

## **G-CLOUD 11**

### **SYSTEM C HEALTHCARE LIMITED SUPPLIER TERMS**

#### **RELATING TO:**

- 1. MEDWAY PAS / EPR**
- 2. MEDWAY BI / DATA WAREHOUSE**
- 3. MEDWAY EMERGENCY CARE**
- 4. MEDWAY CLINICAL NOTING, OBSERVATIONS & CHARTING**
- 5. MEDWAY ORDER COMMUNICATIONS**
- 6. MEDWAY RESULTS REPORTING**
- 7. MEDWAY MOBILE**
- 8. MEDWAY SELF CHECK-IN KIOSK**
- 9. MEDWAY EPMA**
- 10. MEDWAY CARECENTRIC PORTAL**
- 11. CAREPLUS CHILD HEALTH**
- 12. MEDWAY PROXIMA**
- 13. MEDWAY MATERNITY**
- 14. BLUESPIER THEATRE MANAGEMENT SYSTEM**
- 15. IMMJ MEDVIEWER**
- 16. CAREFLOW VITALS**
- 17. CRMS**
- 18. CAREFLOW CONNECT**

**DATED:**\_\_\_\_\_ **201[ ]**

## **PARTIES**

- (1) **SYSTEM C HEALTHCARE LIMITED**, a company incorporated and registered in England and Wales with company number 01754990 whose registered office is at the Maidstone Studios, Vinters Business Park, New Cut Road Maidstone, Kent, ME14 5NZ ("**Supplier**").
- (2) **[INSERT NAME OF CUSTOMER]**, whose principal office is at [ADDRESS] ("**Buyer**").

## **BACKGROUND**

The Supplier is a provider of software implementation and related hosting and support services. The Buyer wishes to engage the Supplier under the G-Cloud 11 framework, and the Supplier agrees to install, licence, support and maintain the Software and provide related services ("**G-Cloud Services**") upon the terms and conditions set out in this Agreement

## **AGREED TERMS**

### **1. INTERPRETATION**

- 1.1 The parties acknowledge that this Agreement constitutes the 'Supplier Terms' and shall be incorporated into the Call-Off Agreement (which includes the Order Form) made between the Supplier and the Buyer for the G-Cloud Services.
- 1.2 In this Agreement, unless otherwise defined in the Call-Off Agreement, capitalised terms shall be given their corresponding definitions as set out in Schedule 4.
- 1.3 The headings in this Agreement do not affect its interpretation. Except where the context otherwise requires, references to clauses and schedules are to clauses and schedules of this Agreement.
- 1.4 Unless the context otherwise requires:
- (a) references to the Supplier and the Buyer include their personal representatives, permitted successors and assigns;
  - (b) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
  - (c) words in the singular shall include the plural and in the plural shall include the singular and a reference to one gender shall include a reference to the other genders;
  - (d) a reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement;
  - (e) a reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision; and

- (f) any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.5 If and to the extent of any inconsistency or conflict between any of the clauses, the schedules, the appendices to the schedules and any document otherwise attached or incorporated into this Agreement, the order of priority for the purposes of construction, is in descending order:

- (a) the clauses of the main body of this Agreement and Schedule 4 (Definitions); then
- (b) the paragraphs of the schedules other than Schedule 4 (Definitions); then
- (c) the appendices to the schedules; then
- (d) any other document incorporated by reference into this Agreement.

## **2. COMMENCEMENT AND TERM**

2.1 This Agreement shall take effect on the Effective Date set out in the Order Form and shall expire on:

- (a) The date specified in paragraph 2.1 of the Order Form; or
- (b) Twenty four (24) Months after the Effective Date, unless otherwise terminated earlier in accordance with the Call Off Agreement.

## **3. THE SERVICES**

3.1 The Supplier shall supply, and the Buyer shall take and pay for, the following Services:

- (a) the Set Up Services;
- (b) the Support Services;
- (c) the hosting Services set out in paragraph 3 of Schedule 1; and
- (d) such of the Specialist G-Cloud Services or Additional G-Cloud Services as may be included in the Order Form.

3.2 In relation to the Set Up Services:

- (a) the Supplier shall appoint the Supplier's Project Manager. The Supplier shall use reasonable endeavours to ensure continuity of the Supplier's Project Manager, but has the right to replace him from time to time where reasonably necessary in the interests of the Supplier's business;
- (b) the Supplier shall perform the Set Up Services in accordance with the timetable set out in the Implementation Plan. The Supplier shall use reasonable endeavours to meet the performance dates set out in the Implementation Plan, but any such dates shall be estimates only, and time shall not be of the essence in this agreement;

- (c) when the Supplier considers that the Software is ready for live use it shall notify the Buyer. Within 5 days of such notification the Buyer shall test the Software to confirm that it functions in all material respects with the Specification. The parties shall agree the test scripts and the test criteria for the Buyer's User Acceptance Testing during the Set Up Services;
- (d) if the Software fails to perform in any material respect to conform with the Specification, the Buyer shall give the Supplier a detailed description of any such non-conformance (**Error**), within the five day review period;
- (e) the Supplier shall use reasonable endeavours to correct any Error within a reasonable time and, on completion, re-submit the Software to the Buyer. The testing process shall then apply again, up to three additional times. If the Supplier is unable to correct the Error after three attempts either party may terminate this agreement without further liability to the other;
- (f) if the Buyer does not provide any written comments in the five day test period, or, if the Software is found to conform with the Specification, then the Software shall be deemed accepted as from the date of the notification (**Application UAT Acceptance**);
- (g) the Buyer, as from the Application UAT Acceptance shall be liable to pay for the Support Services.

3.3 In relation to the Support Services:

- (a) the Support Services shall be provided by the Supplier in respect of the Software described in paragraph 1.3 of the Order Form; and
- (b) the Support Services shall be provided by the Supplier in accordance with the provisions of Schedule 2.

3.4 The Supplier may, on prior notice to the Buyer, make changes to the Services, provided such changes do not have a material adverse effect on the Buyer's business operations.

3.5 The Supplier shall have no obligation to provide the Services where Incidents arise from:

- (a) misuse, incorrect use of or damage to the Software from whatever cause (other than any act or omission by the Supplier), including failure or fluctuation of electrical power;
- (b) failure to maintain the necessary environmental conditions for use of the Software;
- (c) use of the Software in combination with any equipment or software not provided by the Supplier or not designated by the Supplier for use with any Software, or any fault in any such equipment or software;
- (d) relocation or installation of the Software by any person other than the Supplier or a person acting under the Supplier's instructions;

- (e) any breach of the Buyer's obligations under this Agreement howsoever arising including clauses 6.3 and 6.4;
- (f) the Buyer having the Software maintained by a third party; or
- (g) any modification to the Software not made by or authorised by the Supplier.

#### **4. CHARGES**

- 4.1 The Buyer shall pay all costs (at the Supplier's then prevailing rates) and reasonable expenses incurred by the Supplier for work carried out by the Supplier in connection with any fault or Incident which is not covered by this Agreement.
- 4.2 The Buyer shall reimburse any reasonable travel or subsistence expenses incurred by the Supplier where such expenses are incurred wholly and exclusively for the purpose of providing on-site support as part of the Services, provided that any request for reimbursement is in the form of a proper invoice accompanied by appropriate receipts. Any expenses incurred by the Supplier will be approved by the Buyer in advance.
- 4.3 All amounts payable under this Agreement shall be exclusive of VAT or relevant local sales tax (if any) or any relevant local sales taxes which shall be paid at the rate and in the manner for the time being prescribed by law.
- 4.4 The Supplier may increase the Charges as from each anniversary of the date of this Agreement. Any increase shall be notified to the Buyer at least one month before such anniversary. Any percentage increase shall not exceed that of the Retail Price Index (Jevons) published by the Office for National Statistics or its successor from time to time for the Support Year (or the nearest publication dates to the commencement and expiry dates of the relevant Support Year, spanning a 12 month period) and each subsequent Support Year.
- 4.5 All Charges due under this Agreement shall be paid by the Buyer in full without any set-off, counterclaim, deduction or withholding.

#### **5. INTELLECTUAL PROPERTY RIGHTS**

- 5.1 All Intellectual Property Rights in the Software and Supplier Materials shall belong to the Supplier and its respective licensors, and the Buyer shall have no rights in respect of any of the Software and Supplier Materials except as expressly granted under this Agreement. The Buyer shall do or procure to be done all such further acts and things and sign or procure the signature of all such other documents as the Supplier may from time to time require for the purpose of giving the Supplier and its licensors the full benefit of the provisions of this clause 5.1.
- 5.2 All Intellectual Property Rights in the Buyer Materials shall belong to the Buyer and its licensors, and the Supplier shall have no rights in respect of any of the Buyer Materials except as expressly granted under this Agreement. The Supplier shall do or procure to be done all such further acts and things and sign or procure the signature of all such other documents as the Buyer may from time to time require for the purpose of giving the Buyer and its licensors the full benefit of the provisions of this clause 5.2.

- 5.3 In consideration of the Charges, the Supplier hereby grants to the Buyer a non-exclusive, revocable, royalty free licence to use the Software and the Supplier Materials:
- (a) for the Term only; and
  - (b) subject always to the Licensing Restrictions, the Licence Terms and the other terms of this Agreement.
- 5.4 The Supplier shall provide the Third Party Software to the Buyer under the standard licence terms provided by the relevant third parties, copies of which may be set out in this Agreement, notified to the Buyer during the Term and/or provided to the Buyer upon request, and in any such case the Buyer agrees to be bound by such licence terms and shall indemnify the Supplier and its Affiliates against any losses, damages, costs (including legal fees) and expenses suffered or incurred by the Supplier and its Affiliates arising out of or in connection with the Buyer's breach of such licence terms.
- 5.5 The Buyer hereby grants to the Supplier and its Affiliates a non-exclusive, revocable, royalty free licence to use the Buyer Materials to the extent required to perform the Services and such other obligations of the Supplier under this Agreement.
- 5.6 The Supplier undertakes at its own expense to defend the Buyer or, at its option, settle any claim or action brought against the Buyer alleging that the use or possession of any of the Software and/or Supplier Materials (or any part of them) infringes the UK Intellectual Property Rights of a third party (**Claim Against Buyer**) and shall indemnify the Buyer against any reasonable losses, damages, costs (including legal fees) and expenses incurred by, or awarded against, the Buyer as a result of or in connection with any such Claim Against Buyer. For the avoidance of doubt, clause 6.1 shall not apply where the Claim Against Buyer in question is attributable to possession, use, development, modification or maintenance of the Software and/or Supplier Materials (or any part thereof) by or on behalf the Buyer other than in accordance with the terms of this Agreement, use of the Software and/or Supplier Materials (or any part of them) in combination with any hardware or software not supplied or specified by the Supplier, if the infringement would have been avoided by the use of the Software and/or Supplier Materials (or any part of them) not so combined, or use of a non-current release of the Software where a new release had been provided to the Buyer.
- 5.7 Clause 5.6 is conditional on the Buyer:
- (a) as soon as reasonably practicable, giving written notice of the Claim Against Buyer to the Supplier, specifying the nature of the Claim in reasonable detail;
  - (b) not making any admission of liability, agreement or compromise in relation to the Claim Against Buyer without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed);
  - (c) giving the Supplier and its professional advisers at reasonable times (on reasonable prior notice) access to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Buyer, so as to enable the Supplier and its

professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim Against Buyer; and

- (d) subject to the Supplier providing security to the Buyer to the Buyer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim Against Buyer.

5.8 If any Claim Against Buyer is made, or in the Supplier's reasonable opinion is likely to be made, against the Buyer, the Supplier may at its sole option and expense:

- (a) procure for the Buyer the right to continue using the Software and Supplier Materials (or any part of them) in accordance with the terms of this Agreement;
- (b) modify the Software and/or Supplier Materials so that they cease to be infringing;
- (c) replace the Software and/or Supplier Materials with non-infringing works; or
- (d) terminate this Agreement immediately on notice to the Buyer and repay to the Buyer all sums which the Buyer has paid to the Supplier under this Agreement during the year in which the termination occurs, less a charge for the Services performed and the Software used up to the date of termination.

5.9 This clause 5 constitutes the Buyer's exclusive remedy and the Supplier's only liability in respect of Claims Against Buyer.

5.10 The Buyer undertakes at its own expense to defend the Supplier and its Affiliates or, at its option, settle any claim or action brought against the Supplier and its Affiliates alleging that the use or possession of any of the Buyer Materials (or any part of them) infringes the Intellectual Property Rights of a third party (**Claim Against Supplier**) and shall indemnify the Supplier and its Affiliates against any reasonable losses, damages, costs (including legal fees) and expenses incurred by, or awarded against, the Supplier and/or its Affiliates as a result of or in connection with any such Claim Against Supplier. For the avoidance of doubt, clause 5.10 shall not apply where the Claim Against Supplier in question is attributable to possession, use, development, modification or maintenance of the Buyer Materials (or any part thereof) by or on behalf the Supplier in breach of the terms of this Agreement.

5.11 Clause 5.10 is conditional on the Supplier:

- (a) as soon as reasonably practicable, giving written notice of the Claim Against Supplier to the Buyer, specifying the nature of the Claim Against Supplier in reasonable detail;
- (b) not making any admission of liability, agreement or compromise in relation to the Claim Against Supplier without the prior written consent of the Buyer (such consent not to be unreasonably conditioned, withheld or delayed);
- (c) giving the Buyer and its professional advisers (on reasonable prior notice) reasonable assistance (at the Buyer's expense) for the sole purpose of assessing the Claim Against Supplier; and

- (d) subject to the Buyer providing security to the Supplier to the Supplier's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as the Buyer may reasonably request to avoid, dispute, compromise or defend the Claim Against Supplier.

## **6. BUYER RESPONSIBILITIES**

- 6.1 The Buyer shall provide the Supplier and its personnel involved in the provision of the Services with full, safe and uninterrupted access including remote access to the Buyer's premises, systems, facilities and the Software as may reasonably be required for the purpose of performing the Services.
- 6.2 Where the Services are to be performed at any of the Buyer's premises, the Buyer shall provide adequate working space and office facilities (including telephone) for use by the Supplier's personnel and take reasonable care to ensure their health and safety.
- 6.3 The Buyer shall:
  - (a) comply with the Buyer Responsibilities set out in Schedule 3;
  - (b) co-operate with the Supplier in performing the Services and provide any assistance or information as may reasonably be required by the Supplier, including in relation to the diagnosis of any Incidents;
  - (c) report Incidents promptly to the Supplier; and
  - (d) keep full backup copies of all of its data.
- 6.4 Where the Supplier has been prevented and/or delayed from performing any of its obligations under this Agreement because of a failure by the Buyer to comply with its obligations under this Agreement (including the Buyer Responsibilities) (each a "**Buyer Default**"), then the Supplier will be entitled at its option:
  - (a) to an extension of time to perform the obligations which have been affected; and/or
  - (b) to increase the Charges, for any wasted costs and/or additional time taken to perform the Services as a result of the Buyer Default,and in any event the Supplier will be relieved from any liability in respect of a failure by the Supplier to properly perform any of its obligations in accordance with this Agreement arising directly or indirectly as a result of the Buyer Default.

## **7. WARRANTIES**

- 7.1 The Buyer warrants to the Supplier that:
  - (a) it has the right, power and authority to enter into this Agreement; and
  - (b) it has authority to grant to the Supplier the rights and/or licences set out in clause 5.5.



- 7.2 The Supplier warrants to the Buyer that:
- (a) it has the right, power and authority to enter into this Agreement;
  - (b) the Services will be performed in accordance with applicable laws and regulations;
  - (c) the Services will be performed with reasonable skill and care; and
  - (d) it has authority to grant to the Buyer the rights and/or licences set out in clause 5.3.
- 7.3 If, during the term of this Agreement, the Supplier receives written notice from the Buyer of any breach by the Supplier of the warranties contained in clause 7.2, the Supplier shall, at its own option and expense, remedy that breach within a reasonable period following receipt of such notice, or terminate this Agreement immediately on written notice to the Buyer and repay to the Buyer all sums which the Buyer has paid to the Supplier under this Agreement during the Support Year in which the termination occurs, less a charge for the Services performed and the usage of the Software and Supplier Materials up to the date of termination. The Buyer shall provide all information reasonably necessary to enable the Supplier to comply with its obligations under this clause 7.3. This clause sets out the Buyer's sole remedy and the Supplier's entire liability for breach of clause 7.2.
- 7.4 The Supplier does not warrant that the Buyer's use of the Software will be uninterrupted or error-free. Any interruption, error or any other problem in the Buyer's use of the Software shall be reported by the Buyer to the Supplier in accordance with the provisions of Schedule 3 and the Supplier shall thereafter endeavour to resolve such issue as part of the Support Services subject to the provisions governing the same. The Buyer accepts responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Buyer.
- 7.5 Any Third Party Software is provided "as is" and expressly subject to the disclaimer in clause 7.4.
- 7.6 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose and the use of reasonable skill and care.
- 8. EFFECT OF TERMINATION WITHOUT CAUSE**
- 8.1 If the Buyer exercises its right of termination without cause in accordance with clause 18.1 of the Call Off Agreement the Buyer shall pay to the Supplier either:
- (a) an amount equivalent to the liabilities and expenditure suffered by the Supplier as specified in clause 18.3 of the Call Off Agreement; or
  - (b) a sum equivalent to 12 months' worth of the Charges (whichever is the greater)

and the parties acknowledge that, in the event the sum referred to in clause 8.2(b) is payable, such payment shall represent a genuine pre-estimate of the loss the Supplier has suffered.

## **9. NON-SOLICITATION**

- 9.1 The Buyer shall not, for the duration of this Agreement, and for a period of six months following termination, directly or indirectly induce or attempt to induce any employee of the Supplier or its Affiliates who has been engaged in the provision, receipt, review or management of the Services or otherwise in connection with this Agreement to leave the employment of the Supplier or its Affiliates.

## **10. EXPORT**

- 10.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under this Agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (**Export Control Laws**), including United States export laws and regulations, to any country for which the United States or any other government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

- 10.2 Each party undertakes:

- (a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and
- (b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

## **11. WAIVER**

- 11.1 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

## **12. REMEDIES**

- 12.1 Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **13. SEVERANCE**

- 13.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-

provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

- 13.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

#### **NO PARTNERSHIP OR AGENCY**

- 13.3 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.
- 13.4 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

#### **14. NOTICES**

- 14.1 Any formal notice given to a party under or in connection with this contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- 14.2 Any such notice shall be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or
  - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- 14.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

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

Signed by for and on behalf of  
**SYSTEM C HEALTHCARE LIMITED**

**Name:**

**Position**

**Date**

Signed by for and on behalf of  
**[CUSTOMER NAME]**

**Name:**

**Position**

**Date**

## Schedule 1 Software and Services

### 1. SOFTWARE

- 1.1 The Software licensed to Buyer under this Agreement and supported by the Supplier as part of the Services is as follows:

Software Name	Description

- 1.2 The Third Party Software made available to the Buyer under this Agreement and supported by the Supplier as part of the Services is as follows:

Third Party Software Name	Description

### 2. SOFTWARE LICENSING RESTRICTIONS AND LICENCE TERMS

- 2.1 For the purposes of the licence to the Buyer set out in clause 5.3(b), the Licensing Restrictions are as follows:

Site	The licence is for [CUSTOMER] for use at [SITE/S]
Active users	[To be completed]
Concurrent users	[To be completed]

- 2.2 The Buyer may not exceed the Licensing Restrictions without receiving the Supplier's prior written consent and agreeing a written amendment to this Agreement. Any alteration to the Licensing Restrictions may be subject to the payment by the Buyer of additional Charges.

- 2.3 For the purposes of the licence to the Buyer set out in clause 5.3(b), the Licence Terms are as follows:

- (a) Each licence may be used by the Buyer only with the clinical services the Buyer provides and with the Buyer's own business operations, but extends to permitting the accessing and exporting of information in respect of the Buyer's patients (including past, present, and prospective patients) remotely by Buyer staff, GPs, and other members of the Buyer's health community. Each such license is subject to the Licensing Restrictions set out above.

- (b) The Buyer may sub-license the rights granted to it pursuant to paragraph 2.3(b) to a third party provided that:
  - (i) the sub-licence only authorises the third party to use the Software for the benefit of the Buyer; and
  - (ii) the third party has entered into a confidentiality undertaking with the Supplier.
- (c) The Buyer may copy the Software in order to create an archival copy and a back-up copy of it (only where the system is located on the Buyer's premises or at the Buyer's third party data centre).
- (d) When copying the Software, where the system is located on the Buyer's premises or at the Buyer's data centre, the Buyer shall include the original machine readable copyright notice, and a label affixed to the media identifying the software and stating: "This medium contains an authorised copy of copyrighted software which is the property of System C Healthcare Ltd or its licensors."
- (e) Any change in the legal status of the Buyer which means that it ceases to be a Contracting Authority shall not affect the validity of any licence granted under the Standard Licence Terms. If the Buyer ceases to be a Contracting Authority, the Standard Licence Terms shall be binding on any successor body to the Buyer.
- (f) If there is a change of the Buyer's status pursuant to paragraph 2.3(e) above, (in the remainder of this paragraph both such bodies are referred to as the **"Transferee"**):
  - (i) the Transferee may only assign, novate or otherwise dispose of its rights and obligations under the Licence Terms (or any part of it) with the prior written consent (not to be unreasonably withheld or delayed) of the Supplier; and
  - (ii) the rights acquired by the Transferee relating to the use of the Software shall not extend beyond those previously enjoyed by the Buyer.
- (g) At any time during the Term, the Supplier may terminate a licence granted under the Licence Terms with 30 days' notice in writing (or such other period as agreed by the parties) if:
  - (i) The Buyer uses the Software for any purpose not expressly permitted by these Licence Terms or the Agreement; or
  - (ii) The Buyer commits any material breach of the Licence Terms which, if the breach is capable of remedy, is not remedied within 20 Working Days after the Licensor giving the Buyer written notice specifying the breach and requiring its remedy.

- (h) When a licence under the Licence Terms ends for whatever reason, the Buyer shall:
  - (i) immediately cease all use of the Software;
  - (ii) at the discretion of the Supplier return or destroy any licensed materials; and
  - (iii) provide the Supplier with a written notice, signed and otherwise completed by an authorised signatory, to certify compliance with the set out above.

### **3. SERVICES**

3.1 In addition to the Support Services set out in Schedule 2, the Supplier shall also provide the following Services under this Agreement:

- (a) Hosting in respect of the Software (subject to the Service Levels set out in Schedule 2):

### **4. EQUIPMENT**

4.1 (if any)

## **Schedule 2 Support Services**

### **1. SCOPE**

This Schedule 2 sets out the Service Levels which the Supplier is required to achieve when delivering the Services, the mechanism by which Incidents and Service Failures will be managed and the method by which the Supplier's performance of the Services will be monitored

### **2. SERVICE LEVELS**

- 2.1 The Appendix to this this schedule sets out Service Levels for Incident Response and Resolution.
- 2.2 The Supplier shall monitor its performance of each of the Services referred to in paragraph 2.1 by reference to the Service Level(s) for that Service and shall use reasonable endeavours to achieve the same.
- 2.3 In the event that the Contractor materially fails to meet the Service Levels the Contractor shall use reasonable endeavours to correct the same. Should the Buyer be unsatisfied with the corrective action the Contractor is taking to rectify such non-conformance, the Buyer may escalate such failure to meet the Service Levels in accordance with the dispute resolution procedure set out in the Call Off Contract.
- 2.4 Incidents shall be categorised by reference to the severity of such Incidents in accordance with the Priority Levels set out in Table A in the Appendix to Part A. Any dispute as to the appropriateness of a Priority Level assigned to an Incident shall be resolved in accordance with the dispute resolution procedure set out in the Call Off Contract.

### **3. SUPPLIER TECHNICAL SUPPORT**

- 3.1 The Supplier will provide Technical Support for the Software upon the terms and conditions of this Paragraph 7;
- 3.2 The Technical Support will include but not be limited to the following tasks:
  - 3.2.1 the provision of the Help Desk;
  - 3.2.2 the provision of a break/fix service in relation to the System Modules as measured against the Service Levels;
  - 3.2.3 the monitoring of Availability and System Response Times of the System Modules against the Service Levels; and
  - 3.2.4 the provision of monthly service reports of all reported Incidents and their resolution.



- 3.3 Technical Support will be provided from the Supplier's Sites through the use of the contractors IT Service Management Tool, JIRA, email, telephones and remote terminals via N3 connection to the Buyer's premises.
- 3.4 Technical Support shall not include first and second line technical support for Incidents.
- 3.5 Technical Support shall not include the diagnosis and rectification of, and the Service Levels shall not apply to, any Incident resulting from:
- 3.5.1 the improper use operation or neglect of the Software but excluding any such use operation or neglect on the part of the Supplier or its employees, agents, sub-Suppliers or other persons for whom it is responsible;
  - 3.5.2 the unauthorised modification of the Software or its merger (in whole or in part) with any other software but excluding any such modification or merger carried out by the Supplier or its employees, agents, sub-Suppliers or other persons for whom it is responsible;
  - 3.5.3 the use of the Software on equipment other than the agreed Buyer system but excluding any such use by the Supplier or its employees, agents, sub-Suppliers or other persons for whom it is responsible;
  - 3.5.4 the failure by the Buyer to implement recommendations in respect of or solutions to Incidents previously advised by the Supplier;
  - 3.5.5 any repair adjustment alteration or modification of the Software by any person other than the Supplier without the Company's prior written consent;
  - 3.5.6 the use of a Release Update of the Supplier Software older than that required by paragraph 6.9 above;
  - 3.5.7 the use of the Software for a purpose for which it was not designed (other than any such use by the Supplier or its employees, agents, sub-Suppliers or other persons for whom it is responsible);
  - 3.5.8 the Buyer's failure to run the Software on devices of the recommended minimum specification, including the failure to use a currently supported version of Microsoft Office;
  - 3.5.9 an Incident caused by:
    - 3.5.9.1 the Buyer's network over which the Software is operated;
    - 3.5.9.2 any other Buyer system or other systems with which it is integrated;
    - 3.5.9.3 adverse events at the Buyer's premises; or
    - 3.5.9.4 peripheral equipment and other systems attached to the Buyer's network;

3.5.9.5 any inherent inaccuracy in or quality issues with the Buyer data.

- 3.6 The Supplier shall, upon request by the Buyer provide Technical Support notwithstanding that the Incident results from any of the circumstances described above. The Supplier shall in such circumstances be entitled to levy reasonable additional charges in the manner set out below.
- 3.7 The Supplier shall be entitled to levy charges if:
- 3.7.1 Technical Support is provided in circumstances where any suitably skilled and competent Buyer Information Services operator, providing first or second line helpdesk support, would have judged the Buyer's request to have been unnecessary; or
  - 3.7.2 support requests are made in respect of services or issues not included as part of Technical Support (as described above), for the avoidance of doubt the Supplier reserves the right to make a reasonable charge for any work done in identifying the nature of the issues and in determining that it falls outside the scope of the Technical Support service; or
  - 3.7.3 the Supplier has advised the Buyer of its intention to make such charges and the Buyer consents to receiving Technical Support under the conditions contained above.
- 3.8 Where the Supplier provides Technical Support in relation to the scenarios set out in paragraph 3.4 and 3.7 of this Part A ("**Out of Scope Technical Support**"), the Service Levels shall not apply to either the performance of the Out of Scope Technical Support or the Incident and/or Service Downtime giving rise to the requirement of such Out of Scope Technical Support. In no event will the Supplier be deemed to have committed a Service Failure pursuant to this Schedule in respect of such Out of Scope Technical Support and/or the Incident and/or Service Downtime giving rise to the requirement for such Out of Scope Technical Support.

#### **Help Desk**

- 3.9 The Supplier's Help Desk for Technical Support is available during Help Desk Hours.
- 3.10 Incidents relating to the Software may be reported to the Service Desk via the JIRA online system at any time and the Supplier will provide Support Services during Help Desk Hours.

### **8. INCIDENT REPORTING AND RESOLUTION**

- 8.1 The Buyer will be the first point of contact for first (1st) and second (2nd) line technical support for Incidents. The Buyer's Information Technology (IT) Service Desk will be available for first line support of Incidents. If the Buyer's IT Service Desk cannot resolve the Incident, it will be escalated internally within the Buyer to a System Specialist for second line support. If the Incident is not resolved by the System Specialist at second line support, an Incident Notification will be communicated by the

Buyer to the Supplier for third (3rd) line support using JIRA, the Contractor's IT Service Management Tool.

- 8.2 Each Incident shall carry a Response Service Level and a Resolution Service Level. The Response Service Level shall be measured as the time between an incident being raised and the Service Desk responding by either asking further clarification questions or accepting the Incident details provided, an issue reference number is provided automatically ("**Response**").
- 8.3 The Resolution Service Level shall be measured as the time between the completion of the Response Service Level and the time when a resolution has been provided to and accepted by the Buyer ("**Resolution**"). Time during which the Incident is with the Buyer, a third party or time required to provide a code fix, will be excluded from the Resolution Service Level.

## APPENDIX 1

### SERVICE LEVELS AND PRIORITY LEVELS

The Supplier's Incident Priority Levels, Target Resolution Times and Target Help Desk Response Times are as follows:

**Table A**

Priority	Classification	Response Service Level (Within Service Desk Hours)	Resolution Service Level (within Service Desk Hours)
P1 - Immediate	<p>There is a high impact loss/corruption of clinical data.</p> <p>Essential functionality is inaccessible or fails frequently.</p> <p>The business continuity plan has been invoked for all or a major proportion of users.</p> <p>Examples</p> <ul style="list-style-type: none"> <li>Unable to access Supplier Software across entire site (Server failure, SSL expiry)</li> </ul>	1 hour	8.5 hours
P2 - Urgent	<p>There is a low impact loss/corruption of clinical data.</p> <p>Access to certain parts of functionality are inaccessible although the business continuity plan has not been invoked</p> <p>It is a site wide problem affecting all users/devices or major group of users.</p> <p>Examples</p> <ul style="list-style-type: none"> <li>Noticeable system slowness</li> <li>One application is unavailable or produces an error</li> </ul>	1 hour	5 days

Priority	Classification	Response Service Level (Within Service Desk Hours)	Resolution Service Level (within Service Desk Hours)
P3 – Medium	<p>It noticeably affects user productivity eg. slow system response times, time-consuming work arounds required, etc.</p> <p>It only affects a single user/device or small group of users.</p> <p>Examples</p> <ul style="list-style-type: none"> <li>• A small number of users are unable to access the system</li> <li>• Data correction requests</li> </ul>	1 hour	10 days
P4 - Low	<p>The fault has little or no current impact on end users or for which an identified cure or circumvention is available.</p> <p>It is an annoyance.</p> <p>Examples</p> <ul style="list-style-type: none"> <li>• Functionality queries</li> <li>• Deployment requests</li> </ul>	1 hour	No Service Level

## **Schedule 3 Buyer Responsibilities**

### **1 INTRODUCTION**

- 1.1 The responsibilities of the Buyer set out in this Schedule 3 shall constitute the Buyer Responsibilities under this Agreement.
- 1.2 The responsibilities specified within this Schedule shall be provided to the Supplier free of charge, unless otherwise agreed between the parties.

### **2 GENERAL OBLIGATIONS**

- 2.1 The Buyer shall:
  - (a) perform those obligations which are set out in the Clauses of this Agreement and the Paragraphs of the Schedules;
  - (b) provide the Supplier with access to appropriate members of the Buyer's staff, as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Term;
  - (c) provide sufficient and suitably qualified staff to fulfil the Buyer's roles and duties under this Agreement as defined in the agreed Implementation Plan;
  - (d) provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this Agreement provided that such documentation, data and/or information is available to the Buyer and is authorised for release by the Buyer;
  - (e) procure for the Supplier such agreed access and use of the Buyer's premises, facilities, including remote access to relevant ICT systems as is reasonably required for the Supplier to comply with its obligations under this Agreement, such access to be provided during the Buyer's normal working hours on each Working Day or otherwise as agreed by the Buyer (such agreement not to be unreasonably withheld or delayed); and
  - (f) procure End Users comply with any end user notices incorporated into the Software relating to the operation of the same.

### **3 MANAGEMENT AND DIRECTION**

- 3.1 The Buyer shall, in respect of the Set Up Services, :
  - (a) adhere to the PRINCE2 project management methodology as agreed to be implemented between the parties;
  - (b) provide a programme manager to undertake the following tasks and roles:

- (i) providing overall programme management of the Buyer activities and staff working on the project in accordance with the terms of the Agreement;
  - (ii) ensuring that the Buyer resources are available as and when required by the agreed Detailed Implementation Plan;
  - (iii) managing all tasks attributed to Buyer resources that will be agreed in the Implementation Plan;
  - (iv) representing the Buyer at regular steering group meetings;
- (c) provide one or more project managers to undertake the following tasks and roles:
  - (v) monitoring progress of Buyer activities against the Implementation Plan and ensuring that Buyer activities are completed in accordance with the timetable set out in the Implementation Plan;
  - (vi) responding to questions arising from project meetings;
  - (vii) ensuring appropriate Buyer involvement in meetings;
  - (viii) managing the agreement of completion of project stages and assisting with the achievement of Milestones as far as the Buyer is reasonably able to do so.
- (d) provide Buyer resources in order to ensure that the business process impact assessments and process change activities are managed to achieve the desired benefits of the Services. This will include working with the Supplier and the individual Buyer departments to:
  - (i) identify and agree new working practices;
  - (ii) ensure that the Buyer fulfils all of its responsibilities with regard to business change;
- (e) ensure senior level input from the Buyer to the project board;
- (f) provide human resource management in order to fulfil the Buyer's obligations under the Agreement in relation to:
  - (i) administration and booking of project training courses to ensure attendance levels; and
  - (ii) any necessary HR expertise relating to the change management process, and obtaining the necessary key personnel for the Buyer's project and sub-project teams

### 3.2 The Buyer shall, in respect of the Support Services:

- (a) Provide a Service Manager to undertake the following:

- (i) to be the Buyer's main point of contact for Service Management issues including the Buyer's Helpdesk;
- (ii) to work closely with the Supplier's nominated Client Services Manager;
- (iii) to represent the Buyer at regular Service and Performance Review meetings and to ensure involvement of appropriate Buyer staff;
- (iv) to provide all resources required to progress resolution of significant issues; and
- (v) fully to manage any third party services not included as part of Supplier's solution

#### **4 BUYER RESOURCES**

- 4.1 The Buyer shall provide a suitably qualified and experienced team to support the Buyer's use of the Software.

#### **5 TESTING AND ACCEPTANCE**

- 5.1 The Buyer shall ensure that it meets user requirements in accordance with the agreed procedures for Buyer User Acceptance Testing.
- 5.2 The Buyer is responsible for developing and documenting such test scripts (comprising inspections, routines, demonstrations or performance benchmarks) as are necessary to demonstrate the successful achievement of the test criteria .

#### **6 SYSTEM MANAGEMENT**

- 6.1 The Buyer shall provide suitably qualified Buyer support staff as system managers in both system management and housekeeping. The Buyer must ensure that as a minimum at least one trained member of staff is always available during normal working hours.

#### **7 SUPPORT SERVICES**

- 7.1 The Buyer shall provide first line support and second line help desk support during such times when the Supplier is responsible for providing the Support Services. This support will cover the following areas:
  - (a) being a first point of contact for all users of the Software and maintaining responsibility for resolving issues which are educational, operational or are user created (i.e. not a direct result of a software bug or data corruption);
  - (b) performing triage of calls to ensure appropriate local resolution and appropriate definition/description to enable the correct priority to be set;
  - (c) being the first point of contact for the Buyer with the Supplier in order to log faults with the Software and to contact the system users if the Supplier requires it as part of the investigation or resolution of the fault;



- (d) having the necessary training and skills to enable problem identification between hardware, network and application so that the call can be resolved internally or logged appropriately;
- (e) ensuring that calls are logged and passed to the Supplier via the Supplier approved method as outlined in Schedule 2 (Support Services) and that a log is maintained identifying the date and time logged, priority and current status in accordance with the requirements set out in Schedule 2 (Support Services);
- (f) producing a regular log of outstanding calls, for checking with the Supplier log;
- (g) making Supplier aware of all local changes affecting the operation of the system including system configuration and technical infrastructure changes; and
- (h) providing a point of contact to interface with the Buyer in relation to the performance monitoring system including involvement in service reviews.

## **8 INFRASTRUCTURE AND NETWORKING**

- 8.1 Depending on the Supplier Software specified in the Order Form the Buyer may be required:
- (a) to provide all electrical power required by the Supplier's solution.;
  - (b) to provide any new structured cabling requirements as specified by the Supplier;
  - (c) to make available the necessary networking and associated infrastructure and to maintain the same as may be necessary so that the Software will be available for use by the Buyer's intended end-users and that the Supplier Software may continue to operate and be enjoyed by the end-users in accordance with the Service Levels.
- 8.2 The Buyer must integrate the Buyer based Active directory domains for the server based AD domain, the Supplier will work with the Buyer to define the exact requirements dependant on the implementation.

## **9 PROVISION OF HARDWARE AND PREPARATION OF THE SITE**

- 9.1 The Buyer will provide all necessary end user devices, PCs, laptops, mobile devices, peripherals, printers and bar code scanners.
- 9.2 All hardware, operating and networking software will be configured by the Buyer to enable users to access servers, printers and other peripheral devices as required for any of the Software.
- 9.3 The Buyer must identify and make arrangements for Supplier's personnel to avoid or be protected from any health hazards that exist and to which the Supplier's personnel might be exposed during implementation and will take all reasonable precautions to protect the health and safety of the Supplier's personnel whilst on the Buyer's premises.

- 9.4 The Buyer will grant access to all locations as reasonably required by the Supplier to fulfil its obligations under this Agreement, subject always to the rights to refuse such access in accordance with this Agreement.
- 9.5 The hardware environment and specification of End User workstations needed to support the Software to ensure it achieves the required Service Levels are set out in the Order Form.
- 9.6 The Supplier may from time to time issue updates to the specification of the hardware environment and End User workstations needed to support the software.

## **10 ACCOMMODATION AND ACCESS FOR SUPPLIER'S STAFF**

- 10.1 The Buyer must provide suitable on-site accommodation including desk space, telephones and network/Wifi access for the Supplier Personnel.
- 10.2 The Buyer must allow the Supplier or its agents access to discharge its duties relating to installation and maintenance of the Software, including facilities for vehicle access.

## **11 SECURITY**

- 11.1 The Buyer will be responsible for the control of system access by End Users.

## **12 DATA MIGRATION**

- 12.1 The Buyer will provide such assistance as the Supplier reasonably requests in identifying validation criteria to facilitate successful migration of the Buyer's data onto the Supplier Software.
- 12.2 The Buyer will have the following responsibilities with regard to the data conversion process:
- (a) the Buyer will be responsible for defining the rules for which Buyer data is to be extracted and for providing appropriate statistics, as defined by the Supplier, to support the audit and reconciliation process.
  - (b) The Buyer will validate the quality and integrity of exported Buyer data supported by the Supplier using a combination of automated and manual means (e.g. comparison of screen shots, clinic list comparison etc.); the Buyer will validate each cycle of imported Buyer data and the Buyer will be responsible for correcting data errors or defining workarounds in the areas where the Buyer data is not of sufficient quality for safe use
  - (c) The Buyer will correct any Buyer data to be migrated to the Supplier Software which is duplicated, incomplete or otherwise of poor quality which is identified as unsuitable for migration due to not adhering to the business and data rules applied by the Supplier Software.
- 12.3 The Buyer will be able to use the Supplier Software to identify and merge duplicate data entries. It is the responsibility of the Buyer to decide what level of de-duplication should be

carried out as part of the data take-on process and the Buyer will be responsible for any de-duplication it requires.

- 12.4 The Buyer will be responsible for the sign off of each of the trial loads of Buyer data to confirm agreement with the levels and quality of the data load and allow the project to move to the next iteration of phase. The Buyer must provide sufficient skilled and experienced staff to undertake the tasks and be confident enough in the levels of testing undertaken to facilitate this sign off.

## Schedule 4 Definitions

In this Agreement, capitalised terms shall be given the following meanings:

**Affiliate:** means, in relation to the Supplier, each and any subsidiary or holding company of the Supplier and each and any subsidiary of a holding company of the Supplier such terms being given their meaning as set out in section 1159 of the Companies Act 2006.

**Buyer Responsibilities:** means the responsibilities of the Buyer specified in Schedule 3 (Buyer Responsibilities).

**Buyer Materials:** any the materials (including Documents, information, data, software (in whatever form) together with all modifications and adaptations of the same) which the Buyer provides or makes available to the Supplier in its performance of the Services or otherwise pursuant to this Agreement.

**Document:** includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**Effective Date:** the date as defined in the Call-Off Agreement

**End User:** means any person authorised by the Buyer to use the Software and/or the Services;

**Emergency Maintenance:** means ad hoc and unplanned maintenance provided by the Supplier as part of the Services where:

- (a) the Buyer reasonably suspects that the Software or the Services, or any part thereof, has or may have developed a fault, and notifies the Supplier of the same; or
- (b) the Supplier reasonably suspects that the Software or the Services, or any part thereof, has or may have developed a fault.

**Equipment:** the hardware (if any) being provided by the Supplier to the Buyer under this Agreement as described in paragraph 4 of schedule 1.

**Help Desk:** means the single point of contact help desk for 3<sup>rd</sup> line support of the Software operated by the Supplier pursuant to the help desk Service described in Paragraph 7.11 of Schedule 2.

**Help Desk Hours:** means the period after 9.00am until 5.30pm in each Working Day.

**Incident:** means a reproducible fault or error in the Software which is preventing its normal operation, determined by reference to the functionality of such Software;

**Incident Notification:** means the first notification of an Incident received by the Help Desk (including from the Contractor) in respect of that Incident.

**Incident Resolution Service Level:** means the service level measuring Resolution time as calculated in accordance with paragraph 9.2 of part A of schedule 2.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the

right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

**JIRA:** the online issue tracking tool used by the Supplier and the Buyer

**Licensing Restrictions:** means the licence restrictions and/or conditions that govern the Buyer's use of the Software including limitations on the numbers of users, concurrent users, transaction volumes as set out in Schedule 1 and/or the Order Form

**Open-Source Software:** open-source software as defined by the Open Source Initiative (<http://opensource.org>) or the Free Software Foundation (<http://www.fsf.org>).

**Performance Review Meeting:** means the regular meeting between the Supplier and the Buyer to manage and review the Supplier's performance under the Agreement.

**Priority Level:** means the categorisation of severity ascribed to an Incident in accordance with the criteria set out in Appendix 1 to Schedule 2 (Support Services).

**Resolution:** means the resolution of an Incident or the provision of a satisfactory workaround for such Incident and "Resolve" shall be construed accordingly.

**Service Downtime:** the period of time during a Service Period where the Software is not available for the Buyer's use.

**Service Failure:** means in respect of a System Module, a failure by the Supplier to achieve the Service Level in a Service Period.

**Service Levels:** means the levels of service required to be provided, as prescribed in Schedule 2.

**Service Level Report:** the report which summarises the performance by the Supplier against each of the Service Levels, which report shall be prepared by the Supplier and submitted to the Buyer pursuant to paragraph 2.2 of Part A of Schedule 2.

**Service Period:** shall mean a calendar month during the Term from the Effective Date onwards.

**Services:** the G-Cloud Services.

**Set Up Services:** the installation, configuration and hosting of the Software for use by the Buyer, together with the training referred to in the Specification.

**Software:** the computer programs in object code format which are proprietary to the Supplier or its Affiliates, including software which either is or will be used by the Supplier for the purposes of providing the Services or that is provided to the Buyer by or on behalf of the Supplier under this Agreement including the software designated as the Software in Schedule 1 and any corrections, improvements, modifications, upgrades, customisations or replacements of the same.

**Specification:** the G-Cloud Services agreed with the Buyer and set out in the Order Form.

**Supplier Materials:** any materials (including Documents, information, data, Software (in whatever form) together with all modifications and adaptations of the same whether or not such modifications and adaptations are performed as part of the Services) which the Supplier provides or makes made available to the Buyer as part of the Services or otherwise pursuant to this Agreement. Supplier Materials do not include Third Party Software or Buyer Materials.

**Supplier's Project Manager:** the named individual made known to the Buyer during the Set Up Services

**Support Representative:** means a support representative appointed by each of the parties.

**Support Year:** means a period of 12 months period commencing on the Effective Date and thereafter for the remainder of the Term commencing on each anniversary of the Effective Date.

**System Module:** means any one of the integrated software modules comprising of the Software as: i) identified in paragraph 1 of Schedule 1 (Software and Services); and ii) any subsequent aspect of the Contractor Software introduced via the variation procedure and expressly identified by the Supplier as a System Module.

**Technical Support:** means the third line technical support services for the System Modules provided by the Supplier to the Buyer in accordance with the provisions of Paragraph 3 of Schedule 2.

**Term:** means the entire duration of this Agreement from the Effective Date up to and including the date of its termination as determined pursuant to clause 2.1 of this Agreement or clause 1.2 of the Call-Off Agreement.

**Third Party Software:** software which is proprietary to any third party (including Open-Source Software) which either is or will be used by the Supplier for the purposes of providing the Services or provided to the Buyer by or on behalf of the Supplier under this Agreement, including the software designated as Third Party Software in Schedule 1 and any corrections, improvements, modifications, upgrades, customisations or replacements of the same. Third Party Software does not include the Software.

**Working Day:** any day other than a Saturday, Sunday or public holiday in England and Wales.