
“Acts”	National Health Service Act 2006 The Health and Social Care Act 2008 Regulations 2014 Data Protection Act 1998 Data Protection Act 2018
“Actual Performance”	means the Service Level actually achieved, over a given period, for a Service provided by the Service Provider when measured in accordance with Schedule 3;
“Agreement Review”	means a review of this Agreement which will be conducted in accordance with Clause 9 at the intervals specified in that Clause;
“Approved Mediator(s)”	means those individuals identified in Schedule 7 who both Parties agree are suitable to act as mediator should any Dispute arise in respect of which either Party wishes to invoke the Dispute Resolution Procedure as set out in Clause 14.
“Best Practice IPR”	means any Intellectual Property Rights developed by the Service Provider in connection with, or as a result of, the Services, that the Client might reasonably be able to use within its organisation for teaching and training of NHS best practice;
Business Continuity Plan	the Provider’s plan for continuity of all of the Services in adverse circumstances, in accordance with the NHS England Business Continuity Management Framework (Service Resilience) and the principles of PAS 2015 (British Standards Institution 21 October 2010) and ISO 22301)
“Business Day”	means any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business;
CCG	Clinical Commissioning Group as defined in Section 1 of 2006 Act
CEDR	the Centre for Effective Dispute Resolution

Term	Definition
“Change of Law”	<p>means the coming into effect after the date of this Agreement of:</p> <p>(a) Legislation, other than any Legislation which on the date of this Contract has been published:</p> <ul style="list-style-type: none"> i. in a draft Bill as part of a Government Departmental Consultation Paper; ii. in a Bill; iii. in a draft statutory instrument; or as a proposal in the Official Journal of the European Communities, <p>(b) any Guidance, or</p> <p>(c) any applicable judgment of a relevant court of law which changes a binding precedent.</p>
“Change in Control”	any change in the ability to control a Health Service Body by virtue of the entering into of any franchise, management, transfer or other agreement or arrangement, under the terms of which the control over the management of the relevant Health Service Body is conferred on another person;
“Client’s Representative”	means INSERT CCG NAME’s nominated officer who shall be responsible for liaising with the Key Account Manager in accordance with Clause 10, or such other person who the Client may from time to time nominate;
“Client’s Management Representative”	means INSERT CCG NAME’s Chief Operating Officer who shall be responsible for liaising with the Service Provider’s Management Representative in accordance with Clause 10, or such other person who the Client may from time to time nominate; means the lead Director nominated by the Client who shall be responsible for liaising with the Service Provider’s Management Representative in accordance with Clause 10, or such other person who the Client may from time to time nominate;
“Commencement Date”	means the date on which this Agreement comes into force pursuant to Clause 3;
Commissioner Deliverables	all documents, products and materials developed by the Commissioner in relation to the Services in any form and submitted by any Commissioner to the Provider under this Contract, including data, reports, policies, plans and specifications
Condition Precedent	the pre-conditions to commencement of service delivery set out in Schedule 1A (<i>Conditions Precedent</i>)

Term	Definition
“Confidential Information”	Confidential Information. In this agreement, "Confidential Information" means all material, non-public, business-related information, written or oral, whether or not it is marked as confidential, that is disclosed or made available to the recipient, directly or indirectly, through any means of communication or observation by the disclosing party or any of its Affiliates or Representatives.
Contract Management Meeting	<ul style="list-style-type: none"> (i) a notice given by the Co-ordinating Commissioner to the Provider under GC9.4 (<i>Contract Management</i>), alleging failure by the Provider to comply with any obligation on its part under this Contract; or (ii) a notice given by the Provider to the Co-ordinating Commissioner under GC9.5 (<i>Contract Management</i>) alleging failure by any Commissioner to comply with any obligation on its part under this Contract, as appropriate
Contract Performance Notice	<ul style="list-style-type: none"> (iii) a notice given by the Co-ordinating Commissioner to the Provider under xxx (<i>Contract Management</i>), alleging failure by the Provider to comply with any obligation on its part under this Contract; or (iv) a notice given by the Provider to the Co-ordinating Commissioner under xxx (<i>Contract Management</i>) alleging failure by any Commissioner to comply with any obligation on its part under this Contract, as appropriate
“Contract Variation”	means an amendment or variation to the terms of this Agreement that may be requested, from time to time, by either Party and whose consideration and implementation is governed in accordance with Clause 17;
“Contract Variation Notice”	means a notice issued by the Party proposing a Contract Variation, setting out sufficient information to enable the Party in receipt of the notice to assess the extent of the Contract Variation and consider whether any change to the Services, as set out in Schedule 3, or the Service Prices is required in order to implement the Contract Variation.
Controller”	means the individual or organisation that decides the purpose of processing personal information, including what information will be processed and how it will be obtained. See also the Data Protection Act 1998 definition in Part 1 section 1 of the Act or in the Data Protection Act 2018 definition in Part 3, Chapter 1, section 32.
“Data Loss Event”	means any event that results, or may result, in unauthorised access to Personal Data held by the Client under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this

Term	Definition
	Agreement, including any Personal Data Breach.
“Data Protection Legislation”	means (i) the Data Protection Act 1998 or, from the date it comes into force, the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) the General Data Protection Regulation (Regulation (EU) 2016/679), together with all other applicable Law about the processing of personal data and privacy.
“Data Processing”	any business activity or contracted service that involves using personal confidential data or confidential information for any purpose, including obtaining, recording, holding, viewing, storing, adapting, altering, deleting, disclosing. This is not restricted to computer processing, but includes manual files and verbal discussions. See also the Data Protection legislation. NHS Digital have separate requirements of processing of clinical personal confidential data, where specific terms and conditions must be adhered to in accordance the Client’s Data Sharing Contract with NHS Digital. These arrangements differ from the processing of the client’s corporate personal confidential data e.g. Human Resource Records, although Data Protection legislation and Common law Duty of Confidentiality still applies.
“Data Subject”	has the meaning given in the Data Protection Act 1998, part 1 section 1 and in the Data Protection Act 2018, Part 1 section 3(5) and in the General Data Protection Regulation (Regulation (EU) 2016/679).
“Data Subject Access Request”	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
Department of Health	the Department of Health in England of HM Government or other relevant body, or such other body superseding or replacing it from time to time and/or the Secretary of State
Directory of Services	a directory of information that describes the services that organisations offer, provides a window through which providers can display their services and enables referring clinicians to search for clinically appropriate services to which they can refer service users
“Dispute”	means a dispute, conflict or other disagreement between the Service Provider and the Client arising out of or in connection with this Agreement and whose resolution is governed in accordance with Clause 14

Term	Definition
“Expiry Date”	means last working date of the contract which is the date on which this Agreement comes to an end pursuant to Clause 3; but if the last working date falls on a week end/bank holiday then the following working day will be considered as Expiry date.
“Force Majeure Event”	means any failure or delay in carrying out either Party’s obligations where such failure or delay results from one or more causes that are beyond the reasonable variation of that Party and which are set out in Clause 21.
GDPR	General Data Protection Regulation (EU)2016/679
“Guidance”	means all applicable health or social care guidance, direction or determination, framework, code of practice, standard or requirement, to which the Client and/or the Service Provider have a duty to have regard (and whether specifically mentioned in this Agreement or not), to the extent that the same are published and publically available or the existence or contents of them have been notified to the Service Provider by the Client and/or any regulatory or supervisory body.
“Health Service Body”	has the meaning given to it in Section 9 of the National Health Service Act 2006;
“Intellectual Property Rights”	means any and all patents, rights in inventions, rights in designs, trade-marks, trade and business names and all associated goodwill, rights to sue for passing-off or for unfair competition, copyright, moral rights and related rights, rights in databases, topography rights, domain names, rights in information (including know-how and trade secrets) and all other similar or equivalent rights (subsisting now or in the future) in any part of the world, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights for their full term;
“Law”	means any applicable statute or proclamation or any delegated or subordinate legislation or regulation, any enforceable community right within the meaning of section 2(1) European Communities Act 1972 or any applicable judgment of a relevant court of law which is a binding precedent in England and Wales.
“Legislation”	Means any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of Section 2 of the European Communities Act 1972, in each case in the United Kingdom

Term	Definition
“Negotiation Period”	15 Business Days during which the parties in dispute must negotiate and be represented as set out in Clause 14 Dispute Resolution Procedure
Performance Remedy”	means the Service(s) Improvement remedy available to the Client in the event that Service Levels set out at Schedule 3 are not adhered to as set out in Clause 11 and Clause 12;
“Performance Report”	means a report detailing the performance of the Services in relation to the Service Levels, prepared in accordance with the provisions of Clause 9 and Schedule 3;
“Personal Data and Personal Confidential Data”	means personal information about identified or identifiable individuals, which should be kept private or secret. For the purposes of this SLA ‘personal’ includes the Data Protection Legislation definition of personal data, but it is adapted to include dead as well as living people, as per the common law Duty of Confidentiality. ‘Confidential’ includes both information ‘given in confidence’ and ‘that which is owed a duty of confidence’ and is adapted to include ‘sensitive/special category data’ as defined in the Data Protection Legislation. Personal Confidential Information Term differs to the defined ‘confidential information’ stated above within this SLA.
“Premises”	means the Client’s premises at or such other premises as may be notified from time to time by the Client to the Service Provider;
“Principles”	means the set of behaviours the Parties agree to adopt in exercising their respective rights and discharging their respective obligations in this Agreement and which are set out in Clause 2;
“Process”	shall have the same meaning as set out in the Data Protection legislation and Processing and Processed shall be construed accordingly.
Processor	means an individual (other than an employee of the Controller) or organisation that processes personal information whilst undertaking a business activity or contracted service on behalf of the Controller. See also the Data Protection Act 1998 definition in Part 1 section 1 of the Act or in the Data Protection Act 2018 definition in Part 3, Chapter 1, section 32.
“Protective Measures”	means appropriate technical and organisational measures which may include: pseudonimising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and

Term	Definition
	services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures which have been adopted.
“Service(s) Bedding-in Period”	means a period of four calendar months after the Commencement Date;
“Service(s) Improvement”	means the process of Service(s) improvement and rectification to be carried out pursuant to Clause 12 in the event that Service Levels set out at Schedule 3 are not adhered to;
“Service(s) Improvement Notice”	means a notice issued by the Client to the Service Provider setting out the nature and extent to which the Service Provider is failing to adhere to the Service Levels set out in Schedule 3 and which obliges the Service Provider to produce and implement a Service(s) Improvement Plan as set out in Clause 12;
“Service(s) Improvement Plan”	A plan of action to be implemented by the Service Provider, in response to the issuance of a Service(s) Improvement Notice by the Client, and which will lead to the Service Provider adhering to the Service Levels set out in Schedule 3 as set out in Clause 12;
“Service Levels”	means the agreed levels to which the Service Provider’s performance in providing the Service must adhere as set out in Schedule 3 and Clause 7;
“Service(s) Prices”	means the amounts payable by the Client to the Service Provider for the provision of Services in accordance with Clause 6 and Schedule 4;
“Service Provider’s Key Account Manager”	means, as at the date of this Agreement, the senior manager nominated by the Service Provider who shall be responsible for liaising with the Client’s Representative in accordance with Clause 9, or such other person who the Service Provider may from time to time nominate;
“Service Provider’s Management Representative”	means the NEL CSU POD Director who shall be responsible for liaising with the Client’s Management Representative in accordance with Clause 9, or such other person who the Service provider may from time to time nominate;
“Service Provider’s Performance Representative”	means [the Service Provider’s Key Account Manager who shall be responsible for monitoring the provision of the Services in accordance with the Service Levels under Clause 10, or such other person who the Service Provider may from time to time nominate;
“Service Provider’s Personnel”	means the Service Provider’s employees and/or the employees of organisations to whom the Service Provider has, in accordance with the terms of this Agreement, sub-contracted or sub-licensed the provision

Term	Definition
	of some or all of the Services;
“Service(s) Suspension Notice”	means a notice issued by the Client to the Service Provider notifying that the Service Provider shall, following its failure to adhere to Service Levels and, further, its failure to achieve agreed Service(s) Improvement(s), suspend the provision of a relevant Service(s) to the Client, until further notification by the Client.
“Substitute Service Provider”	means a third-party provider which has been procured by the Client to provide a Service included in Schedule 1 of this Agreement Service(s) following the issue by the Client of a Service Suspension Notice to the Service Provider
“Term”	means the term of this Agreement as set out in Clause 3;
“Termination”	means the cessation of this Agreement, either in its entirety or in respect of one or more Services, before the Expiry Date;
“Termination Notice”	means a notice issued by the Party seeking to effect the Termination of this Agreement.

1.2 Unless the context otherwise requires, each reference in this Agreement to:

1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;

1.2.2 a reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it;

1.2.3 “this Agreement” is a reference to this Agreement and each of the Schedules as amended or supplemented at the relevant time;

1.2.4 a Schedule is a schedule to this Agreement; and

1.2.5 a Clause or paragraph is a reference to a Clause of this Agreement (other than the Schedules) or a paragraph of the relevant Schedule.

1.2.6 a "Party" or the "Parties" refer to the parties to this Agreement.

1.3 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.

1.4 Words imparting the singular number shall include the plural and vice versa.

2. Principles

2.1 The Parties agree to adopt the following Principles when carrying out this Agreement:

- 2.1.1 to collaborate and co-operate in the delivery of the Services to ensure that the commissioning ambitions and intentions of the Client are met;
- 2.1.2 to be accountable, by taking on, managing and accounting to each other for the performance of the respective roles and responsibilities set out in this Agreement;
- 2.1.3 to communicate openly about major concerns, issues or opportunities relating to this Agreement
- 2.1.4 to learn, develop and seek to achieve the full potential by sharing information, experience, materials and skills to learn from each other and develop effective working practices, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;
- 2.1.5 to behave in a constructive and proactive manner;
- 2.1.6 to comply with applicable law and standards, including EU procurement rules, data protection and freedom of information legislation;
- 2.1.7 to act in a timely manner, recognizing the time-critical nature of the Services provided under this Agreement and respond accordingly to requests for support and information;
- 2.1.8 to manage stakeholders effectively;
- 2.1.9 to act in good faith to support the achievement of each Party's objectives in entering into this Agreement and compliance with these Principles;
- 2.1.10 to provide coherent, timely and efficient decision-making.
- 2.1.11 to abide by and promote awareness of the NHS Constitution, including the rights and pledges set out in it. The Provider must ensure that all Sub-Contractors and all Staff abide by the NHS Constitution.

3. Term of Agreement

3.1 This Agreement will come into force on the Commencement Date of xx/xx/xxxx and shall continue in force until the Expiry Date, subject to the provisions of this Clause 3 and Clause 19.

- 3.2 The Client may, by giving written notice to the Service Provider not less than 6 months prior to the Expiry Date, seek to extend the Agreement for such further period as may be specified in the notice.
- 3.3 On issue of such notice the Parties will negotiate the terms of any extension to the term of the Agreement. Such negotiations will be conducted in accordance with Clause 17 (Contract Variation Procedure), save that sub-Clause 17.8.2 shall not apply.
- 3.4 Any extension of this Agreement shall not, in any event, exceed more than 24 months.
- 3.5 In the event that the Parties cannot agree the terms of an extension to the Term of the Agreement in accordance with Clause 3.3, then the Agreement will end, subject to the provisions of Clause 19, on the Expiry Date.

4. Service Provider's Obligations

- 4.1. The Service Provider shall render the Services to the Client in accordance with the provisions of Clause 7 and Schedule 2 and in accordance with the required Service Levels set out in Schedule 3.
- 4.2. The Service Provider shall perform its obligations under this Agreement in a reasonable and timely manner in accordance with the provisions of this Agreement.
- 4.3. The Service Provider shall provide the Client with such information and advice in connection with the Services and the provision thereof as the Client may, from time to time, reasonably require both before and during the provision of the Services.
- 4.4. The Service Provider shall use its reasonable endeavours to keep the Client informed of any special requirements (including, but not limited to, legislative requirements) applicable to the rendering of the Services. To the extent necessary and appropriate, the Service Provider shall promptly take steps to comply with any such requirements. These steps shall not otherwise alter this Agreement in any way, subject to each Party's right under sub-Clause 9.6 to request a meeting to review such changes.
- 4.5. The Service Provider shall notify the Client in writing as soon as reasonably practicable if it becomes aware during the performance of this Agreement of any inaccuracies in any information provided to it by the Client during the due diligence undertaken by the Service Provider prior to the Commencement Date which materially and adversely affects its ability to perform the Services or meet any Service Levels.
- 4.6. The Service Provider will provide the Client with the services of a nominated Key Account Manager. The Key Account Manager will provide the Client with a single point of contact and will be responsible for the overall management of the Client relationship with the Service Provider. The Key Account Manager will be authorised and

empowered, as a senior management representative of the Service Provider, to make decisions about key client service delivery. The Key Account Manager will be responsible for ensuring there is regular, timely and relevant contact with the Client and this will include arranging Client meetings as referred to in clause 9.1.

- 4.7. As part of the obligations stated under Clause 9 (Services & Agreement Management), the Service Provider undertakes to continuously monitor and review services for the duration of this Agreement.

5. Client's Obligations

- 5.1 The Client shall provide the Service Provider with such information in connection with the Services and the provision thereof as the Service Provider may, from time to time, reasonably require both before and during the provision of the Services.
- 5.2 The Client shall perform its obligations under this Agreement in a reasonable and timely manner in accordance with the provisions of this Agreement.
- 5.3 The Client shall allow the Service Provider and its personnel access at all reasonable times to the Premises for the purpose of providing the Services. In so doing the Client will inform the Service Provider of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Premises to which the Service Provider requires access.
- 5.4 The Client shall use its reasonable endeavours to keep the Service Provider informed of any special requirements (including, but not limited to, legislative and regulatory requirements) applicable to the rendering of the Services. To the extent necessary and appropriate, the Service provider shall promptly take steps to comply with any such requirements. These steps shall not otherwise alter this Agreement in any way, subject to each Party's right under sub-Clause 9.6 to request a meeting to review such changes.
- 5.5 The Client shall use all due and proper care to ensure that the manner in which it discharges its obligations under this Agreement does not have any adverse effect on the name, reputation, image or business of the Service Provider.

6. Service Prices, Payment and Records

- 6.1 The Service Provider shall invoice the Client for payment of the Service Prices quarterly in advance in respect of the Services that the Service Provider has or will deliver to the Client, such Services having been or due to be delivered in accordance with the provisions of Schedule 3 and the terms and conditions of this Agreement.
- 6.2 The Service Prices are stated exclusive of VAT, which shall be added at the prevailing rate

as applicable and paid by the Client following delivery of a valid VAT invoice.

6.3 The Client shall pay the Service Prices to the Service Provider within 30 days of receipt of an undisputed invoice delivered under the provisions of Clause 6.1 in sterling in cleared funds to such bank as the Service Provider may from time to time nominate.

6.4 Where the Client disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid in accordance with Clause 6.3 and the dispute as to the sum that remains unpaid shall be determined in accordance with Clause 13 (Dispute Resolution Procedure).

For the avoidance of doubt, the Client shall be in breach of its payment obligations under this Agreement if the process referred to in this Clause 6 has been followed and it has been determined that the queried or disputed invoice amount is properly due to the Service Provider and the Client has then failed to pay such sum within a reasonable period following such determination.

6.5 Where any payment pursuant to this Agreement is required to be made on a day which is not a Business Day, it may be made on the next following Business Day.

6.6 The Service Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Client pursuant to this Agreement. Such records shall be retained for inspection by the Client (upon reasonable notice and if deemed necessary by the Service Provider) during the Term.

6.7 The Client shall make any payments due to the Service Provider without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

6.8 Unless otherwise agreed, the Client shall make available to the Service Provider, CCG desk space as may be required for delivery, without charge and without exclusive possession. The Service Provider shall use the desks solely for the purpose of providing the agreed Services during the term of this Contract and shall vacate the same on the expiry or other termination of this Contract.

7. Provision of the Services

7.1 The Service Provider shall, throughout the Term of this Agreement, provide the Services to the Client in accordance with the terms and conditions of this Agreement, the provisions of Schedule 1 and the Services and Service Levels as specified in Schedule 3.

7.2 The Service Provider shall provide the Services only as specified in Schedule 3 unless otherwise agreed in writing by the Parties.

7.3 The Service Provider shall be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Services.

- 7.4 The Service Provider shall use all due and proper care to ensure that the manner in which it provides the Services does not have any adverse effect on the name, reputation, image or business of the Client.

8. Conflicts of Interest

- 8.1 The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any Service Provider's Personnel is placed in a position where, in the reasonable opinion of the Client:

8.1.1 there is or may be an actual conflict or potential conflict, between the pecuniary or personal interests of the Service Provider and the duties owed to the Client under the provisions of the Agreement; or

8.1.2 the behaviour of the Service Provider or the Service Provider's Personnel is not in the Client's best interest or might materially adversely affect the Client's reputation.

- 8.2 The Service Provider will, as soon as reasonably practicable, disclose to the Client full particulars of any behaviour which might give rise to the acts described in sub-Clauses 8.1.1 or 8.1.2.

- 8.3 The Client reserves the right to take such other steps it deems necessary where, in the reasonable opinion of the Client, there is or may be an actual conflict or potential conflict, between the financial or personal interests of the Service Provider or the Service Provider's Personnel and the duties owed to the Client under the provisions of the Agreement.

- 8.4 The actions of the Client pursuant to this Clause 8 shall not prejudice or affect any right of action or remedy which has accrued or will accrue to the Client or the Service Provider under this Agreement.

9. Services and Agreement Management

- 9.1 The Client and the Service Provider shall arrange meetings between the Client's Representative and the Key Account Manager at regular intervals, [the dates and times to be scheduled by the Service Provider and agreed with the Client], in order to discuss the provision of the Services in accordance with the Service Levels, where relevant, based upon Performance Reports generated in accordance with Clause 10 and Schedule 5.

- 9.2 The Service Provider shall produce written reports from meetings held pursuant to sub-Clause 9.1 within 10 business days following such meetings. The meeting

records shall be agreed by both parties following which they shall use their reasonable endeavours to comply with any and all agreed actions to be taken with respect to the provision of the Services, the Service Levels and the performance by each Party of its respective obligations under this Agreement.

- 9.3 The Client and the Service Provider shall arrange meetings between the Client's Management Representative and the Service Provider's Management Representative at regular intervals [the dates and times to be scheduled by the Service Provider and agreed with the Client], in order to discuss matters arising out of meetings held pursuant to sub-Clause 9.1 and any other matters including, but not limited to, those relating to the provision of the Services and the Service Levels.
- 9.4 In addition to the matters set out in sub-Clause 9.3, the Client's Management Representative and the Service Provider's Management Representative shall, in their regular meetings conduct an Agreement Review during which the Parties may propose, discuss and agree upon any desired or necessary alterations to this Agreement including, but not limited to, its terms and conditions, scope and duration. Any such change will be treated as a Contract Variation to this Agreement and its consideration and adoption will be completed pursuant to the Clause 17 (Contract Variations Procedure).
- 9.5 No later than 6 months prior to the end of the Term of this Agreement, the Client's Management Representative and the Service Provider's Management Representative shall conduct an Agreement Review during which an extension of this Agreement shall be considered and determined. In the event that an extension of the Agreement is to be considered, the provisions of sub-Clause 3.2 sub-Clause 3.3 and sub-Clause 3.4 shall apply.
- 9.6 Notwithstanding the provisions of sub-Clause 9.4, in the event that changes to this Agreement are required due to circumstances including, but not limited to, a material change in the level of year-on-year funding received by the Client or in year-on-year Service Provider cost pressures due to, inter alia, national pay settlements, or a Change in Law, either Party shall have the right to call for an immediate Agreement Review to discuss the necessary changes and action to be taken. Any such change will be treated as a Contract Variation to this Agreement and its consideration and adoption will be completed pursuant to the Clause 17 (Contract Variations Procedure).

10. Performance Management and Monitoring

- 10.1 For the purposes of monitoring and managing performance under this Agreement the Parties shall respectively appoint the Client's Performance Representative and the Service Provider's Performance Representative (each a "Performance Representative" for the purposes of this Clause 10). It shall be the responsibility of the Performance Representatives to ensure that the Services are provided in accordance with the Service Levels and the terms and conditions of this Agreement
- 10.2 The provision of the Services in accordance with the Service Levels shall be monitored by

the Service Provider's Performance Representative in accordance with the provisions of Schedule 3.

- 10.3 All data collected by the Service Providers Personnel (s) pursuant to this Clause 10 and to Schedule 5 shall be presented in monthly Performance Reports by the Service Provider.
- 10.4 Performance Reports shall be submitted to the Client's Representative and the Key Account Manager for consideration and agreement upon appropriate action to be taken (where relevant) during meetings to be held in accordance with sub-Clause 9.1.

11. Service(s) Failure

- 11.1 In the event that, in respect of any of the Services provided, the Service Provider fails to adhere to the Service Levels set out in Schedule 3, there will be a requirement for Services Improvement, in accordance with the provisions in Clause 12.
- 11.2 The Service Provider is expected to meet the Service Levels set out in Schedule 3 from the conclusion of any 'bedding in period'. Commencement Date. In the event that the Service Provider fails to adhere to the Service Levels set out in Schedule 3, the Client may be able to apply a pre-determined Penalty in accordance with the definitions and calculations set out in Schedule 4 [save the Client shall not apply any Penalty during the Services Bedding-In Period].
- 11.3 If and to the extent only that the Service Provider is unable to perform any Services in accordance with this Agreement as a direct result of any failure by the Client to perform any of the Client Obligations specified in this Clause 5 (unless and to the extent caused or contributed to by the Service Provider) then, provided that the Service Provider has taken all reasonable steps to mitigate the consequences of the failure by the Client to perform any such responsibility, the Service Provider shall be entitled:
 - 11.3.1 to a reasonable extension of time to perform the relevant Services (but not to any extension to the Term);
 - 11.3.2 to relief from the application of Performance Remedies in respect of its failure to adhere to the relevant Service Levels in respect of relevant Services as set out in Schedule 3;
 - 11.3.3 to relief from the Client exercising its right of Termination of this Agreement, in its entirety or in part, for breach of any provision of this Agreement that may arise as a result of failure to adhere to the relevant Service Levels in respect of relevant Services as set out in Schedule 3.
 - 11.3.4 The Service Provider shall continue to use all reasonable endeavours to continue to perform its obligations under this Agreement insofar as is possible, notwithstanding any failure of the Client to perform any of the Client Obligations specified in this Clause 5.
 - 11.3.5 Where the Service Provider becomes aware that is unable to perform any Services in accordance with this Agreement as a direct result of any failure

by the Client to perform any of the Client Obligations specified in this Clause 5 (unless and to the extent caused or contributed to by the Service Provider), it shall, acting timeously, inform the Client.

12. Service(s) Improvement

12.1 In the event that the Service Provider fails to adhere to the Service Levels set out in Schedule 3, the following Improvement provisions shall apply:

12.1.1 if the Service Provider fails to meet the Service Levels then the Client may, acting reasonably, issue a Service(s) Improvement Notice.

12.1.2 a Service(s) Improvement Notice shall state:

- a) the relevant Service Level agreed and the Actual Performance achieved;
- b) the date on which the relevant Actual Performance achieved was recorded;
- c) an account of any relevant circumstances, including any remedial steps already undertaken by the Service Provider, so far as known to the Client;
- d) any other supporting information which the Client considers relevant.

12.1.3 The Service Provider shall, within 10 Business Days either:

- a) confirm acceptance of the Service(s) Improvement Notice and prepare and submit to the Client a Service(s) Improvement Plan within 20 Business Days of issue of the Service(s) Improvement Notice; or
- b) invite the Client to withdraw the Service(s) Improvement Notice on the basis that either:
 - i) the Actual Performance of the Service(s) does not meet the agreed threshold for a Service(s) Improvement Notice; or
 - ii) whilst the Actual Performance of the Service(s) does not meet the agreed the Service Level set out in Schedule 3, the issue of a Service(s) Improvement Notice is disproportionate in the context of the level achieved or the duration of the Actual Performance when compared to the agreed Service Level; or
 - iii) The Service Level achieved has met the agreed threshold for a Service(s) Improvement Notice but that the Client has breached obligations set out under Clause 5 and that such breach has had a

direct and material effect on the Service Provider's ability to meet the agreed Service Level for the relevant Service(s).

In the event that the Client withdraws the Service Improvement Notice, service delivery will continue in accordance with the terms of this agreement.

In the event that the Client fails to withdraw the Service Improvement Notice, then the matter as to whether the issue of a Service(s) Improvement Notice accords with this Agreement shall be resolved in accordance with Clause 13 (Dispute Resolution Procedure).

12.1.4 The Service(s) Improvement Plan shall:

- a) provide a detailed statement of the reasons for the Actual Performance;
- b) identify the remedial action needed to rectify the circumstances so the Service Level set out in Schedule 3 is adhered to;
- c) set out the Service Provider's key proposals for carrying out the remedial actions, a programme for undertaking such actions and the dates by which this programme will be completed, such dates being reasonable in relation to the importance or urgency of the particular Service(s) subject to the Service(s) Improvement Plan to the proper discharge of the Client's own functions;
- d) identify any actions or consents required from the Client and/or any other body to facilitate the Service Provider's programme of remedial actions;
- e) specify proposed criteria for the purpose of auditing completion of the remedial actions and resolution of the Service(s) failure;
- f) achieve a permanent resolution to such Actual Performance and prevent its re-occurrence;

12.1.5 For the avoidance of doubt, the formulation and implementation of a Service Improvement Plan does not relieve the Service Provider of its obligations under this Agreement. The Service Provider will, at all times, expedite ways by which the Actual Performance of the Service subject to Service(s) Improvement achieves the agreed Service Levels.

12.1.6 Following receipt of a Service(s) Improvement Plan, the Client may, acting reasonably and within five Business Days:

- a) agree it; or
- b) reject it and require the Service Provider to submit a revised

Service(s)Improvement Plan within ten Business days of such rejection.

- 12.1.7 where the Service Provider fails to submit a revised Service(s) Improvement Plan in accordance with sub-Clause 12.1.6(b) or the revised Service(s) Improvement Plan is, in the Client's reasonable opinion, unacceptable, the matter shall be resolved in accordance with Clause 14 (Dispute Resolution Procedure).
- 12.1.8 the Service Provider shall implement all the remedial actions set out in a Service(s) Improvement Plan by the date specified in the Service(s) Improvement Plan and at the Service Provider's own cost.
- 12.1.9 the Client's Representative shall be authorised to act on behalf of the Client for the purposes of measuring progress against a Service(s) Improvement Plan, completion of the audit and closure of the Service(s) Improvement Plan following completion.
- 12.1.10 a Service(s) Improvement Plan shall remain open until the remedial actions to be carried out under it by the Service Provider have been audited by the Client, and the Client's Representative has confirmed in writing that all such remedial actions have been completed in accordance with the agreed Service(s) Improvement Plan and to the Client's relevant audit standards, whereupon the Service(s) Improvement Plan shall be closed.
- 12.1.11 where the remedial actions required under a Service(s) Improvement Plan are carried out and completed but do not succeed in rectifying the circumstances which have resulted in the Actual Performance being below the agreed Service Level or in achieving a permanent resolution of such Actual Performance being below the agreed Service Level and preventing its re-occurrence, then the Client may, at its sole discretion:
 - a) agree an extension to the time for carrying out and completing the Service(s) Improvement Plan; or
 - b) agree a revised Service(s) Improvement Plan; or
 - c) issue a Service(s) Suspension Notice; or
 - d) issue a notice to terminate in accordance with Clause 18.3.
- 12.1.12 where relevant, the Client shall endeavour to procure any actions or consents identified in a Service(s) Improvement Plan as required from the Client or any other body. Where the Client is unable to procure such compliance, it may:
 - a) agree that the Service Provider is no longer required to complete the remedial actions identified in the Service(s) Improvement Plan for which such actions or consents are needed and close the relevant Service(s) Improvement Plan; or

- b) agree with the Service Provider a revised date for completion of the Service(s) Improvement Plan

12.1.13 where the Parties agree that the Service Provider is no longer required to complete the remedial actions identified in the Service(s) Improvement Plan and it is thereby, not possible for the Service Provider to meet the Service Levels set out in Schedule 3, the Parties will execute a Contract Variation in accordance with the provisions of Clause 17 (Contract Variations Procedure).

12.1.14 a report on progress against each open Service(s) Improvement Plan shall be provided and considered either:

- a) at the regular meetings between the Client's Representative and the Key Account Manager; or
- b) where an open Service(s) Improvement Plan requires such a report to be provided and considered more frequently, at meetings of the Client's Representative and the Key Account Manager to be arranged as required by the open Service Improvement Plan.

12.1.15 a Service(s) Improvement Plan may relate to one or more failures to achieve agreed Service Levels.

12.1.16 where the Client issues a Service(s) Suspension Notice or a Termination Notice:

the Client will be entitled to obtain any of the relevant Services affected from a Substitute Service Provider until such time as it is satisfied that the breach has been remedied or, in the event of Termination or Expiry of this Agreement, until such time as the Service Provider's obligations cease.

13. Penalties

13.1 In the event that the Service Provider fails to adhere to the Service Levels set out in Schedule 3 Part 6 KPIs, and the provisions of any Service Improvement Notices as set out in clause 12; a financial penalty of not more than 2% of the service line price would be applied to the annual service line value, subsequent to completion of the dispute resolution process outlined at clause 14.

13.2 In the event two or more service lines fail to adhere to the Service Levels set out in Schedule 3 the maximum financial penalty will not exceed 2% of total in year contract value in accordance with the definitions and calculations set out in Schedule 4.

14. Dispute Resolution Procedure

14.1 The provisions of 14.2 to 14.21 will not apply when any Party in Dispute seeks an injunction relating to a matter arising out of 20 (*Confidential Information of the*

Parties) Escalated Negotiation

Escalated Negotiations

- 14.2 If any Dispute arises out of the Agreement, either Party may serve a notice on the other Party to commence formal resolution of the Dispute'. The formal period of negotiation is 15 Business Days
- 14.2.1 for the first 10 Business Days, by a senior person who where practicable has not had any direct day-to-day involvement in the matter and has authority to settle the Dispute; and
- 14.2.2 for the last 5 Business Days, by their chief executive, director, or member of its Governing Body who has authority to settle the Dispute.
- 14.3 Where practicable, no Party in Dispute should be represented by the same individual under 14.2.1 and 14.2.2.

Mediation

- 14.4 If the Parties in Dispute are unable to settle the Dispute by negotiation, they must, within 5 Business Days after the end of the **Negotiation Period**, submit the Dispute:
- 14.4.1 to mediation arranged by NHS Improvement and/or NHS England, where the Commissioners are CCGs and/or NHS England; or
- 14.4.2 to mediation by CEDR or other independent body or organisation agreed between the Parties and set out in the Particulars, in all other cases.
- 14.5 Mediations under 14.4.1 will follow the mediation process agreed between NHS Improvement and NHS England from time to time.
- 14.6 Mediations under 14.4.2 will follow the mediation process of CEDR or other independent body or organisation named in the Particulars.
- 14.7 Any mediation shall be completed within [30] Business Days of referral to the mediator and any agreement arising therefrom should be recorded in writing and signed by the Parties and shall be binding and final to the extent set out in such agreement.

Expert Determination

- 14.8 If the Parties in Dispute are unable to settle the Dispute through mediation, the Dispute must be referred to expert determination, by one Party in Dispute giving written notice to that effect to the other Parties in Dispute following closure of the failed mediation. The Expert Determination Notice must include a brief statement of the issue or issues which it is desired to refer, the expertise required in the expert, and the solution sought.

- 14.9 If the Parties in Dispute have agreed upon the identity of an expert and the expert has confirmed in writing their readiness and willingness to embark upon the expert determination, then that person will be appointed as the Expert.
- 14.10 Where the Parties in Dispute have not agreed upon an expert, or where that person has not confirmed their willingness to act, then any Party in Dispute may apply to CEDR for the appointment of an expert. The request must be in writing, accompanied by a copy of the Expert Determination Notice and the appropriate fee and must be copied simultaneously to the other Parties in Dispute. The other Parties in Dispute may make representations to CEDR regarding the expertise required in the expert. The person nominated by CEDR will be appointed as the Expert.
- 14.11 The Party in Dispute serving the Expert Determination Notice must send to the Expert and to the other Parties in Dispute within 5 Business Days of the appointment of the Expert a statement of its case, including a copy of the Expert Determination Notice, the Contract, details of the circumstances giving rise to the Dispute, the reasons why it is entitled to the solution sought, and the evidence upon which it relies. The statement of case must be confined to the issues raised in the Expert Determination Notice.
- 14.12 The Parties in Dispute not serving the Expert Determination Notice must reply to the Expert and to the other Parties in Dispute within 5 Business Days of receiving the statement of case, giving details of what is agreed and what is disputed in the statement of case and the reasons why.
- 14.13 The Expert must produce a written decision with reasons within 30 Business Days of receipt of the statement of case referred to in 14.11, or any longer period as is agreed by the Parties in Dispute after the Dispute has been referred.
- 14.14 The Expert will have complete discretion as to how to conduct the expert determination, and will establish the procedure and timetable.
- 14.15 The Parties in Dispute must comply with any request or direction of the Expert in relation to the expert determination.
- 14.16 The Expert must decide the matters set out in the Expert Determination Notice, together with any other matters which the Parties in Dispute and the Expert agree are within the scope of the expert determination.
- 14.17 The Parties in Dispute must bear their own costs and expenses incurred in the expert determination and are jointly liable for the costs of the Expert.
- 14.18 The decision of the Expert is final and binding, except in the case of fraud, collusion, bias, manifest error or material breach of instructions on the part of the Expert, in which case a Party will be permitted to apply to Court for an Order that:
- 14.18.1 the Expert reconsider his decision (either all of it or part of it); or
- 14.18.2 the Expert's decision be set aside (either all of it or part of it).

- 14.19 If a Party in Dispute does not abide by the Expert's decision the other Parties in Dispute may apply to Court to enforce it.
- 14.20 All information, whether oral, in writing or otherwise, arising out of or in connection with the expert determination will be inadmissible as evidence in any current or subsequent litigation or other proceedings whatsoever, with the exception of any information which would in any event have been admissible or disclosable in any such proceedings.
- 14.21 The Expert is not liable for anything done or omitted in the discharge or purported discharge of their functions, except in the case of fraud or bad faith, collusion, bias, or material breach of instructions on the part of the Expert.
- 14.22 The Expert is appointed to determine the Dispute or Disputes between the Parties in Dispute and the Expert's decision may not be relied upon by third parties, to whom the Expert will have no duty of care.

15. Confidentiality

- 15.1 Each Party undertakes that, except as provided by sub-Clause 15.2 or 19.8.5 or as authorised in writing by the other Party, it shall, at all times during the continuance of this Agreement and for five (5) years after its termination:
- 15.1.1 keep confidential all Confidential Information and Personal Confidential Data;
 - 15.1.2 not disclose any Confidential Information or Personal Confidential Data to any other person;
 - 15.1.3 not use any Confidential Information or Personal Confidential Data for any purpose other than as contemplated by and subject to the terms and conditions of this Agreement;
 - 15.1.4 not make any copies of, record in any way or part with possession of any Confidential Information or Personal Confidential Data; and
 - 15.1.5 ensure that none of its directors, officers, employees, agents or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 15.1.1 to 15.1.4 above.
- 15.2 Either Party may:
- 15.2.1 disclose any Confidential Information or Personal Confidential Data to:
 - 15.2.1.1 any sub-contractor of that Party; or

15.2.1.2 any governmental or other authority or regulatory body (but only if requested by such a body); or

15.2.1.3 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies; or

15.2.1.4 to comply with Legislation,

to such extent only as is necessary for the purposes contemplated by this Agreement, or as required by law, and in each case subject to that Party first informing the person, party or body in question that the Confidential Information or Personal Confidential Data is confidential and (except where the disclosure is to any such body as is mentioned in sub-Clause 15.2.1.2 above or any employee or officer of any such body) obtaining and submitting to the other Party a written undertaking from the person in question, as nearly as practicable in the terms of this Clause 15, to keep the Confidential Information and Personal Confidential Data confidential and to use it only for the purposes for which the disclosure is made; and

15.2.2 use any Confidential Information or Personal Confidential Data for any purpose, or disclose it to any other person, to the extent only that it is at the date of this Agreement, or at any time after that date becomes, public knowledge through no fault of that Party, provided that in doing so that Party does not disclose any part of that Confidential Information or Personal Confidential Data which is not public knowledge; in or comes into the public domain other than by breach of this Agreement.

15.3 The obligations contained within Clauses 15.1 and 15.2 shall not apply to any Confidential Information or Personal Confidential Data which:-

15.3.1 the receiving party can demonstrate by its records that the Confidential Information or Personal Confidential Data was in its possession before it received it from the disclosing party;

15.3.2 the receiving party can prove that it was obtained or was able to obtain from a source other than the disclosing party without breaching any obligation of confidence.

15.4 The provisions of this Clause 15 shall continue in force in accordance with their terms, notwithstanding the Termination of this Agreement for any reason.

DATA PROTECTION

15.5 The Parties acknowledge that, for the purposes of the Data Protection Legislation:

- 15.5.1 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, each Party 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.
- 15.5.2 The Service Provider and the Client 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 under any Law and guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).
- 15.5.3 Where, as a requirement of this Agreement, either Party is Processing Personal Data relating to patients and/or service users as part of the Services, it shall:
- (a) complete and publish an annual information governance assessment using the NHS Data Security and Protection toolkit;
 - (b) achieve a minimum level 2 performance against all requirements in the relevant NHS Data Security and Protection toolkit;
 - (c) nominate an information governance lead able to communicate with its board of directors or equivalent governance body, who will be responsible for information governance and from whom its 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;
 - (d) report all incidents of data loss and breach of confidence in accordance with Department of Health and/or the NHS England and/or Health and Social Care Information Centre guidelines;
 - (e) put in place and maintain policies that describe individual personal responsibilities for handling Personal Data and apply those policies vigorously;

- (f) put in place and maintain a policy that supports its obligations under the NHS Care Records Guarantee (being the rules which govern information held in the NHS Care Records Service, which is the electronic patient/service user record management service providing authorised healthcare professionals access to a patient's integrated electronic care record);
- (g) put in place and maintain agreed protocols for the lawful sharing of Personal Data with other NHS organisations and (as appropriate) with non-NHS organisations in circumstances in which sharing of that data is required under this Agreement;
- (h) 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; and
- (i) comply with any new and/or updated requirements, Guidance and/or policies notified by one Party to the other from time to time (acting reasonably) relating to the Processing and/or protection of Personal Data.

15.5.4 Where any Personal Data is Processed by any sub-contractor in connection with this Agreement, the Party contracting with that sub contractor shall procure that such sub-contractor shall comply with the relevant obligations set out in this Clause **Error! Reference source not found.**, as if such sub-contractor were the Service Provider.

The Service Provider as a Data Processor

- 15.5.5 Clauses 15.5.6 to 15.5.14 shall apply where the Service Provider acts as a Data Processor on behalf of the Client.
- 15.5.6 The Service Provider shall notify the Client immediately if it considers that any of the Client's instructions infringe the Data Protection Legislation and may not process data until the Client (1) makes arrangements to ensure the lawfulness of its processing; or (2) revises its instructions.
- 15.5.7 At the Client's cost, the Service Provider shall provide reasonable assistance to the Client in the preparation of any Data Protection impact assessment prior to commencing any processing. Such assistance may, at the discretion of the Client, include:
 - (a) a systematic description of the envisaged processing operations and the purpose of the processing;

- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

15.5.8 The Service Provider shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with Schedule [x] (Data Processing), unless the Service Provider is required to do otherwise by Law. If it is so required, the Service Provider shall promptly notify the Client before processing the Personal Data unless to give such notice is prohibited by Law;
- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Client as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that:
 - (i) Service Provider staff and personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule [x] (Data Processing)); and
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Service Provider staff and personnel who have access to the Personal Data and ensure that they:
 - 1) are aware of and comply with the Service Provider's duties under this clause;
 - 2) are subject to appropriate confidentiality undertakings with the Service Provider or any sub-contractor or sub-processor;
 - 3) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing

to do so by the Client or as otherwise permitted by this Agreement;

- 4) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 5) do not transfer Personal Data outside of the EU unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
 - a. there are appropriate safeguards in relation to the transfer (in accordance with GDPR Article 46) as determined by the Client;
 - b. the Data Subject has enforceable rights and effective legal remedies;
 - c. the Service Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Client in meeting its obligations);
 - d. the Service Provider complies with any reasonable instructions notified to it from time to time by the Client with respect to the processing of the Personal Data; and
 - e. at the written direction of the Client, delete or return Personal Data (and any copies of it) to the Client on termination of the Agreement, (i) save that the Service Provider (may reasonably keep a copy of the data processed for audit and governance purposes; (ii) or unless the Service Provider is required by Law to retain the Personal Data.

15.5.9 Subject to clause 15.5.10, the Service Provider shall notify the Client promptly if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of any actual or suspected a Data Loss Event.

15.5.10 The Service Provider's obligation to notify under clause 15.5.9 shall include the provision of further information to the Client in phases, as details become available.

15.5.11 The Service Provider shall promptly notify the Client of any complaint or request received under 15.5.9 and provide:

- (a) the Client with full details and copies of the complaint, communication or request;
- (b) such reasonable assistance as is requested by the Client to enable the Client to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Client, at its request and expense, with any Personal Data it holds in relation to a Data Subject;
- (d) reasonable assistance as requested by the Client following any Data Loss Event; and
- (e) reasonable assistance as requested by the Client with respect to any request from the Information Commissioner's Office, or any consultation by the Client with the Information Commissioner's Office.

15.5.12 The Service Provider shall maintain complete and accurate records and information to demonstrate its compliance with clauses 15.5.6 to 15.5.11.

15.5.13 The Client may, at any time on not less than thirty (30) working days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

15.5.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Client may on not less than thirty (30) working days' notice to the Service Provider amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

15.6 Controller Responsibilities

15.6.1 The Client is the Controller of the data insofar as it is personal confidential data and, shall at all time, only process personal data lawfully and in accordance with the Data Protection legislation principles.

15.6.2 It is the legal duty of the Controller to comply with the data protection principles in relation to all personal confidential data with respect to which he is a Controller (unless an exemption applies).

15.6.3 The Client shall not instruct the Service Provider to process personal confidential data on their behalf under this contract and/or as detailed in any contract and Data Sharing Agreement with NHS Digital where the Client does not have a secure basis in law to process that data.

15.6.4 The Controller is legally responsible for the data processing carried out by the contracted Processor.

15.6.5 The eight Data Protection Act principles are set out in Schedule 1 parts I & II of the Act. The interpretation of the seventh principle set out in Part II requires that:

Where processing of personal confidential data is carried out by a Processor on behalf of the Controller, the Controller must:

- a) choose a Processor providing sufficient guarantees in respect of the technical and organisational security measures governing the processing to be carried out, and
- b) take reasonable steps to ensure compliance with those measures¹, and

Where processing of personal confidential data is carried out by a Processor on behalf of the Controller, the Controller is not to be regarded as complying with the seventh principle unless:

- c) the processing is carried out under contract
 - (i) which is made or evidenced in writing, and
 - (ii) under which the Processor is to act only on instructions from the Controller, and
- d) the contract requires the Processor to comply with obligations equivalent to those imposed on the Controller by the seventh principle²

15.6.6 The Client, as the Controller, is entitled during the term of this contract and/or as detailed in any contract and Data Sharing Agreement with NHS Digital, to require the Service Provider, as the Processor, to provide reasonable assurance

that the technical and organisational security measures to protect the processing of personal confidential data it is contracted to do. This includes the entitlement to audit the Processor's premises, systems, procedures, documents and staff as may be desirable or necessary to ensure compliance with this contract and/or as detailed in any contract and Data Sharing Agreement with NHS Digital and/or with the law.

15.7 PROCESSOR RESPONSIBILITIES

- 15.7.1 The Service Provider is the Processor and shall at all times process personal confidential data only as instructed to do so by the Controller and in accordance with the Data Protection legislation principles and the Contract.
- 15.7.2 The Processor also undertakes to fully comply with all related and relevant legislation, regulatory and industry standards, including (but not limited to) the NHS Care Record Guarantee and the NHS Constitution.
- 15.7.3 The Service Provider, as the Processor, shall have in place appropriate technical and organisational security measures that protect the personal confidential data it is contracted to process on behalf of the Controller from unauthorised or unlawful processing, accidental loss or destruction of, or damage.
- 15.7.4 The Service Provider shall provide reasonable assurances and guarantees to the Controller as required that those technical and organisational security measures in place are both appropriate and effective in protecting the processing of personal confidential data.
- 15.7.5 The Service Provider agrees to maintain good information governance standards and practices, by meeting or exceeding the Information Governance Toolkit requirements to a minimum of level 2 across all requirements of the toolkit.
- 15.7.6 The Processor shall not share the personal confidential data with any third party without the prior written permission of the Controller or process personal data in any way or for any purpose that has not been instructed and authorised by the Controller.
- 15.7.7 Neither shall the Service Provider sub-contract a third party to process the Controller's personal data without the prior knowledge and written agreement of the Controller, and only then having provided all the necessary assurance and guarantees of their adequate organisational and technical security measures.
- 15.7.8 The Processor shall not transfer or permit the transfer of the personal confidential data on to any territory outside the European Economic Area.

15.8 Data Security Requirements

The Processor shall:

- 15.8.1 Have regard to the state of technological development and to the cost of implementing any measures, provide a level of security (including appropriate technical and organisational measures) appropriate to the harm that might result from unauthorised or unlawful processing of personal confidential data

or the accidental loss, damage or destruction of personal data and the nature of that personal confidential data.

15.8.2 Ensure that access to the personal confidential data is limited to those employees who need access to meet the Processors obligations under this contract and/or as detailed in any contract and Data Sharing Agreement with NHS Digital.

15.8.3 Take reasonable steps to ensure the reliability of the Processors' personnel who have access to the personal confidential data, which shall include:

15.8.3.1 Ensuring that all staff engaged by the Service Provider understand the confidential nature of the personal data, and have received appropriate training in data protection prior to their use of the data, and

15.8.3.2 have signed a written undertaking that they understand and will act in accordance with their responsibilities for confidentiality under contract.

The Processor shall ensure:

15.8.4 That is has properly configured access rights for its staff, including a well-defined starters and leavers process to ensure appropriate access control.

15.8.5 That suitable and effective authentication processes are established and used to protect personal confidential data.

15.8.6 That the personal confidential data is backed up on a regular basis and that any back up data is subject to vigorous security measures as necessary to protect the availability, integrity and confidentiality of the data.

15.8.7 Data transferred electronically is encrypted in accordance with national standards.

15.8.8 Employees are not able to access the data remotely e.g. from home or via their own electronic device or internet portal other than through a secure electronic network and in accordance with organisational remote working policy. No data shall be stored in such devices.

15.8.9 Data that requires disposal is disposed of securely and confidentially in accordance with section 15.11.

15.9 Personal Confidential Data arrangements

15.9.1 Where the Provider is required to process pseudonymised data on behalf of the Recipient under processing requirement established by NHS England and NHS Digital arrangements, the Provider is responsible for obtaining assurances in accordance with the various stages of the approval process as determined by NHS Digital.

15.9.2 The Recipient will require assurance that the Provider has received the necessary approvals to become accredited.

15.9.3 The Service Provider is responsible for immediately notifying the Recipient if they have been refused approval to process data or, if the approval status is lost or suspended, or of any information security incident resulting in accreditation status being revoked and potential enforcement by the Information Recipient.

15.9.4 Where the Provider is processing personal confidential data on behalf of the Recipient under any processing requirement established by NHS England and NHS Digital, they must only do so in accordance with this contract together with the Data Sharing Contract established with NHS Digital and, in particular must:

- have robust procedures in place to maintain separation of Personal Confidential Data from other data that may also be in their possession;
- process data in a way that protects the data from inappropriate use and prevents the identity of individuals to whom the data relates from being identified;
- ensure that staff are appropriately trained and aware of their individual responsibilities under the Personal Confidential arrangements, and
- ensure those arrangements are adequately set out in job descriptions and employment contract clauses.

15.10 Serious information breach incident, incident reporting and duty of candour. Without limitation to any other information governance requirements set out in this Agreement, each Party shall:

- (a) notify the other 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 other Party's information governance policies; and
- (b) fully cooperate with any audits or investigations relating to information security and any privacy impact assessments undertaken by the other Party and shall provide full information as may be reasonably requested by the other Party in relation to such audits, investigations and assessments.

15.10.1 The Processor shall have procedures in place to monitor access and to identify unauthorised and unlawful access and use of personal Confidential data.

15.10.3 In so far as the Controller is responsible for the personal confidential data, it is the Controller's responsibility to ensure that the incident is reported in accordance with the Department of Health policy and procedures and for informing the relevant data subjects as appropriate.

15.10.4 Each Party will ensure that it puts in place and maintains an information security management plan appropriate to this Agreement, the type of Services being provided and the obligations placed on the Service Provider.

15.10.5 Each Party shall obtain and maintain certification under the HM Government Cyber Essentials Scheme.

15.10.6 A data sharing agreement shall be agreed and signed between the Parties and attached to this Agreement at Schedule [x] (Data Sharing Agreement).] where the service provided requires the processing of personal or personal confidential data (sensitive/special category data).

15.11 Secure Destruction

15.11.1 The Processor shall ensure that NHS information held in paper form (regardless of whether originally provided by the Controller or printed from the Processor's IT systems) is destroyed using a cross cut shredder or subcontracted to a confidential waste company that complies with European Standard EN15713.

15.11.2 The Processor shall ensure that electronic storage media used to hold or process NHS Information is destroyed or overwritten to current National Cyber Security Centre standards as defined by the National Cyber Security Centre: www.ncsc.gov.uk.

15.11.3 In the event of any bad or unusable sectors that cannot be overwritten, the Processor shall ensure complete and irretrievable destruction of the media itself.

15.11.4 The Processor shall provide the Controller with copies of all relevant overwriting verification reports and/or certificates of secure destruction of NHS information at the conclusion of the Agreement.

15.12 This Clause shall survive the termination or expiry of this Agreement.

GDPR

On the 25th of May 2018, the General Data Protection Regulation (GDPR) will come into effect. The GDPR will be brought in with the upcoming Data Protection Bill, which shall repeal the previous Data Protection legislation (DPA 1998) that used to govern the use of data. The GDPR and DPA share a lot of concepts and principles, however GDPR offers greater rights for data subjects and requires more from organisations to demonstrate compliance. A breach could bring a fine as high as 20 million Euros or 4% of the annual turnover, whichever is higher.

Broadly speaking there are two types of contract that involve the processing of personal data that will need to be reviewed and updated to take account of these changes:

- **Data processing agreements** These are agreements where a supplier is acting as a “**Processor**”. A Processor is an organisation that can only process personal data in accordance with NHS England’s instructions.
- **Data sharing agreements or data sharing protocols** These are agreements, protocols or memoranda of understanding under which NHS England shares information with another “**Controller**” who is not bound to follow NHS England’s instructions. For ease of reference this guidance refers to arrangements for data sharing with other Controllers as data sharing protocols.

GDPR Time Scale: As GDPR comes into force on the 25th May. This contract will follow the GDPR with immediate effect from/on 25th May 2018.

Reference to Data Protection Act 1998: This contracts/SLA regarding data protection have reference to the Data Protection Act 1998 as the governing legislation, as it has been and will be until the 25th of May 2018. As the DPA 1998 will be repealed, any reference to it will become out of date unless the data processing has been future-proofed.

Substituting references to the DPA 1998 with GDPR will not be sufficient, as the GDPR will not operate alone. There will be a second Data Protection Act 2018 to be brought in at some point before the 25th May 2018 that will exist alongside and support GDPR. Also, once the UK leaves the European Union the GDPR will no longer apply and provisions in the new Data Protection Act 2018 will kick in.

The above is just a brief introduction of GDPR. The detailed version will be applicable with immediate effect on this the contracts after 25th May 2018.

16 Intellectual Property Rights

- 16.1 Except as set out expressly in this Agreement, no Party shall acquire the Intellectual Property Rights of the other Party.
- 16.2 Where, during the Agreement, Intellectual Property Rights are, in the view of one or other Party, created which are owned by that Party, then the Party will notify the other Party that such is the case. The Party in receipt of such notice shall, within 20 Business Days, either agree or disagree that Intellectual Property Rights have been created that are owned by the notifying party. Where the Parties fail to agree the Dispute Resolution Procedure set out at Clause 14 will be applied.
- 16.3 Where no Party notifies the other Party of a claim to Intellectual Property Rights, any such Intellectual Property Rights that may, in fact, be created will be jointly-owned.
- 16.4 Through the operation of Services no Intellectual Property Rights shall transfer from one

Party to the other, unless explicitly agreed and documented in advance.

- 16.5 For Intellectual Property Rights owned by the Client, the Client shall be deemed, for the Term of this Agreement, to automatically grant a royalty-free, non-exclusive license of any and all such rights to the Service Provider to use the same in accordance with the terms and conditions of this Agreement and the Services.
- 16.6 For Intellectual Property Rights owned by the Service Provider, the Service Provider shall be deemed, for the Term of this Agreement, to automatically grant a royalty-free, non-exclusive license of any and all such rights to the Client to use the same in accordance with the terms and conditions of this Agreement and the Services, which shall include the dissemination of best practice with the NHS.
- 16.7 For Intellectual Property Rights owned jointly by the Client and the Service Provider, each Party shall be deemed, for the Term of this Agreement, to automatically grant a royalty-free, non-exclusive licence of any and all such rights to the other Party to use the same in accordance with the terms and conditions of this Agreement and the Services, which shall include the dissemination of best practice with the NHS.
- 16.8 From time to time, the Service Provider shall disclose all documents and information concerning the development of Best Practice IPR to the Client. The Service Provider shall grant the Client a royalty-free, exclusive licence in perpetuity to use such Best Practice IPR, albeit solely for the purpose of teaching, training and research within its own organisation and not for transferral to the private sector or outside of an ICS footprint.
- 16.9 The Parties agree that additional agreements may need to be entered into between the Parties in relation to the joint ownership of Intellectual property Rights where it may be necessary for the Parties to set out exactly how the Intellectual Property Rights are jointly owned. As a result, each Party agrees to use all reasonable endeavours in order to enter into such deeds, agreements and notices as the other may reasonably require in order to document the joint ownership of such Intellectual Property Rights and if any such jointly owned Intellectual Property Rights are registerable, the Parties shall be jointly responsible for the filing of applications for the registration of such rights, together with any renewals or modifications thereof and the Parties shall bear an equal proportion of any fees and costs (including reasonable agents and lawyers' fees), in relation to such registrations.
- 16.10 In complying with the provisions of this Clause 16 and subject to Clause 16.9, both Parties hereby undertake to execute any such agreements and perform any such actions which may be necessary to put such licenses into effect and shall each bear any costs associated therewith.

17. Contract Variations Procedure

- 17.1 Save for Clause 3.4, which may not be amended or varied, this Agreement may not be

amended or varied other than in accordance with this Clause 18.

- 17.2 Where such amendment or variation is agreed in accordance with this Clause 18, it will be a Contract Variation.
- 17.3 The provisions of this Agreement and the Services described in Schedule 3 may be varied at any time by agreement in writing between the Service Provider and the Client.
- 17.4 Each Party that requests a Contract Variation shall have regard for its impact on the other Services.
- 17.5 Where a Client proposed Contract Variation would have the effect of increasing the cost of the Service(s), then the Service Provider will inform the Client of any increase in accordance with the Service Specification as detailed in Schedule 3.
- 17.6 The Party requesting a Contract Variation pursuant to this Clause 18 will issue a Contract Variation Notice. The Contract Variation Notice shall:
 - 17.6.1 provide sufficient information to enable the Party in receipt of the Contract Variation Notice to assess the extent of the Contract Variation and consider whether any change to the Service Prices is required in order to implement the Contract Variation.
 - 17.6.2 specify a time limit within which the Party in receipt of the Contract Variation Notice shall respond to the request for a Contract Variation. Such time limits shall be reasonable having regard to the nature of the Contract Variation.
- 17.7 If the Contract Variation is agreed, then the Parties shall confirm the same in writing and the terms of this Agreement shall be modified so that they accurately reflect the agreed Contract Variation. An agreed Contract Variation will be recorded in the Record of Agreed Contract Variations in the form set out in Schedule 6.
- 17.8 Where the Parties fail to agree a Contract Variation, having followed the procedure outlined in sub-Clause 17.6:
 - 17.8.1 the Contract Variation Notice is withdrawn by the Party first issuing it; or
 - 17.8.2 the Dispute Resolution Procedure set out at Clause 14 will be applied.
- 17.9 If any Change in Law directly alters the costs incurred or to be incurred by the Service Provider in meeting its obligations under the Agreement or otherwise requires any deletion, amendment or alteration of the extent of any obligation to be met by the Service Provider under the Agreement or an addition to the obligations of the Service provider under the Agreement, the Service Provider shall notify the Client accordingly and the Parties shall negotiate in good faith to agree a Contract Variation to the

Agreement and, where relevant, to amend the Service Prices to account for the introduction of the Change in Law.

18. Expiry and Termination

18.1 This Agreement shall commence on the Commencement Date and, unless terminated earlier in accordance with the terms of this Agreement or the general law, shall continue until the earlier of:

18.1.1 the end of the Term; or

18.1.2 the date on which the Service Provider becomes independent of NHS England.

18.2 The Client shall be entitled to extend the Term by giving the Service Provider written notice no less than six (6) months prior to the date on which this Agreement would otherwise have expired, provided that the duration of the extension shall be no longer than twenty-four (24) months in total.

Termination: No Fault

18.3 Either Party may terminate this Agreement by giving to the other Party written notice of not less than twelve (12) months.

18.4 Either Party may terminate a Service by giving to the other Party written notice in accordance with the timescales set out in Schedule 1.

Termination: Default

18.5 Either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:

18.5.1 the other Party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than thirty (30) days after being notified in writing to make such payment;

18.5.2 the other Party commits a material breach of any term of this Agreement which breach is irremediable or (if such a breach is remedial) fails to remedy that breach within twenty (20) Business Days after being notified in writing to do so;

18.5.3 the other Party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;

18.5.4 the other Party suffers a Force Majeure Event which prevents it from performing its obligations under this Agreement for a continuous period of thirty (30) days, provided that, where relevant, the terminating Party may terminate the Services affected by the Force Majeure Event only; or

18.5.5 NHS England fails to authorise a Party to conduct activity in connection with this Agreement or otherwise withdraws its authorisation at any time during the Term.

Termination: Client's right to terminate

18.6 The Client may terminate this Agreement forthwith either in its entirety or in respect of the relevant Service(s), by giving written notice to the Service Provider if:

18.6.1 the Service Provider fails to provide the Service(s) in compliance with the Service Levels and further fails to comply with the Service(s) Improvement provisions set out in Clause 12;

18.6.2 NHS England exercises its right to substitute the Service Provider;

18.6.3 NHS England instructs the Client to conduct a competition for some or all of the Services set out in Schedule 3.

Termination: Service Provider's right to terminate

18.7 The Service Provider shall be entitled to terminate this Agreement immediately in the event that a Service(s) Suspension Notice is issued by the Client and not withdrawn within ninety (90) days of issue.

18.8 The right for either Party to terminate this Agreement under the terms of this Clause 18 shall not prejudice any other right or remedy available to the Parties.

19. Obligations on Expiry or Termination of this Agreement

19.1 This Clause 19 shall apply on Expiry or Termination of this Agreement (howsoever arising) and on the Termination of any individual Service(s) (howsoever arising). References in this Clause to the Services shall where applicable be read as a reference to the relevant individual Service(s) which are subject to Termination.

19.2 The Service Provider shall provide such assistance as the Client may reasonably require to affect a full and orderly transfer of the Services either to the Client or to a third party nominated by the Client. The Service Provider shall furnish the Client or the third party with all reasonable information or documents reasonably required to perform the Services (including staffing details). All such assistance shall be provided within a reasonable time having regard to the circumstances of the transfer.

19.3 Pursuant to Clause 19.3, the Service Provider shall produce an Exit Management Plan. This Exit Management Plan will comprehensively cover all activities and the associated liaison and assistance which should be provided by the Service Provider for the successful transfer of the Services to the Client and/or a third party nominated by the Client.

19.4 The Exit Management Plan(s) shall be delivered to and agreed by the Client (if appropriate) no later than 3 months prior to the end of the Term of this Agreement or the date of Termination of this Agreement or any part thereof.

19.5 The Exit Management Plan shall include the following information to the extent that such information is required to enable the Client or a third party nominated by the Client to provide the Services, such information to be provided by the Service Provider within the Exit Management Plan:

19.5.1 a description of the tasks to be performed in order to achieve an orderly transfer of the Services;

19.5.2 estimates of the resources required by the Service Provider to perform the tasks and an indication of any Client resources that may be required;

19.5.3 estimates of the timescales necessary for the orderly execution of the Exit Management Plan;

19.5.4 a chart showing which tasks are dependent on the completion of any other task or tasks;

19.5.5 a process for disclosure of agreed documentation used by the Service Provider, Service Provider Personnel and any Sub-Contractors in support of provision of the Services (including designs, specifications, operations manuals, user-related documentation);

19.5.6 a process for disclosure of supporting documentation critical to service delivery;

19.5.7 a process for disclosure of full details of the information relating to Service Provider Staff;

19.5.8 a process for disclosure of full details of any third party contracts entered into by the Service Provider which relate to the Service Provider's provision of the Services (indicating which of these are third party contracts relating exclusively to the Services);

19.5.9 a process for disclosure of full details of any relevant Intellectual Property used by the Service Provider in the provision of the Services, detailing ownership of the relevant rights and any restrictions or conditions applying to their use;

19.5.10 proposals for knowledge transfer to the Client and/or the third party nominated by the Client in connection with the continuation of the provision of the Services

following the Expiry or Termination of this Agreement or Termination of any Service(s);

19.5.121 a process for disclosure of an inventory of any Client data and Service Provider owned data that is under the control of the Service Provider and details of the data structures in which the Client data is stored;

19.5.12 proposals for the transfer of any Client data and Service Provider owned data in the Service Provider's possession from the Service Provider to either the Client or a third party nominated by the Client, including:

- (a) proposed data transfer methods, both physical and electronic (wherever possible); and
- (b) proposed methods for ensuring the integrity of Client data on transfer.

19.5.13 proposals for the assignment or novation, where applicable, of any third party contracts which the Parties agree are to be so transferred from the Service Provider to the Client and/or a third party nominated by the Client;

19.5.14 proposals for the supply of any other information or assistance reasonably required by the Client or a third party nominated by the Client in order to effect an orderly hand over of the provision of the Services. This shall include resources to support any due diligence activities required as part of any future procurement undertaken by the Client.

19.6 The Client shall be responsible for reasonable costs incurred by the Service Provider in discharging its obligations under this Clause, except where the Agreement has been terminated by reason of:

19.6.1 a material breach of this Agreement by the Service Provider;

19.6.2 the Service Provider terminating this Agreement, either in full or in part, under the provisions of Clause 18.7

19.6.3 a Force Majeure Event as set out in sub-Clause 21.2, in which case the Service Provider shall be responsible for such costs.

19.7 The Service Provider shall be entitled to charge and the Client shall pay any exit fees in relation to any part of the Services that may no longer be required by the Client during the lifetime of this Agreement. Such exit fees shall be calculated according to the costs, losses and liabilities that the Service Provider incurs as a result of the Client electing to reduce its requirements for the Services, including any staff redundancies that may arise and liabilities the Service Provider may have to third party contractors. The Service Provider undertakes to use all reasonable endeavours in order to minimise redundancy and related costs.

19.8 Upon the Expiry or Termination (for any reason) of this Agreement:

- 19.8.1 any sum owing by either Party to the other Party under any of the provisions of this Agreement shall become immediately due and payable;
- 19.8.2 any rights or obligations to which any of the Parties to this Agreement may be entitled or be subject before its Expiry or Termination shall remain in full force and effect where they are expressly stated to survive such termination;
- 19.8.3 Expiry or Termination shall not affect or prejudice any right to damages or other remedy which any Party may have in respect of any breach of this Agreement which existed at or before the date of Expiry or Termination;
- 19.8.4 subject as provided in this Clause 19, and except in respect of any accrued rights, neither Party shall be under any further obligation to the other;
- 19.8.5 Upon Expiry or Termination of this Agreement, each Party shall, to the extent permissible by law, promptly:
 - a) return to the other Party all equipment, materials and property belonging to the other Party in connection with the provision of the Services under this Agreement;
 - b) except to the extent referred to in sub-Clause 15.3, forthwith cease to use, either directly or indirectly, any Confidential Information, and shall forthwith return to the other Party any documents in its possession or control which contain or record any Confidential Information;
 - c) erase all Confidential Information from their respective computer systems (to the extent possible); and
 - d) Any confidential information that is not returned or transferred to a new Provider due to legal restriction or requirement must remain confidential in perpetuity and only disclosed when the law enables the process.
 - e) on request, certify in writing to the other Party that it has complied with the requirements of this sub-Clause 19.9.5.
- 19.9 If the Client suspends or terminates a Service(s), and that Service(s) Suspension or Termination has a material adverse effect on the Service Provider, the Key Account Manager will notify the Client's Representative of the actions being taken to manage this adverse effect. The Key Account Manager will inform the Client's Representative of progress in completing these actions at their regular meetings until such time that such adverse effect is eliminated.
- 19.10 On receipt of a Suspension Notice or Termination Notice, the Parties will determine and agree the Service(s) Price of the suspended or terminated Service(s) to be extracted by

the Client from the Service Price(s) and the reasonable costs of implementing that Service(s) Suspension or Termination. Where the Parties fail to agree:

19.10.1 the Service Price(s) to be extracted; and/or

19.10.2 the reasonable costs to be incurred in effecting the Service(s) Suspension or Termination (such costs to include additional or unforeseen costs resulting directly from the Service(s) Suspension or Termination) then the Dispute Resolution Procedure set out at Clause 14 will be applied.

19.11 In the event that any client of the Service Provider, save for the Client, suspends or terminates a service(s) and that service suspension or termination has a material adverse effect on the Service Provider, the Key Account Manager will notify the Client's Representative of the actions being taken to manage this adverse effect. The Key Account Manager will inform the Client's Representative of progress in completing these actions at their regular meetings until such time that such adverse effect is eliminated.

20. Indemnity, Liability and Limits on Liability

20.1 The Service Provider shall indemnify and hold harmless the Client, its subcontractors, agents and employees from and against any and all claims, costs and liabilities howsoever arising and of whatsoever nature and whether in contract or in tort, including injury to or death of any person or persons or loss of or damage to any property arising out of or in respect of the performance or failure to perform its obligations under this Agreement if and to the extent that such losses, costs, damages and expenses are caused or contributed to by the negligent acts or omissions of the Service Provider or any persons for which the Service Provider is otherwise legally liable.

20.2 The Client shall indemnify and hold harmless the Service Provider, its subcontractors, agents and employees from and against any and all claims, costs and liabilities howsoever arising and of whatsoever nature and whether in contract or in tort, including injury to or death of any person or persons or loss of or damage to any property arising out of or in respect of the performance by the Client of its obligations under this Agreement if and to the extent that such losses, costs, damages and expenses are caused or contributed to by the negligent acts or omissions of the Client or any persons for which the client is otherwise legally liable.

20.3 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Agreement.

20.4 Notwithstanding any other provision of this Agreement neither Party limits or excludes its liability for:

20.4.1 fraud or fraudulent misrepresentation;

- 20.4.2 death or personal injury caused by its negligence;
 - 20.4.3 breach of any obligation as to title implied by statute; or
 - 20.4.4 any other act or omission, liability for which may not be limited under any applicable law.
- 20.5 Subject always to Clauses 20.3, 20.4 and 20.7, the Service Provider's total liability to the Client in respect of any losses, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall not, under any circumstances exceed, in the aggregate, a sum equal to the Service(s) Prices payable in any one year by the Client to the Service Provider under this Agreement.
- 20.6 Both Parties agree to take out and maintain in force adequate insurance throughout the Term, whether under the NHSLA Schemes or otherwise, in respect of their obligations under this Agreement.
- 20.7 Except as expressly provided in this Agreement, neither Party shall be liable or responsible to the other in contract, tort or otherwise (including any liability for negligence) for:
- 20.7.1 any loss of revenue, business, contracts, anticipated savings or profits, or any loss of use of facilities; or
 - 20.7.2 any special indirect or consequential loss howsoever arising.
 - 20.7.3 For the purposes of sub-Clause 21.7.1 "anticipated savings" means any expense which either Party expects to avoid incurring or to incur in a lesser amount than would otherwise have been the case by reason of the use of the Services provided by the Service Provider under this Agreement.

21. Force Majeure

Force Majeure

- 21.1 Neither Party to this Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party (a "Force Majeure Event") provided that this Party:
- 21.1.1 promptly notifies the other Party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;
 - 21.1.2 uses all reasonable endeavours to mitigate the effect of the Force Majeure Event to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 21.2 For the purposes of this Agreement causes of Force Majeure Events are limited to:

- 21.2.1 flood, earthquake, windstorm or other natural disaster;
 - 21.2.2 war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
 - 21.2.3 terrorist attack, civil war, civil commotion or riots, sabotage;
 - 21.2.4 nuclear, chemical or biological contamination or sonic boom;
 - 21.2.5 fire, explosion or accidental damage;
 - 21.2.6 loss at sea;
 - 21.2.7 extreme adverse weather conditions;
 - 21.2.8 enduring or repercussive interruption or failure of utility services, including but not limited to electric power, gas or water.
- 21.3 Any costs incurred as a result of Force Majeure Events shall be shared by both parties.

22. Nature of the Agreement

- 22.1 This Agreement is personal to the Parties and neither Party may assign, mortgage, or charge (otherwise than by floating charge) or sub-license any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder, except with the written consent of the other Party, such consent not to be unreasonably withheld.
- 22.2 The Service Provider may sub-contract the supply of Services or a part of the Services to any third party. The Service Provider shall maintain and, at the reasonable request of the Client, supply to the Client, an up-to-date list of any subcontractors engaged in the provision of any or all of the Services from time to time. In the event that the provider wishes to outsource a significant element of Services to third party suppliers, the Service Provider shall have regard to the views of the Client, acting reasonably, in respect of the evaluation of potential suppliers. In doing so, the provider will work with the Client to understand the Client position in relation to the proposed procurement and identify and account for the Client's requirements.
- 22.3 The Service Provider shall use its reasonable endeavours to ensure that its sub-contractors act in compliance with the Service Provider's obligations under this Agreement in its provision of the Services to the Client and notwithstanding any such sub-contracting the Service Provider shall remain responsible for fulfilling its obligations hereunder.
- 22.4 If at any time the Service Provider becomes aware of any act or omission or any proposed

act or omission by the Client or by any member, official, employee, subcontractor, service user of or visitor to the Client which;

22.4.1 prevents or hinders or may prevent or hinder the Service Provider and or its Sub-Contractors from providing the Services in accordance with the Agreement; and/or

22.4.2 would interfere with, or adversely affect a third party contract or the provision of the services connected with it; then the Service Provider shall immediately inform the client of that fact in writing and both Parties shall treat the matter as an Unforeseen Event in accordance with the procedure set out at Clauses 3.7-3.10 (inclusive) above. To the extent that the Service Provider is unable to comply with its obligations to its sub-contractors and or such obligations under Third Party Contracts as a result of an Unforeseen Event then the Provider shall be compensated by the Client for any direct and reasonable extra costs and or Losses incurred as a direct result) such costs and/or Losses to be agreed in advance between the Parties.

22.3 This Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

22.4 Each Party acknowledges that, in entering into this Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in this Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

22.5 No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

22.6 Subject to the provisions of Clause 16, at any time after the date hereof each of the Parties shall, at the request and cost of the other Party, execute or procure the execution of such documents and do or procure the doing of such acts and things as the Party so requiring may reasonably require for the purpose of giving to the Party so requiring the full benefit of all the provisions of this Agreement.

22.7 The Parties declare that they each have the right, power and authority and have taken all action necessary to execute and deliver and to exercise their rights and perform their obligations under this Agreement.

23. Severance

- 23.1 The Parties agree that, in the event that one or more of the provisions of this Agreement is found to be unlawful, invalid or otherwise unenforceable, that/those provisions shall be deemed severed from the remainder of this Agreement. The remainder of this Agreement shall be valid and enforceable.

24. Relationship of the Parties

- 24.1 Nothing in this Agreement shall constitute, or be deemed to constitute, a partnership between the Parties nor, except as expressly provided, shall it constitute, or be deemed to constitute an agency of any other Party for any purpose.
- 24.2 Subject to any express provisions to the contrary in this Agreement, the Service Provider shall have no right or authority to, and shall not do any act, enter into any contract, make any representation, give any warranty, incur any liability, assume any obligation, whether express or implied, of any kind on behalf of the Client or bind the Client in any way.

25. Notices

- 25.1 All notices under this Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
- 25.2 Notices shall be deemed to have been duly given:
- 25.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
 - 25.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or
 - 25.2.3 on the fifth Business Day following mailing, if mailed by national ordinary mail, postage prepaid; or
 - 25.2.4 on the fifth Business Day following mailing, if mailed by airmail, postage prepaid.
- in each case addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

26. Law and Jurisdiction

- 26.1 The Service Provider expects to remain an arm's length organisation of NHS England during the Term of this Agreement and therefore:

26.1.1 the Service Provider shall be deemed to be a Health Service Body for the purposes of section 9 of the National Health Service Act 2006;

26.1.2. this Agreement shall be an NHS Contract made between NHS bodies pursuant to section 9 of the National Health Service Act 2006;

26.1.3 in order to ensure this Agreement can take proper effect, the Parties acknowledge and agree that the Service Provider shall operate as and have the standing of an independent contractor and each party shall otherwise comply with its respective rights and obligations under this Agreement as if they are legally competent bodies.

26.2 This Agreement will expire on the date that the Service Provider becomes independent of NHS England.

27. Termination of this Agreement: Staff and the application of TUPE

The Transfer of Undertakings (TUPE) and Cabinet Office Statement of Practice (COSOP) will be applicable if required.