

NHS conditions of contract for the supply of managed services IT

..... Service

Contractor: Health Intelligence Ltd

Date:.....

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Introduction

This agreement is made on **Date** between **CCG Name** (whose principal office is at **Address** and Health Intelligence Ltd (the Contractor) whose registered office is at Ebenezer House, Ryecroft, Newcastle under Lyme, Staffordshire, ST5 2BE.

1. A revised proposal was submitted to the Commissioner on **Date** offering an annual managed service. The proposal offered the export of data on a monthly basis for **XX** GP Practices **CCG Name**. The service also offered the hosting of this data and the provision of a Diabetes IT Solution module using the HI Hub browser-based application. These reports are detailed on page 8 of this document.
2. The Commissioner accepted the proposal on **Date** placing an order for the service.
3. This contract establishes the contractual arrangements for a twelve month period for the provision of HI Hub from **Date to and from**. The initial scope of the HI Hub reporting service is defined within Figure 1 below.

NOW, IT IS HEREBY AGREED that:

- (a) The Contractor shall provide the Managed Services as specified hereunder to the Commissioner ; in consideration of which
- (b) the Commissioner shall pay the Contractor as detailed in Figure 1

Figure 1 – Pricing Schedule

Organisation	Discounted cost per GP Practice	Total No. of GP Practices	Total Cost
CCG Name	£Price	XX	£Price
Total Cost			£Price

Our Terms & Conditions

Full payment of the contract to be invoiced to **Date**

Prices are exclusive of VAT

Payment terms are 30 days net of invoice

Prices are inclusive of maintenance and support

CCG/GP Practices allow the use of remote 'Away from My Desk' sessions for manual data exports

Contract clauses

1 Interpretations

1.1 Definitions

- 1.1.1 *Acceptance Date* means the date upon which acceptance criteria for the implementation of Managed Services as specified in Schedule F, (acceptance criteria and procedures) are met in accordance with clause 20. *Planned Acceptance Date* means the date in schedule E (timetable) by which it is planned that the Contractor shall have met such criteria;
- 1.1.2 *Acceptance Completion Date* means any date, contained in the timetable in Schedule E under the provisions of sub-clause 3.1.2, by which the Contractor undertakes to have met acceptance criteria specified in Schedule F for implementation of Managed Services in accordance with clause 20;
- 1.1.3 *Acceptance Test* means a test or sequence of tests specified in Schedule F to be performed in order to establish, by compliance with acceptance criteria contained in Schedule F, that the Managed Services conform to the Contractor Undertakings;
- 1.1.4 *Authorised Officer* means an individual, (specified in Schedule C for the Contractor and Schedule D for the Lead and Secondary Commissioners), who is designated by each party as its official representative for the purposes of liaison, communication and resolution of issues between them;
- 1.1.5 *Commissioner* means the Health Service Body placing the Contract
- 1.1.6 *Commissioner Software* means Software listed as such in Schedule B to be provided by the Commissioner for use in the provision of the Managed Services;
- 1.1.7 *Confidential Information* means information, data and material of any nature which either Party may receive or obtain in connection with the operation of the Contract and:
- (i) which comprises Personal Data or Sensitive Personal Data (as both terms are defined in the Data Protection Act 1998) or which relates to any patient of either the Lead or the Secondary Commissioner's or his or her treatment or medical history;
 - (ii) the release of which is likely to prejudice the commercial interests of the Commissioner or (as the case may be) any Beneficiary or the Contractor respectively; or
 - (iii) Which is a trade secret.
- 1.1.8 *Contract* means this agreement concluded between the Commissioner and the Contractor including:
- (a) The clauses contained herein;
 - (b) The schedules attached hereto;

- (c) any specifications, plans or other documents which are relevant to the Contract and expressly incorporated herein as appendices to, and part of, the relevant schedules; and
 - (d) Such variations in writing as shall be agreed by the Lead or the Secondary Commissioner and the Contractor according to the provisions of clause 6 (variations to the Contract);
- 1.1.9 *Contractor* means the Person who undertakes the obligations specified in clause 2.1 (Contractor's obligations), which term shall include, for all purposes of the Contract, its successors and permitted assignees;
- 1.1.10 *Contractor Premises* means any Contractor's building or location where Facilities are installed for the purposes of providing the Managed Services.
- Contractor Premises shall be identified in schedule B;
- 1.1.11 *Contractor Software* means the Software which is listed as such in schedule B to be supplied by the Contractor for use in the provision of the Managed Services whether such Software is owned by the Contractor or by a third party;
- 1.1.12 *Contractor Undertakings* means the statements contained in schedule A which specify:
- (a) Managed Services that the Contractor undertakes to provide and the functions and performance that such services shall meet in all material respects; and
 - (b) operational responsibilities in respect of such Managed Services as the Contractor undertakes;
 - (c) implementation responsibilities in respect of such Managed Services as the Contractor undertakes; and
 - (d) Service Levels in accordance with which the Contractor undertakes to perform the Managed Services.
- 1.1.13 *Contract Reference Number* means the number stated on the title page of the Contract, which shall be quoted in all communications under the Contract including invoices;
- 1.1.14 *Contract Charges* means the recurring charges stated in schedule G for the ongoing provision of any services, Facilities or licences specified hereunder. Contract Charges stated in schedule G may only be varied in accordance with any formula or index provided therein;
- 1.1.15 *Contractual Date* means any date specified for the fulfilment of Contractual obligations in schedule E, which is identified as a Contractual Date therein or otherwise stated to be a Contractual Date in sub-clause 3.1.2;
- 1.1.16 *Default* means any breach of the obligations of either party, (including but not limited to fundamental breach or breach of a fundamental term), or any default, act, omission, negligence or statement of either party, its employees, agents or sub-contractors in connection with or in

relation to the subject matter of the Contract and in respect of which such party is liable to the other hereunder;

- 1.1.17 *Exit Plan* means the exit plan specified in schedule A;
- 1.1.18 *Facilities* means any or all of the Hardware, Software and any other facilities or equipment listed in schedule B to be used by the Contractor in the provision of the Managed Services;
- 1.1.19 *Hardware* means any hardware listed or computing Facility identified in schedule B to be used by the Contractor in the provision of the Managed Services;
- 1.1.20 *Health Service Body* means a health service body as defined within the Health and Social Care Act 2012 or any NHS foundation trust listed in the register of NHS foundation trusts maintained pursuant to section 39 of that Act;
- 1.1.21 *Implementation Charge* means the total, non-recurring sum stated in schedule G (financial obligations), which shall remain fixed unless otherwise provided therein, to be paid by the Commissioner to the Contractor, where applicable, in respect of the implementation of the Managed Services;
- 1.1.22 *Intellectual Property Rights* means
- (a) patents, trade marks, service marks, domain names, registered designs, utility models, applications for and the right to make applications for any of such rights, inventions, know-how, unregistered trade marks and service marks, trade and business names, including rights in any get-up or trade dress, copyrights (including rights in computer software), unregistered design rights and other rights in designs and copyright in databases;
 - (b) the sui generis right for the maker of a database to prevent extraction or re-utilisation or both of the whole or a substantial part of the content of that database, as described in the Copyright and Rights in Databases Regulations 1997 (S.I. 1997 No. 3032); and
 - (c) rights of the same or similar effect or nature as or to those in paragraphs (a) and (b) above;
- 1.1.23 *Managed Services* means the services provided by the Contractor which, through its management of Facilities, shall result in the functions and performance specified in the Contractor Undertakings in respect of the Managed Services being available to both the Lead and Secondary Commissioner's
- 1.1.24 *MS Charges* means the sums payable by the Commissioner for the provision of Managed Services earned by the Contractor in any period in accordance with clause 25.5;
- 1.1.25 a *Person* means a partnership, firm, corporation or association, (whether incorporated or unincorporated) as well as a natural person;
- 1.1.26 *Personal data* means data as defined by the Data Protection Act 1998 which relates to a living individual who can be identified from such data, and/or from such data and other information which is in the possession of, or is likely to come into the possession of the Contractor and

includes any expression of opinion about an individual and any indication of the intentions of the Contractor in respect of an individual;

- 1.1.27 *Published Specification* means the functional and technical specification of any product, including any item of Hardware or Software, which its manufacturer or developer publishes or makes generally available which is current at the date of execution of the Contract or, with the agreement of both parties, current at the Acceptance Date of the Managed Services;
- 1.1.28 *Recruits* means any new employees engaged by the Contractor to work on the Services to which this Contract relates (and any amendment to those Services);
- 1.1.29 *Related Company* means any subsidiary, holding company or company with a holding company in common as defined in section 736 of the Companies Act 1985;
- 1.1.30 *Service Levels* means the standards of service or service objectives specified in the Contractor Undertakings which the Contractor is required to achieve in the performance of Managed Services details of which are contained in schedule A;
- 1.1.31 *Site* shall mean a Commissioner 's building or location where Managed Services will be used by the Commissioner and where Facilities, as identified in schedule B, if any, are installed;
- Sites shall be identified in schedule B;
- 1.1.32 *Software* means the Commissioner Software and Contractor Software or any of them, listed as such in schedule B;
- 1.1.33 *Transition Project* means a project to achieve the transfer of responsibility for the provision of Managed Services between parties with the minimum disruption to processing either the Commissioner's or the Secondary Commissioner's workload in accordance with clause 19 whether at the commencement of the Managed Services (the assumption of responsibility by the Contractor for the provision of Managed Services) or on discontinuance of Managed Services by the Commissioner (transfer of responsibility between the Contractor and the Commissioner or its third-party contractor);
- 1.1.34 *TUPE* means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and any subsequent amendment or statute replacing such regulations as it shall apply to the Contract in accordance with clause 26;
- 1.1.35 *Virus* means any Software intended to corrupt, destroy or otherwise damage or interfere with the use of Software or other Software or data owned by or under the control of the Commissioner whether such Software is introduced wilfully or negligently.

1.2 Number

As used herein unless the context otherwise requires, the singular includes the plural and vice versa.

1.3 Gender

As used herein unless the context otherwise requires, the masculine includes the feminine and vice versa.

1.4 Headings

The headings in the Contract are not intended to, and shall not, affect or limit the intent, scope or interpretation of the Contract.

1.5 Order of precedence

Reference to clauses and schedules herein are references to the clauses and schedules of the Contract. In the event of any conflict or inconsistency between the clauses and schedules, the clauses shall prevail over the schedules.

1.6 Subsequent enactments

References herein to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

1.7 Severability

If any provision of the Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the parties shall immediately commence good faith negotiation to remedy such invalidity.

1.8 Entire agreement

With the exception of statements made fraudulently, the Commissioner and the Contractor agree that the Contract is the complete and exclusive statement of the agreement between the parties which supersedes all proposals or prior agreements, whether oral or written, and all other communications between the parties relating to the subject matter of the Contract.

1.9 Law

The parties accept the non-exclusive jurisdiction of the English courts and agree that the Contract is to be governed and construed according to English Law.

2 Obligations of parties

2.1 Contractor's obligations

The Contractor shall meet the Contractor Undertakings contained in Schedule A and fulfil all its other obligations under the Contract in accordance with the timetable in Schedule E in consideration of which the Commissioner shall pay the Implementation Charge, if any, and applicable MS Charges.

2.2 Commissioner's obligations

- 2.2.1 The Commissioner shall pay the Contractor the Implementation Charge, if any and applicable Managed Service Charges and perform its responsibilities under the Contract including those specified in Schedule D (Commissioner's responsibilities).
- 2.2.2 The Commissioner shall consider extending the service provision to further boroughs within NWL upon successful implementation of this contract. The criteria for a successful implementation is defined in Schedule H (Implementation Evaluation Criteria). If the Commissioner acquires sufficient authority to expand the service, the Contractor will be a preferred provider, under the any qualified provider rules.

2.3 Quality management

- 2.3.1 The Contractor shall apply the quality management system, described in schedule C, to all its operations related to performance of the Contract. Such quality management system shall adhere to the quality standards and requirements specified in the Contractor Undertakings or, where no such standards or procedures are specified therein, to good practices recognised in the information systems industry in relation to quality.
- 2.3.2 If through no fault of either the Commissioner, the Contractor materially fails to adhere to the timetable in schedule E, the Commissioner may request the Contractor to provide a written, quality assurance report of its operation of the quality management system referred to in sub-clause 2.3.1 above in respect of its performance of the Contract and the Contractor shall provide a plan for the implementation of any appropriate remedial actions recommended therein.
- 2.3.3 The quality assurance report referred to in sub-clause 2.3.2 above shall be delivered to the Commissioner within thirty (30) days of being so requested or within any period stated in such request and agreed by the Contractor and shall be prepared by a Person appropriately qualified in quality assurance techniques who shall be appointed by the Contractor with the approval of the Commissioner, such approval not to be unreasonably withheld or delayed.

3 Time

3.1 Timetable

- 3.1.1 The Contractor shall implement the Managed Services according to the timetable contained in Schedule E. However, the Contractor shall not be liable for delay or failure to meet any dates specified in schedule E unless such dates are stated therein or otherwise stated in sub-clause 3.1.2 to be Contractual Dates.
- 3.1.2 The timetable contained in Schedule E is constructed relative to the date of signature of the Contract, unless stated otherwise in Schedule E, and shall contain planned dates for major events in the implementation of the Managed Services including:
 - (a) a Planned Acceptance Date for the Managed Services; and

- (b) an Acceptance Completion Date in respect of the Managed Services, which if no such date is specified in Schedule E, shall be thirty (30) days after the Planned Acceptance Date. The Acceptance Completion Date for Managed Services shall be a Contractual Date.

3.1.3 Delay or failure by the Contractor to meet any Contractual Date contained in the timetable specified in Schedule E shall be subject to the provisions of clause 8.3 (delays).

3.2 Extension of time

- 3.2.1 If the performance of the Contract by the Contractor be delayed by reason of Default by the Commissioner or by its employees or agents or by other Contractors of either the Commissioner, the Contractor shall be entitled to a reasonable extension of time and to any reasonable additional costs which it can show were directly incurred as a result of the delay, provided always that it advises appropriate personnel within the Commissioner in writing without undue delay.
- 3.2.2 If the performance of the Contract by either party be delayed by reason of any event of force majeure (as defined in clause 3.3), both parties shall be entitled to a reasonable extension of time provided that the party so delayed notifies the other party in writing without undue delay. Neither party shall be entitled to any additional costs incurred as a result of such delay.

3.3 Force majeure

- 3.3.1 Neither party shall be liable for delay or failure to perform any of its obligations under the Contract insofar as the performance of such obligation is prevented by any event, which constitutes an event of force majeure (as defined in sub-clause 3.3.2 below). Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such event of force majeure.
- 3.3.2 For the purposes of sub-clause 3.3.1 above, the events which constitute force majeure (*an event of force majeure*) and in terms of which either party shall be excused from liability for delay or of failure to perform any of its obligations under the Contract, shall only include:
 - (a) war, civil war, armed conflict or terrorist attack arising within and affecting the United Kingdom; or
 - (b) nuclear, chemical or biological contamination of the Contractor's property arising from any of the events as set out in (a) above; or
 - (c) fire, theft and explosion; or
 - (d) Act of God (as defined below); or
 - (e) national emergency declared by Her Majesty's Government; or
 - (f) any other item specified in schedule A.

Act of God includes all uncontrollable natural forces and natural disasters including flood, avalanche, storms, unforeseeable accidents or equipment failure which are not the fault of the party relying upon such circumstances but shall specifically exclude any industrial action and any

acts or omissions of any employees in the course of their employment or consultants in the course of their engagement.

- 3.3.3 If any event of force majeure arises during the term of the Contract which directly causes the Contractor or the Commissioner to be materially unable to comply with any of its obligations hereunder, the Contractor and the Commissioner may agree such terms, including as to extension of time, as are appropriate for the continued performance of the Contract. If no such terms are agreed within 180 days of the commencement of the said event, and such event is continuing or its consequence remains such that the party subject to such event is materially unable to comply with its obligations, the parties hereby agree that the Contract shall thereupon terminate, subject to the provisions of clause 10.
- 3.3.4 Relief under sub-clause 3.3.1 above shall not be given unless a party intending to claim relief has, by notice to the other party as soon as practicable after becoming aware of the event of force majeure or, if later, of the failure to perform, informed the other party that it intends to claim relief. Such notice shall contain such relevant information relating to such failure as is available.
- 3.3.5 It shall not be considered to be an event of force majeure, nor shall either party be excused from liability for delay or failure to perform any of its obligations under the Contract, if it is delayed or fails to meet its obligations as a result of:
- (a) industrial action taken by it or its employees; or
 - (b) failure by its agents or sub-contractors to meet any obligation in relation to the Contract when failure by such agent or sub-contractor does not itself result from an event of force majeure; or
 - (c) any unplanned event, the effects of which the Contractor undertakes, expressly, to avoid or circumvent by:
 - i. the operation of back-up or recovery procedures or other relevant procedures; or
 - ii. the provision of alternative or back-up services, as specified in the Contractor Undertakings.

4 Communications under the Contract

4.1 Notices

- 4.1.1 Any notice or other communication which the Commissioner or the Contractor is required or authorised by the Contract to serve on the other shall be sufficiently served if sent to the Authorised Officer of the other at the address specified in schedule D for the Commissioner and the address specified in schedule C for the Contractor:
- (a) by hand; or
 - (b) by registered first class post or recorded delivery; or

- (c) by facsimile transmission confirmed by registered first class post or recorded delivery; or
- (d) by Electronic Data Interchange.

4.1.2 Notices sent by registered first class post or recorded delivery shall be deemed to be served three (3) working days following the day of posting. Notices sent by facsimile transmission shall be deemed to be served on the day of transmission if transmitted before 4:00 pm on a working day but otherwise on the next working day, provided that confirmation by registered post or recorded delivery is sent the same day. Notices sent by Electronic Data Interchange, where such is an established means of communication between the parties, shall be deemed to be served on the day of transmission if transmitted before 4:00 pm on a working day but otherwise on the next working day. In all other cases, notices and other communications will be deemed to have been served on the day they are actually received.

4.1.3 All notices and other communications served hereunder shall quote the Contract Reference Number of the Contract. Notices of termination served hereunder shall expressly refer to the clause or sub-clause under the provisions of which they are served.

4.2 Validity of communications

No notice, approval, acceptance, waiver, consent or other communication by the Commissioner or the Contractor shall be valid unless made in writing and executed on behalf of the party sending the communication by the Authorised Officer specified in schedule D (Commissioner's responsibilities) for the Commissioner and in schedule C (Contractor's other responsibilities) for the Contractor or on behalf of the relevant Authorised Officer by a Person delegated by him to serve such notice, approval, acceptance, waiver, consent or other communication.

5 Statutory responsibilities

5.1 Compliance with statutory and other regulations

5.1.1 The Contractor shall in all matters arising from the performance of the Contract conform with all relevant Acts of Parliament and in particular the Health and Safety at Work Act 1974 and with all orders, regulations and bye-laws made with statutory Commissioner by Government Departments or by local or other authorities that shall be applicable to the Contract, including legislation on equal opportunities and discrimination in employment. The Contractor shall also observe through its personnel any rules applicable to the Site. The Commissioner shall provide to the Contractor without undue delay following the signing of the Contract and from time-to-time thereafter as may be necessary during the term of the Contract, written information as to current local conditions. Such information shall include:

- (a) Site regulations;
- (b) location of any toxic hazards the existence of which the Commissioner should reasonably be expected to know; and
- (c) relevant procedures to be followed and precautions to be taken in relation to such hazards.

The Contractor shall not in the performance of the Contract in any manner endanger the safety or unlawfully interfere with the convenience of the public and shall procure that its employees, agents and sub-contractors shall conform to such regulations, procedures and precautions provided by the Commissioner as may be appropriate.

- 5.1.2 The Contractor shall give the Commissioner such prior written notice as the Commissioner may require of the delivery under the Contract of any goods having a toxic hazard or other hazard to the safety or health of persons or property, the existence of which the Contractor should reasonably be expected to know, identifying those hazards and giving full details of any precautions to be taken by the Commissioner on the delivery of such goods and their subsequent storage or handling.
- 5.1.3 The Contractor shall ensure that all such goods are suitably packed and identified at the time of delivery with reference to the hazards attaching to them.

5.2 Cost of compliance with law

- 5.2.1 If the direct cost to the Contractor of the performance of the Contract shall be increased or reduced by reason of the making after the date of the Contract of any relevant law or any relevant order, regulation or bye-law having the force of law that shall be applicable to the Contract (other than any tax upon profits or revenue), the amount of such increase or reduction shall be notified to the Commissioner and shall take effect in accordance with the change control procedure in schedule H, upon proof by the Contractor of the amount of any such increase or reduction, which increase or reduction shall be added to or deducted from the Implementation Charge, if any, and MS Charges unless stated otherwise in schedule G.
- 5.2.2 In the event that the Contractor does not fulfil its responsibilities and obligations under the Contract and the Commissioner thereby incurs costs to which it would not otherwise be liable due to any relevant law or any relevant order, regulation or bye-law having the force of the law the amount of such costs shall be reimbursed by the Contractor to the Commissioner providing the Commissioner has made all reasonable efforts to mitigate such costs.

5.3 Corrupt gifts and payments of commission

- 5.3.1 The Contractor shall not:
 - (a) offer or give or agree to give any servant of the Commissioner, any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of the Contract or any other Contract for the Commissioner or for showing or forbearing to show favour or disfavour to any Person in relation to this Contract or any other Contract for the Commissioner;
 - (b) enter into this Contract, or any other contract with the Commissioner, in connection with which commission has been paid or agreed to be paid by it or on its behalf or to its knowledge to any Person employed by or in the service of the Commissioner unless before the Contract is made, particulars of any agreement for the payment thereof have been disclosed in writing to the Authorised Officer of the Commissioner.

- 5.3.2 Any breach of this clause 5.3 by the Contractor or by anyone employed by it or acting on its behalf (whether with or without the knowledge of the Contractor) or the commission of any offence by the Contractor or by anyone employed by it or acting on its behalf under the Prevention of Corruption Acts, 1889 to 1916, in relation to this Contract or any other Contract for the Commissioner, shall entitle the Commissioner to determine the Contract and recover from the Contractor the amount of any loss resulting from such determination.
- 5.3.3 In any dispute, difference or question arising in respect of the interpretation of this clause 5.3 (except so far as the same may relate to the amount recoverable from the Contractor under sub-clause 5.3.2 in respect of any loss resulting from such determination of the Contract), the right of the Commissioner to determine the Contract under this clause 5.3 or the amount or value of any such gift, consideration or commission shall be final and conclusive.

6 Variations to the Contract

6.1 Amendments

- 6.1.1 No amendments to the Contract, nor any additional or substitute clauses, schedules or appendices thereto, shall be valid unless made in writing expressly purporting to amend the Contract and executed on behalf of both parties by their respective Authorised Officers (except where the Contractor is a company, in which case such amendment shall be executed by a director or the company secretary).
- 6.1.2 Both parties shall maintain a complete and accurate master copy of the Contract during the term thereof containing all amendments thereto.

6.2 Change control

The control of change hereunder shall be in accordance with the change control principles and procedures laid down in schedule H. For these purposes, a *change* includes any proposed amendment to the Contract, including the proposed assignment or sub-contracting of the Contract, whether in whole or in part. For each such change, which is agreed by the Commissioner and the Contractor, the Contract shall be amended using the form of amendment set out in schedule H.

6.3 Assignment

- 6.3.1 The Contract is personal to the Contractor. Save as set out in clause 6.4 the Contractor shall not assign, novate, sub-contract or otherwise dispose of the Contract or any part thereof or the benefit or advantage of the Contract or any part thereof without previous consent in writing of the Commissioner .
- 6.3.2 Subject to the provisions of sub-clause 6.3.3 the Commissioner shall have the right to assign, novate, sub-contract or otherwise dispose of its rights and obligations under the Contract provided that any such assignment, novation, subcontracting or disposal of the Contract is to another NHS legal entity and shall not increase the burden on the Contractor of the obligations accepted by the Contractor under this Contract. Any resulting changes to the Contract shall be carried out in accordance with the change control procedures specified in schedule H always

provided that the use of such procedures shall not restrict or prevent the Commissioner from exercising its rights under this clause.

- 6.3.3 Where the Commissioner elects to assign, novate, sub-contract or otherwise dispose of its rights and obligations under the Contract (*assignment*) and such assignment relates solely to the management of the Contract other than in circumstances in which the Commissioner transfers or divest all or part of its functions to a third party the Commissioner shall seek the prior written consent of the Contractor to such assignment, such consent not to be unreasonably withheld or delayed.

7 Payment and taxes

7.1 Payments

- 7.1.1 The Commissioner shall pay the Contractor according to the payment schedule contained in Schedule G.
- 7.1.2 The Contractor shall submit invoices in accordance with the invoicing procedure specified in Schedule G and payment shall be made within 30 days of receipt of a correct and valid invoice in accordance with Schedule G.

7.2 Value added tax

The Commissioner shall pay the Contractor, in addition to the Implementation Charge, if any, and MS Charges and any other valid charges, a sum equal to the value added tax chargeable on the value of goods supplied and services performed under the Contract at the date of invoice. The Contractor shall, upon request, provide such information as may be reasonably required by the Commissioner regarding the amount of value added tax charged on invoices submitted.

7.3 Recovery of sums due

Whenever, under the Contract, any sum of money shall be recoverable from or payable by the Contractor, including any over-payments, the same may be deducted from any sum then due or which at any time may become due to the Contractor under this Contract or any other contract with the Commissioner, subject to prior written notice to the Contractor.

8 Remedies; indemnities

8.1 Limitation of liability

8.1.1 Injury to Persons

Neither party excludes or limits liability to the other party for death or personal injury caused by the negligence of either party.

8.1.2 Financial limits

Subject to sub-clause 8.1.1 the liability of either party for Defaults shall be limited as stated below:

- (a) the liability of either party under the Contract for any one Default resulting in direct loss of or damage to tangible property of the other party, or any series of connected Defaults resulting in or contributing to the loss of or damage to the tangible property of the other party, shall not exceed the figure set out in schedule G;
- (b) the aggregate liability of either party under the Contract for all Defaults, in respect of the implementation of the Managed Services, other than those governed by paragraph (a) above, shall not exceed the amount stated in schedule G to be the limit of such liability;
- (c) the aggregate liability of either party under the Contract for all Defaults arising in any twelve-month contract period, other than those governed by paragraphs (a) and (b) above shall not exceed the amount stated in schedule G to be the limit of such liabilities for that six month contract period. For this purpose, such amount specified in schedule G shall be expressed as a percentage of the Contract Charges applicable to the same period and six month contract periods shall be measured from the date of commencement of Managed Services in accordance with clause 17.1 and anniversaries thereof.

8.1.3 Exclusions

- (a) Without prejudice to the generality of sub-clause 8.1.1 neither party shall be liable to the other for:
 - (i) loss of profits, or of business, or of revenue, or of goodwill, or of anticipated savings; and / or
 - (ii) indirect or consequential loss or damage; and / or
 - (iii) specific performance of the Contract unless expressly agreed by the parties to be applicable in schedule G.
- (b) The provisions of sub-clause 8.1.3 (a) shall not be taken as excluding or limiting the Commissioner's right under the Contract to claim for any of the following which results from a Default by the Contractor provided that the Commissioner has made all reasonable efforts to mitigate such results:
 - (i) costs and expenses which would not otherwise have been incurred by the Commissioner including, without limiting the generality of the foregoing, costs relating to the time spent by the Commissioners's executives and employees in dealing with the consequences of the Default;
 - (ii) expenditure or charges paid by the Commissioner which would not otherwise have been incurred or would have ceased or would not have recurred;
 - (iii) costs, expenses and charges resulting from the loss or corruption of the data or Software owned by or under the control of the Commissioner, in accordance with sub-clause 12.3.2 provided that the Contractor's liability shall be limited to costs,

expenses and charges associated with re-constituting such data or Software and returning it to a fully operational state insofar as it is inherently capable of being re-constituted.

- (c) Any liability of the Contractor resulting from a claim under sub-clause 8.1.3 (b) shall be subject to limitation in accordance with sub-clause 8.1.2.

8.2 Intellectual Property Rights indemnity

Save as granted under this Contract, the Commissioner nor the Contractor shall acquire any right, title or interest in the Contractor's Pre-Existing Intellectual Property Rights nor in the Commissioner's Pre-Existing Intellectual Property Rights respectively and hereby grants to both the Commissioner a licence to use the Contractor's Software on its standard licence terms;

8.2.1 Commissioner's indemnity

- (a) Any reference in this sub-clause 8.2.1 to a claim, demand or action for the infringement or alleged infringement of Intellectual Property Rights shall apply only to any claim, demand or action for the infringement or alleged infringement of Intellectual Property Rights in connection with the Commissioner Software or any other item supplied by the Commissioner in connection with the provision of Managed Services, (hereinafter referred to in this clause 8.2 as *Commissioner supplied items*)
- (b) Subject always to the Contractor's proper observance of its obligations under this sub-clause 8.2.1, the Commissioner shall fully indemnify the Contractor against all claims, demands, actions, costs, expenses (including but not limited to full legal costs and disbursements on a solicitor and client basis), losses and damages arising directly from or incurred only by reason of any infringement or alleged infringement (including but not limited to the defence of such alleged infringement) of any Intellectual Property Right, enforceable in the United Kingdom, in the Commissioner supplied items.
- (c) The Contractor shall forthwith notify the Commissioner if any claim or demand is made or action brought against the Contractor for infringement or alleged infringement of any Intellectual Property Right in the Commissioner supplied items. The Commissioner shall at its own expense conduct any litigation arising therefrom and all the negotiations in connection therewith and the Contractor hereby agrees to grant the Commissioner exclusive control of any such litigation or such negotiations.
- (d) The Commissioner shall forthwith notify the Contractor if any claim or demand is made or action brought against the Commissioner for infringement or alleged infringement of any Intellectual Property Right in the Commissioner supplied items which may affect the performance of the Managed Services by the Contractor.
- (e) The Contractor shall at the request of the Commissioner afford all reasonable assistance for the purpose of contesting any such claim, demand or action and shall be repaid all costs and expenses incurred in so doing.

- (f) The Contractor shall not make admissions which may be prejudicial to the defence of such claim or demand or action.
- (g) If a claim, demand or action is made which is subject to this sub-clause 8.2.1 or in the reasonable opinion of the Commissioner is likely to be made, the Commissioner may at its own expense:
 - (i) modify or replace the Commissioner supplied items without increasing the burden of the Contractor's obligations in providing the Managed Services, so as to avoid the infringement or the alleged infringement and the terms herein shall apply mutatis mutandis to such modified or replaced the Commissioner supplied items; or
 - (ii) modify or replace the Commissioner supplied items so as to avoid the infringement or the alleged infringement and, insofar as the burden of the Contractor's obligations in providing the Managed Services is increased, such modification or replacement shall be treated as an amendment to the Contract in accordance with clause 6.1 and subject to the change control procedures contained in schedule H. Acceptance by the Contractor of such modification or replacement shall not be unreasonably withheld or delayed; or
 - (iii) procure a licence in respect of the Commissioner supplied items in order that the Contractor may continue to perform the Managed Services.
- (h) The foregoing provisions of this sub-clause 8.2.1 shall not apply insofar as any such claim or demand or action is in respect of:
 - (i) any use in the provision of the Managed Services by the Contractor of anything supplied by the Contractor in combination with any Commissioner supplied items where such combined use of the item supplied by the Contractor directly gives rise to the claim, demand or action;
 - (ii) any modification of any Commissioner supplied items carried out by the Contractor if such modification has not been authorised by the Commissioner in writing; or
 - (iii) the Contractor's unreasonable refusal to use any modified or replaced Commissioner supplied item in the performance of the Managed Services pursuant to sub-clause 8.2.1 (g); or
 - (iv) any infringement or alleged infringement of any Intellectual Property Right arising only by reason of the Contractor's non-compliance with the express instructions of the Commissioner issued in writing after the date hereof.
- (i) If the Commissioner has availed itself of its rights to modify or replace Commissioner supplied items in accordance with sub-clause 8.2.1 (g) paragraph (i) or (ii) or to procure a licence in accordance with sub-clause 8.2.1 (g) paragraph (iii) and such exercise of the said rights has avoided any claim, demand or action for the infringement or alleged infringement, then the Commissioner shall have no further liability thereafter under this sub-clause 8.2.1 in respect of the said claim, demand or action.

- (j) If modification or replacement in accordance with sub-clause 8.2.1 (g) paragraph (i) or (ii) is not possible so as to avoid the infringement or the Commissioner has been unable to procure a licence in accordance with sub-clause 8.2.1 (g) paragraph (i), the Contractor shall be entitled to terminate the Contract in accordance with clause 10.2 paragraph (b).

8.2.2 Contractor's indemnity

- (a) Any reference in this sub-clause 8.2.2 to a claim, demand or action for the infringement or alleged infringement of Intellectual Property Rights shall exclude any claim, demand or action which is subject to the provisions of sub-clause 8.2.1.
- (b) Subject always to the Commissioner's proper observance of its obligations under this sub-clause 8.2.2, the Contractor shall fully indemnify the Commissioner against all claims, demands, actions, costs, expenses (including but not limited to full legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including but not limited to the defence of such alleged infringement) of any Intellectual Property Right enforceable in the United Kingdom in connection with the Managed Services.
- (c) The Commissioner shall forthwith notify the Contractor if any claim or demand is made or action brought against the Commissioner for infringement or alleged infringement of any Intellectual Property Right in connection with the Managed Services. The Contractor shall at its own expense conduct any litigation arising therefrom and all the negotiations in connection therewith and the Commissioner hereby agrees to grant the Contractor exclusive control of any such litigation or such negotiations provided that this sub-clause 8.2.2 (c) shall be subject to the provisions of sub-clause 8.2.2 (k).
- (d) The Contractor shall forthwith notify the Commissioner if any claim or demand is made or action brought against the Contractor for infringement or alleged infringement of any Intellectual Property Right which may affect the use of the Managed Services by the Commissioner.
- (e) The Commissioner shall at the request of the Contractor afford all reasonable assistance for the purpose of contesting any such claim, demand or action and shall be repaid all costs and expenses incurred in so doing.
- (f) The Commissioner shall not make admissions which may be prejudicial to the defence of such claim or demand or action.
- (g) If a claim, demand or action for the infringement or alleged infringement of any Intellectual Property Right is made in respect of the Managed Services or in the reasonable opinion of the Contractor is likely to be made, the Contractor may at its own expense:
 - (i) modify Managed Services without reducing the performance or functionality of the same, so as to avoid the infringement or the alleged infringement and the terms herein shall apply mutatis mutandis to such modified Managed Services; or

- (ii) procure a licence for the Contractor to perform the Managed Services on terms, which are acceptable to the Commissioner.
- (h) The foregoing provisions of this sub-clause 8.2.2 shall not apply insofar as any such claim or demand or action is in respect of:
 - (i) any use in the provision of the Managed Services by the Contractor of anything it supplies in combination with any item supplied by the Commissioner where such combined use of the item supplied by the Commissioner directly gives rise to the claim, demand or action;
 - (ii) any modification carried out by or on behalf of the Commissioner to any item supplied by the Contractor under the Contract if such modification has not been authorised by the Contractor in writing; or
 - (iii) the Commissioner's unreasonable refusal to use modified Managed Services provided pursuant to sub-clause 8.2.2 (g); or
 - (iv) any infringement or alleged infringement of any Intellectual Property Right arising only by reason of the Contractor's compliance with the express instructions of the Commissioner issued in writing after the date hereof.
- (i) If the Contractor has availed itself of its rights to modify Managed Services in accordance with sub-clause 8.2.2 (g) paragraph (i) or to procure a licence in accordance with sub-clause 8.2.2 (g) paragraph (ii) and such exercise of the said rights has avoided any claim, demand or action for the infringement or alleged infringement, then the Contractor shall have no further liability thereafter under this sub-clause 8.2.2 in respect of the said claim, demand or action.
- (j) If a replacement or modification in accordance with sub-clause 8.2.2(g) paragraph (i) is not possible so as to avoid the infringement or the Contractor has been unable to procure a licence in accordance with sub-clause 8.2.2(g) paragraph (ii), the Contractor shall be liable for the full value of the costs incurred in procuring and implementing replacement Managed Services.
- (k) In the event that, due to a claim, demand or action arising from or by reason of infringement or alleged infringement of any Intellectual Property Right, the quiet enjoyment by the Commissioners of the Managed Services is disrupted or impaired and the Contractor:
 - (i) has not within seven (7) days of the commencement of such disruption or impairment commenced all appropriate and effective actions to restore to the Commissioner the quiet enjoyment of the Managed Services by exercising its rights in accordance with sub-clause 8.2.2 (g); and thereafter
 - (ii) does not use all reasonable efforts to pursue such actions to restore to the Commissioner the quiet enjoyment of the Managed Services, the Commissioner may conduct negotiations and make a settlement necessary to enable the Commissioner to continue to use the Managed Services. Such negotiations and settlement shall

relate solely to the continued use of the Managed Services and any settlement made by the Commissioner shall be expressed to be without prejudice to the conduct by the Contractor under the provisions of sub-clause 8.2.2 (c) of any litigation arising from, or settlement of, such claim, action or demand.

- (l) Where any claim, action or demand, to which this sub-clause 8.2.2 applies, is settled as a result of negotiations by the Commissioner under the provisions of sub-clause 8.2.2 (k) and compensation resulting from such settlement is paid to a third party other than by the Contractor or its insurers, the Contractor shall not be required to pay by way of indemnity any sum greater than that which would be reasonably payable in settlement having regard to the circumstances of the case and in particular to the damages which might be recoverable by law.
- (m) The foregoing states the entire liability of the Contractor with regard to the infringement of any Intellectual Property Right in connection with the Managed Services.

8.2.3 The liability of either party under this clause 8.2 shall not exceed 150% of the MS Charges arising in any six month period in which the indemnifying party receives notice of the claim or allegation pursuant to sub-clauses 8.1.2.1 or 8.1.2.2. The six-month period shall be measured from the date of commencement of Managed Services in accordance with clause 17.1 and anniversaries thereof.

8.3 Waiver

- 8.3.1 The failure of the Contractor or the Commissioner to insist upon strict performance of any term, condition or provision of the Contract or to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by the Contract.
- 8.3.2 A waiver of any Default shall not constitute a waiver of any other Default.
- 8.3.3 No waiver of any of the terms, conditions or provisions of the Contract shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause 4.

8.4 Statutory invalidity

The parties expressly agree that should any limitation or provision contained in this clause 8 be held to be invalid under any particular statute or law, or any rule, regulation or bye-law having the force of law, it shall to that extent be deemed to be omitted but, if any party thereby becomes liable for loss or damage which would have otherwise been excluded, such liability shall be subject to the other limitations and provisions set out herein.

8.5 Remedies cumulative

Except as otherwise expressly provided by the Contract, all remedies available to the Contractor or the Commissioner for breach of the Contract are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

8.6 Disbursement of public funds

- 8.6.1 The Commissioner has a duty to account for the disbursement of public funds. The Contractor shall keep comprehensive and accurate records in respect of the Implementation Charge, if any, and all MS Charges due to it under the Contract. The Contractor shall allow inspection of such records at all reasonable times by the Commissioner's duly authorised representatives for the sole purpose of verifying the Contractor's fulfilment of its obligations under the Contract and amounts due to the Contractor therefore. The Contractor shall make available such Facilities and give such assistance, including the provision of copies or extracts of such records as the Commissioner may reasonably request in connection with the performance of such audit and shall afford the Commissioner's authorised representatives all reasonable access to all other information, reports, documents, records and data, whether in human or machine readable form, solely relevant to the performance of its obligations.
- 8.6.2 Representatives of the Commissioner who are authorised to perform such inspection shall:
- (a) have other auditing responsibilities to the Commissioner in addition to those related to this clause 8.7;
 - (b) be acceptable, on all reasonable grounds, to the Contractor.
- 8.6.3 All confidential information of the Contractor made available to the Commissioner under this clause 8.7 shall be treated by the Commissioner in accordance with clause 11.1.
- 8.6.4 The Contractor shall use its reasonable endeavours to obtain and maintain access to its sub-contractors records in all sub-contracts entered into in relation to the Contract in order to ensure access by the Commissioner, where appropriate, to information of such sub-contractors required in accordance with sub-clause 8.7.1.

9 Dispute resolution

9.1 Escalation procedure negotiation

If any dispute arises out of the Contract the parties will attempt to settle it by negotiation. In the event of any dispute, difference or question of interpretation arising between the parties, neither shall take recourse to any other resolution (whether by reference to mediation as set out in this clause 9, or by litigation), until the escalation procedure included in schedule H has been fully exercised.

9.2 Mediation

If the parties are unable to settle any dispute in accordance with clause 9.1 within 21 days, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure (*the model procedure*).

9.3 Initiating the mediation

To initiate a mediation, a party by its Authorised Officer must give notice in writing (*ADR notice*) to the other party (addressed to its Authorised Officer) requesting a mediation in accordance with clause 9.2. A copy of the request should be sent to CEDR.

9.4 Disagreements on mediation

If there is any point on the conduct of the mediation (including as to the nomination of the mediator) upon which the parties cannot agree within 14 days from the date of the ADR notice, CEDR will, at the request of any party, decide that point for the parties, having consulted with them.

9.5 Timing of mediation

The mediation will start not later than 28 days after the date of the ADR notice.

9.6 Mediation in parallel

Any party, which commences court proceedings or an arbitration, must institute a mediation or serve an ADR notice on the other party to the court proceedings or arbitration within 21 days.

9.7 Mediation before litigation

No party may commence any court proceeding or arbitration in relation to any dispute arising out of the Contract until they have attempted to settle it by mediation and that mediation has terminated.

9.8 Jurisdiction of courts

Disputes, differences or questions of interpretation shall, subject to the foregoing provisions of this clause 9, be subject to the non-exclusive jurisdiction of the English courts.

10 Termination

10.1 Commissioner's right of termination

The Commissioner may at any time by notice in writing to the Contractor terminate the Contract as from the date of service of such notice if:

- (a) there is a change of control of the Contractor, as defined by section 416 of the Income and Corporation Taxes Act 1988, where it may be reasonably anticipated that it will have a material effect on the Contractor's ability to perform its obligations under the Contract, save that the Commissioner shall only be permitted to exercise the foregoing right of termination for six (6) months after the later of the occurrence of each such change of control or becoming aware of each such change of control (the Contractor being under an obligation to so notify) and shall not be permitted to exercise such right where the Commissioner has agreed in advance to the particular change of control and such change of control takes place as proposed; or
- (b) the Contractor, being an individual, shall become bankrupt; or

- (c) the Contractor, being a company, shall resolve, or have an order made against it for it to be wound up other than for the purposes of reconstruction or amalgamation, or the same shall be the case for a Related Company of the Contractor; or
- (d) the Contractor, being a firm, shall:
 - i. have an individual member or partner to which paragraph (b) applies; or
 - ii. have a corporate member to which paragraph (c) applies; or
- (e) the Contractor, being an individual, a company or a firm, shall:
 - i. have a receiver, manager or administrative receiver appointed, or a receiving order or administration order is made for the benefit or on behalf of a creditor in respect of its business, assets or property or any part thereof; or
 - ii. make any arrangement or composition, including a voluntary arrangement under the Insolvency Act 1986, with or for the benefit of a creditor; or
 - iii. become unable to pay or have no reasonable prospect of being able to pay its debts or have a distress levied against it; or
 - iv. fail to satisfy a statutory demand served on it under section 123 (1) (a), section 268 (1) (a) or section 222 of the Insolvency Act 1986, as appropriate; or
 - v. call or cause to be called, apply or have application made for, a meeting of its creditors or any class of creditor; or
- (f) the Contractor, being an individual, a company or a firm, experience circumstances similar to those specified in paragraphs (a), (b), (c), (d) or (e) above in relation to it or its business in any country other than England, where it would reasonably be expected to affect the Contractor's ability to perform under the Contract.

10.2 Termination on breach of contract

Either the Commissioner or the Contractor may at any time by notice in writing to the other party terminate the Contract as from the date of service of such notice whenever any of the following events occurs:

- (a) there is a breach by the other party of any provision hereof which expressly entitles the non-breaching party to terminate the Contract; or
- (b) the other party commits a material breach of any of its obligations hereunder which is not capable of remedy or, if capable of remedy, is not remedied within a reasonable time, (agreed between the parties at the time), after receipt of written notice from the non-breaching party of its intention to terminate.

10.3 Commissioner's optional rights on termination

In the event the Commissioner is entitled to and terminates the Managed Services, or following expiry of the Contract in accordance with clause 17.3, the Commissioner may, at its discretion and on reasonable written notice at the time of such termination or expiry, exercise any of the options specified in the Contractor Undertakings or any subsequently agreed between the parties in accordance with the change control procedures contained in schedule H. Such options as the Commissioner shall decide to exercise shall be implemented as soon as practicable after termination or expiry.

10.4 Survival of obligations

Rights and obligations of the parties, which have accrued or shall accrue shall survive termination of the Contract insofar as survival shall be construed from the relevant clauses in the context of such termination.

10.5 Consequences of termination

10.5.1 In the event of the termination or expiry of this Contract:

- (a) the Contractor shall repay forthwith to the Commissioner any advance payments made by the Commissioner relating to any Managed Services not performed by the Contractor in accordance with the Contract.
- (b) the Contractor shall provide to the Commissioner or a replacement Contractor nominated by the Commissioner any data belonging to the Commissioner in its possession either in its then current format or in a format nominated by the Commissioner (in which event the Commissioner will reimburse the Contractor's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Commissioner;
- (c) the Contractor shall cease to use the data belonging to the Commissioner;
- (d) each party shall return all items supplied to it in connection with the Contract by the other party;
- (e) the Contractor shall render reasonable assistance to the Commissioner, if requested, to the extent necessary to effect an orderly assumption by a replacement Contractor of the Managed Services performed previously by the Contractor hereunder and the Commissioner shall reimburse the Contractor for such assistance at the rates then prevailing for customers of the Contractor for the same or similar services.

10.5.2 Upon expiry or an early termination of the Contract for any reason, then at the direction and discretion of the Commissioner and subject to the express terms of the Exit Plan;

- (a) the Commissioner shall have the option in respect of all of the matters referred to in the Exit Plan to acquire such items free of charge or if specified in the Exit Plan in consideration of the payment by the Commissioner of the price specified in respect of such items: or
- (b) the Contractor shall make a legally binding offer to the replacement Contractor nominated to the Contractor by the Commissioner in respect of all of the matters referred to in the Exit Plan

free of charge, or if specified in the Exit Plan in consideration of the payment by the replacement Contractor of the payment of the price specified in respect of such items.

- 10.5.3 The option set out in sub-clause 10.5.2 shall be exercisable by the Commissioner by service of a notice upon the Contractor as soon as possible following any notice of termination being given and no later than one (1) month prior to the date of termination of the Contract (in the case of the expiry of the Contract).
- 10.5.4 The option set out in sub-clause 10.5.2 shall take effect either on the termination or expiry of the Contract (whether the exercise of the option takes place prior to termination or expiry) or on the date of the exercise of the option (where the exercise of the option takes place after the termination of the Contract).
- 10.5.5 If the Commissioner exercises the option pursuant to sub-clause 10.5.2(a), and the Exit Plan specifies that fair market value is payable in respect of any Facility the Commissioner shall as appropriate pay the fair market value within thirty (30) days of the determination of such value. If the Contractor makes a legally binding offer to the replacement Contractor pursuant to sub-clause 10.5.2(b), the Contractor shall as appropriate allow the replacement contractor thirty (30) days to pay the Contractor following the determination of the fair market value.
- 10.5.6 For the purpose of this clause, *fair market value* shall mean a sum equal to the market value thereof at the date of termination between a willing buyer and a willing seller in each case in respect of the *in situ* value of the Facilities. In the event that the parties, using their best endeavours, are unable to agree the fair market value within such thirty day period the matter shall be referred to an independent valuer, nominated in default of agreement by the president for the time being of the Incorporated Society of Valuers and Auctioneers, whose determination shall be final and binding including as to costs.

11 Confidentiality and data protection

11.1 Confidentiality

- 11.1.1 In respect of any Confidential Information it may receive from the other party ("the Discloser") and subject always to the remainder of this clause 11.1, each party ("the Recipient") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser's prior written consent provided that:
- 11.1.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of the Contract;
- 11.1.1.2 the provisions of this clause 11.1 shall not apply to any Confidential Information which:
- (a) is in or enters the public domain other than by breach of the Contract or other act or omissions of the Recipient;

- (b) is obtained by a third party who is lawfully authorised to disclose such information; or
- (c) is authorised for release by the prior written consent of the Discloser; or
- (d) the disclosure of which is required to ensure the compliance of the Commissioner or the Secondary Commissioner with the Freedom of Information Act 2000 (the FOIA).

11.1.2 Nothing in this clause 11.1 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law or, where the Contractor is the Recipient, to the Contractor's immediate or ultimate holding company provided that the Contractor procures that such holding company complies with this clause 11.1 as if any reference to the Contractor in this clause 11.1 were a reference to such holding company.

11.1.3 The Contractor authorises the Commissioner to disclose the Confidential Information to such person(s) as may be notified to the Contractor in writing by the Commissioner from time to time to the extent only as is necessary for the purposes of auditing and collating information so as to ascertain a realistic market price for the goods supplied in accordance with the Contract, such exercise being commonly referred to as "benchmarking". The Commissioner shall use all reasonable endeavours to ensure that such person(s) keeps the Confidential Information confidential and does not make use of the Confidential Information except for the purpose for which the disclosure is made. The Commissioner shall not without good reason claim that the lowest price available in the market is the realistic market price.

11.1.4 The Contractor acknowledges that the Commissioner is or may be subject to the FOIA. The Contractor notes and acknowledges the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) and the Environmental Information Regulations 2004 as may be amended, updated or replaced from time to time. The Contractor will act in accordance with the FOIA, these Codes of Practice and these Regulations (and any other applicable codes of practice or guidance notified to the Contractor from time to time) to the extent that they apply to the Contractor's performance under the Contract.

11.1.5 The Contractor agrees that:

11.1.5.1 Without prejudice to the generality of clause 11.1.2, the provisions of this clause 11.1 are subject to the respective obligations and commitments of the Commissioner under the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) and the Environmental Information Regulations 2004;

11.1.5.2 subject to clause 11.1.5.3, the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for the Commissioner;

11.1.5.3 where the Commissioner is managing a request as referred to in clause 11.1.5.2, the Contractor shall co-operate with the Commissioner and shall respond within five (5) working days of any request by it for assistance in determining how to respond to a request for disclosure.

11.1.6 The Contractor shall and shall procure that its sub-contractors shall:

11.1.6.1 transfer the any request for information, as defined under section 8 of the FOIA, to the Commissioner as soon as practicable after receipt and in any event within five (5) working days of receiving a request for information;

11.1.6.2 provide the Commissioner with a copy of all information in its possession or power in the form that the Commissioner requires within five (5) working days (or such other period as the Commissioner or a Beneficiary may specify) of the Commissioner or a Beneficiary requesting that Information; and

11.1.6.3 provide all necessary assistance as reasonably requested by the Commissioner to enable the Commissioner to respond to a request for information within the time for compliance set out in section 10 of the FOIA.

11.1.7 The Commissioner may consult the Contractor in relation to any request for disclosure of the Contractor's Confidential Information in accordance with all applicable guidance.

11.1.8 This clause 11.1 shall remain in force without limit in time in respect of Confidential Information which comprises Personal Data or which relates to a patient, his or her treatment and/or medical records. Save as aforesaid and unless otherwise expressly set out in the Contract, this clause 11.1 shall remain in force for a period of 3 years after the termination or expiry of this Contract.

11.1.9 In the event that the Contractor fails to comply with this clause 11.1, the Commissioner reserves the right to terminate the Contract by notice in writing with immediate effect.

11.2 Personal data and medical records

11.2.1 The Contractor shall comply with the Data Protection Act 2012 ("**the 2012 Act**") and any other applicable data protection legislation. In particular the Contractor agrees to comply with the obligations placed on the Commissioner namely:

- (a) to maintain technical and organisational security measures sufficient to comply at least with the obligations imposed on the Commissioner by the Seventh Principle;
- (b) only to process Personal data for and on behalf of the Commissioner, in accordance with the instructions of the Commissioner and for the purpose of the Contract and to ensure compliance with the 2012 Act;
- (c) to allow the Commissioner to audit the Contractor's compliance with the requirements of this clause 11.2 on reasonable notice and/or to provide the Commissioner with evidence of its compliance with the obligations set out in this clause 11.2.

- 11.2.2 The Contractor shall obtain prior agreement of the Commissioner, such agreement not to be unreasonably withheld or delayed, to store or process Personal data for the purpose of performing the Contractor's obligations under the Contract at Sites outside the United Kingdom.
- 11.2.3 The Contractor agrees to indemnify and keep indemnified the Commissioner against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith by the Commissioner as a result of any claim made or brought by any individual or other legal person in respect of any loss, damage or distress caused to that individual or other legal person as a result of the Contractor's unauthorised processing, unlawful processing, destruction of and/or damage to any Personal data processed by the Contractor, its employees or agents in the Contractor's performance of the Contract or as otherwise agreed between the Parties.
- 11.2.4 Both parties agree to use all reasonable efforts to assist each other to comply with the 1998 Act. For the avoidance of doubt, this includes the Contractor providing the Commissioner with reasonable assistance in complying with subject access requests served on the Commissioner under Section 7 of the 1998 Act and the Contractor consulting with the Commissioner prior to the disclosure by the Contractor of any Personal data in relation to such requests.
- 11.2.5 For the avoidance of doubt, failure to comply with sub-clause 11.2 may constitute a material breach of contract without prejudice to the right of either party to determine that any other breach of the Contract constitutes a material breach. In the event of such breach, the party who is not in breach may terminate the Contract under the provisions of sub-clause 10.2 (b).

11.3 Know-how

Nothing herein shall be so construed as to prevent either party from using data processing techniques, ideas, know-how and the like gained during the performance of the Contract in the furtherance of its normal business, to the extent that this does not result in a disclosure of confidential information or infringement of any valid Intellectual Property Rights of either party or the unauthorised processing of any Personal Data.

11.4 Publicity

Except with the written consent of the other party, which shall not be unreasonably withheld or delayed, neither party shall make any press announcements or publicise the Contract in any way. The provisions of this clause shall not apply to information regarding the Contract made available by the Commissioner to any other Health Authorities under the provision of clause 11.3.

12 Security

12.1 On-site regulations

The Commissioner shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. The Contractor shall comply with all reasonable security requirements of the Commissioner while on its premises and shall procure that all its employees, agents and sub-contractors shall likewise comply with such requirements. The Contractor confirms that, prior to signature of the Contract it has received copies of all the Commissioner's written security procedures listed in

schedule A and has been afforded an opportunity to inspect the Commissioner's physical security arrangements. The Contractor also acknowledges that, with the exception of any notified to the Commissioner prior to signature of the Contract, it accepts and will abide by such procedures and arrangements listed in schedule A.

12.2 Contractor's property; risk of loss

All Contractor's property held on the premises of the Commissioner, including property to be used in the performance of the Contract shall be so held at the sole risk and responsibility of the Contractor, except that the Commissioner shall be liable for loss of such Contractor's property which is due to the Default or wilful act of the Commissioner. In the event of any loss of Contractor's property held on the Commissioner's premises for the purpose of the Contract, due to whatever cause, the Contractor shall replace such property as soon as reasonably possible and shall, notwithstanding such loss, make all reasonable efforts to fulfil its obligations hereunder in accordance with the timetable contained in schedule E and otherwise as appropriate.

12.3 Data security

- 12.3.1 The Contractor shall be liable to the Commissioner for loss or corruption of any data or Software owned by the Commissioner or for which the Commissioner is responsible to the owners for its security, including loss or corruption resulting from the introduction of a Virus, when such loss or corruption results from a wilful act or Default of the Contractor. Such liability by the Contractor shall be subject to the Commissioner having exercised data security and data management procedures, (insofar as such procedures are stated to be the responsibility of the Commissioner in schedule D), in accordance with good practice in the health industry or the information technology industry as appropriate, to avoid such loss or corruption where possible and to mitigate the effects thereof.
- 12.3.2 In the event of loss or corruption of data owned by the Commissioner or for which it is responsible to the owners for its security resulting from a wilful act or Default of the Contractor, the Contractor shall return such data and Software to a fully operational state with all possible speed. If such loss or corruption of data or Software owned by the Commissioner or for which the Commissioner is responsible to the owners for its security is not a result of a wilful act or Default of the Contractor, the Contractor shall be reimbursed by the Commissioner for all reasonable costs of returning such data to a fully operational state.
- 12.3.3 For the avoidance of doubt the provisions of this clause 12.3 do not limit the Contractor's liability in respect of Personal data under the provisions of clause 11.2 above. The Contractor shall be liable to the Commissioner in accordance with sub-clause 11.2.3 for any failure to comply with the provisions of clause 11.2 which, without prejudice to the Commissioner's remedies for any other failure to comply with such provisions, results from the disposal, re-assignment or re-use by the Contractor of any magnetic or other media which is or has been used to store data owned by the Commissioner or for which the Commissioner is responsible to the owners for its security.

13 Personnel

13.1 Contractor's personnel

- 13.1.1 The Commissioner reserves the right to refuse to admit to, or remove from, any premises occupied by or on behalf of it any Person employed by the Contractor or by its sub-contractors whose admission or presence would, in the reasonable opinion of the Commissioner, be undesirable. The reasonable exclusion of any such individual from the premises of the Commissioner under the provisions of this sub-clause 13.1.1 shall not relieve the Contractor from the performance of its obligations under the Contract nor provide grounds for an extension of time under clause 3.2. However, the Commissioner will indemnify the Contractor for failure to carry out its obligations if such refusal by the Commissioner is unreasonable.
- 13.1.2 If and when directed by the Commissioner, the Contractor shall provide a list of the names and business addresses of all Persons, who may require admission in connection with the performance of the Contract to premises occupied by or on behalf of the Commissioner, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Commissioner may reasonably require.
- 13.1.3 Failure by the Contractor to comply with the provisions of sub-clause 13.1.2 within a reasonable time of written notice to do so will entitle the Commissioner to refuse admission to its premises to any Person who has not been notified to the Commissioner in accordance therewith.

13.2 Employment offers

The Commissioner and the Contractor agree that during the period from the signature of the Contract to twelve months after the date of expiry or termination of the Contract they shall not offer employment to any of the other party's staff who have been associated with the performance of the Contract without the other party's prior agreement in writing.

The above provision shall not however apply to offers of employment resulting from general recruitment advertising.

13.3 Key personnel and Authorised Officers

13.3.1 Each party acknowledges that any individuals named as *key personnel* in schedule C (for the Contractor) or schedule D (for the Commissioner) are essential to the fulfilment of its obligations under the Contract and undertakes to use all reasonable endeavours to ensure that such key personnel are not removed or replaced, to the detriment of its performance of the Contract. However, in the event that any of its own key personnel will become unavailable for any reason each party shall have the right, upon giving reasonable notice in writing to the other party, to replace such individual with another individual whose abilities and qualifications closely approximate those of the individual so replaced.

13.3.2 Either party may change its Authorised Officer by giving thirty (30) days written notice to the other party or such other notice as may be agreed as practicable and amending Schedules C and D accordingly.

14 Insurance

- 14.1 The Contractor shall at all relevant times being not less than the term of the Contract, considering its obligations under the Contract, maintain adequate insurance or shall self insure against any losses which

result from its fault or negligence, except those risks which are inherently incapable of being insured and shall take all reasonable steps to procure that any sub-contractor or agent shall likewise be similarly insured. At any time, on reasonable notice, the Contractor shall, if requested by the Commissioner, provide reasonable confirmation, (for instance a broker's certificate), that such insurance or self insurance continues to be valid.

- 14.2 In respect of this clause 14, insurance cover in respect of damage to tangible property shall not be less than the Contractor's limit of liability for such damage in accordance with sub-clause 8.1.2 paragraph (a).

15 Authority and approval

- 15.1 Each party warrants to the other that it has undertaken all requisite corporative and other action to approve the signature and performance of the Contract.

16 Standards

- 16.1 The Contractor undertakes that the provision of Managed Services under the Contract and its performance of the Contract shall conform to all standards specified in the Contractor Undertakings.

17 Term

- 17.1 The Contract shall commence on the date of signature of the Contract by both parties.
- 17.2 Managed Services may be terminated by the Commissioner on the expiry of notice in writing to the Contractor at the end of an initial period of Managed Services specified in Schedule A or on any anniversary of the end of such initial period, the minimum period of such notice to be specified in Schedule A.

If no initial period of Managed Services or minimum period of notice is stated in Schedule A, the periods shall be one (1) year from the commencement of contract date in accordance with clause 17.1 and ninety (90) days respectively.

- 17.3 Unless terminated earlier in accordance with clause 17.2 or otherwise in accordance with clause 10, the provision of the Managed Services shall continue until the expiry date stated in Schedule A or for the period stated therein. If no such date or period is stated in Schedule A, Managed Services shall continue for seven (7) years from commencement of the Managed Services, in accordance with clause 17.1.

18 Responsibilities in respect of the Site

18.1 Environment

The Commissioner shall, unless stated otherwise in the Contractor Undertakings, provide and maintain physical conditions at the Site appropriate to the provision of the Managed Services including any recommended by the manufacturer of Facilities installed thereat. The Contractor shall maintain appropriate physical conditions at the Contractor Premises.

18.2 Inspection of the Site

- 18.2.1 The Contractor acknowledges that it has had the opportunity to inspect the Site and has satisfied itself that there is no aspect of the Site or matter related thereto, (other than any which has been notified to the Commissioner before commencement of the Contract and for which the Commissioner is responsible in accordance with clause 18.1), which shall cause the Site to be unsuitable for the performance of the Managed services specified in the Contractor Undertakings or preclude the Contractor from conformance with any Service Levels specified therein for the performance of such Managed Services.
- 18.2.2 During the term of the Contract, the Commissioner shall notify the Contractor in writing of changes to any aspect of the Site or matter related thereto which it makes or of which it becomes aware.
- 18.2.3 The Contractor shall notify the Commissioner of any aspect of the site or matter related thereto which arises during the performance of the Contract, which affects its ability to perform the Managed Services or meet any Service Levels specified in respect thereof.
- 18.2.4 The Commissioner acknowledges that if the Contractor has not received reasonable notice, in accordance with sub-clause 18.2.2, of any change to any aspect of the site or matter related thereto made by the Commissioner or of which the Commissioner is or could reasonably be expected to be aware and as a result the Contractor fails to perform the Managed Services or meet any Service Levels specified in respect thereof, the Contractor shall not be liable for such failure.
- 18.2.5 The Contractor acknowledges that it is not entitled to recover any additional costs from the Commissioner which arise from, or be relieved from any of its obligations as a result of, any aspect of the site or matter related thereto, of which the Contractor is or could reasonably be expected to be aware, which affects its ability to perform the Managed Services or meet any Service Levels specified in respect thereof insofar as such aspect or matter has not been notified to the Commissioner as provided by sub-clause 18.2.3.

19 Transition

19.1 Implementation of Managed Services

- 19.1.1 A Transition Project for the implementation of the Managed Services shall be specified in the Contractor Undertakings in accordance with which;
- (a) the Contractor shall carry out its responsibilities as specified therein; and
 - (b) the Commissioner shall carry out its responsibilities as identified therein and specified in schedule D.
- 19.1.2 Within any period specified in schedule E for such purpose or if no such period is stated in schedule E within thirty (30) days of the date of commencement of the Contract under the provisions of clause 17.1, the Contractor shall prepare a detailed plan for the completion of a Transition Project incorporating the timetable dates contained in schedule E and obtain

agreement to such plan by the Commissioner , such agreement not to be unreasonably withheld or delayed.

- 19.1.3 If specified in the Contractor Undertakings, the Transition Project shall include a period of trial operation. Any Service Levels to be achieved or MS Charges to be paid during such period shall be specified in the Contractor Undertakings and schedule G respectively. The duration of such period of trial operation shall be specified in the Transition Project and may end, as specified therein, on or after acceptance of the Managed Services (as specified in schedule F).

19.2 Discontinuance of Managed Services

- 19.2.1 In the event that the Commissioner is entitled to and discontinues the Managed Services or any part thereof, the Contractor shall, if requested by the Commissioner, provide assistance in the execution of a Transition Project to the extent reasonable and necessary for an orderly implementation of an alternative to the Managed Services by the Commissioner or its third party contractor.
- 19.2.2 The Commissioner shall reimburse the Contractor for such assistance at the rates then prevailing for the same or similar services provided to other customers of the Contractor.

20 Acceptance

20.1 Acceptance process

- 20.1.1 The Managed Services shall be required to meet acceptance criteria specified in schedule F before being accepted by the Commissioner. The Commissioner shall notify the Contractor in writing of acceptance, such notification not to be unreasonably withheld or delayed, with the date on which such criteria were met in all material respects. Such date shall be the Acceptance Date in respect of the Managed Services. Acceptance of the Managed Services may be completed in stages as indicated in schedule F.
- 20.1.2 The Commissioner shall conduct Acceptance Tests and other acceptance procedures and the respective responsibilities of the parties in the performance of such tests and procedures shall be as specified in schedule F.

20.2 Acceptance Tests

- 20.2.1 Following implementation of the Managed Services in accordance with the timetable contained in schedule E, the Contractor shall prepare for Acceptance Tests and notify the Commissioner when ready. On being so notified, the Commissioner shall conduct the relevant Acceptance Tests by the appropriate planned Acceptance Date and if the relevant acceptance criteria specified in schedule F are met in all material respects, the Commissioner shall notify the Contractor of acceptance, as specified in sub-clause 20.1.1 above.
- 20.2.2 If Acceptance Tests show that the Managed Services do not meet the relevant acceptance criteria specified in schedule F in all material respects, the Commissioner shall notify the Contractor of such failure without undue delay. The Contractor shall thereupon undertake all necessary steps to rectify such failure at no additional cost to the Commissioner and re-submit the Managed

Services for re-testing. If the relevant acceptance criteria are met in all material respects, the Commissioner shall notify the Contractor of acceptance, as specified in sub-clause 20.1.1 above.

20.3 Failure to gain acceptance

20.3.1 If the Managed Services have failed to meet the required acceptance criteria specified in schedule F in all material respects by the Acceptance Completion Date specified in relation to them, unless the provisions of clause 3.2 apply the Contractor shall be deemed to be in default, thereon, without prejudice to any other remedies available to the Commissioner, it shall be entitled in respect of and as appropriate to such failure, to:

- (a) grant further periods of time during which the Contractor shall be required to submit or re-submit the Managed Services to the relevant Acceptance Tests in accordance with clause 20.2 as applicable; or
- (b) accept such Managed Services and pay such amended Implementation Charge, if any, and / or apply such amended Contract Charges as shall be agreed upon and the resulting changes to the Contract shall be treated as amendments in accordance with clause 6.1 and subject to the change control procedures contained in schedule H;
- (c) terminate the Contract under the provisions of clause 10.2 paragraph (a) and the provisions of clause 10.5 shall apply unless:
 - i. schedule G expressly limits or excludes such right of termination to the extent and in the circumstances specified therein; and
 - ii. such circumstances shall have arisen.

20.3.2 If the Commissioner grants a further period of time under the provisions of sub-clause 20.3.1 (a) and the Contractor has failed to meet the relevant acceptance criteria before expiry of such period, the Commissioner Shall be entitled, at that time, to exercise any of remedies to which it is entitled under sub-clause 20.3.1.

20.3.3 A grant of additional time under the provisions of sub-clause 20.3.1 (a) or sub-clause 20.3.2 shall not imply any change in the timetable in schedule E or be interpreted to mean that the Planned Acceptance Date or Acceptance Completion Date have been or shall be changed and the provisions of sub-clause 8.3.1 above shall continue in full force and effect.

20.3.4 If the Contractor's failure to meet the Acceptance Completion Date is due to a delay by the Commissioner, the provisions of sub-clause 3.2.1 shall apply and the Acceptance Completion Date may be rescheduled as an amendment to the Contract in accordance with clause 6.

20.3.5 In the event that, through no fault of the Contractor, the Acceptance Tests in respect of the Managed Services have not commenced by the Acceptance Completion Date, unless the provisions of sub-clause 3.2.2 apply, any payment, which would have become due on successful completion of such Acceptance Tests shall become due. Such payment shall not be construed as acceptance by the Commissioner of the Managed Services and, notwithstanding such payment, the provisions of clause 20 shall remain applicable and in the event of any subsequent failure of

the Managed Services to meet the required acceptance criteria such sums shall be repaid to the Commissioner forthwith.

21 Warranties

21.1 Contractor's warranty

21.1.1 Managed Services

The Contractor warrants that the Managed Services shall meet the Contractor Undertakings in all material respects. The Contractor and its sub-contractors shall use all reasonable skill and care performing all Managed Services and any other work hereunder and shall use personnel of appropriate skill and experience for performance of such services.

21.1.2 Intellectual Property Rights

The Contractor warrants that it has to grant to the Commissioner any rights to be granted hereunder and owns or has obtained valid licences to any Intellectual Property Rights necessary for the fulfilment of all its obligations under the Contract.

21.1.3 Standards

The Contractor warrants that in performance of the Contract it shall meet and the Managed Services shall meet all relevant standards listed in schedule A.

21.1.4 Viruses

The Contractor warrants that it has taken all practical steps, in accordance with good industry practice, to prevent the introduction of any Virus into data or Software owned by or under the control of the Commissioner including Commissioner Software.

21.2 Commissioner 's warranty

21.2.1 Intellectual Property Rights

The Commissioner warrants that it has Commissioner to grant to the Contractor any rights to be granted hereunder and owns or has obtained valid licences to any Intellectual Property Rights necessary for the fulfilment of all its obligations hereunder.

21.2.2 Viruses

The Commissioner warrants that it has taken all practical steps, in accordance with good industry practice, to prevent the introduction of any Virus into any of its data or Software, which will be used by the Contractor during the provision of Managed Services.

21.3 Exclusion of implied warranties

Except as expressly set forth herein, all conditions and warranties, express or implied, statutory or otherwise, (including, but not limited to, any concerning fitness for purpose), are hereby excluded to the extent permitted by law.

23 Contractor Software

23.1 Licence

The Contractor hereby grants to the Commissioner for the term of the Contract a non-exclusive, non-transferable licence to use the Contractor Software solely as contemplated hereunder for the purposes of the Managed Services.

24 Substitutions

24.1 The Contractor may, with the agreement of the Commissioner, which shall not be delayed or withheld unreasonably, make substitutions and modifications in the specification of Contractor Hardware and Contractor Software providing that such substitutions or modifications do not adversely affect the Contractor's ability to gain acceptance of the Managed Services, achieve relevant Service Levels, meet the provisions of the warranties in clause 21 or to comply with any of its other obligations under the Contract.

25 Contractor's performance of Managed Services

25.1 Managed Services to be provided

The Contractor shall provide the Managed Services specified in the Contractor Undertakings.

25.2 Measurement of Contractor's performance

The Contractor's performance of Managed Services shall be measured in accordance with the methods and procedures set out in the Contractor Undertakings.

25.3 Service Levels

The Contractor's performance of the Managed Services shall be required to meet any Service Levels specified in the Contractor Undertakings from the commencement of Managed Services in accordance with clause 17.1.

25.4 Achievement of Service Levels

The Contractor's achievement of the Service Levels specified in accordance with clause 25.3 shall be determined in accordance with the procedures set out in the Contractor Undertakings.

25.5 Calculation of MS Charges

The amount of MS Charges earned by the Contractor shall be calculated as set out in schedule G using any formula or process specified therein for such purpose. Such calculation shall relate to any Contract Charges associated with the provision of Managed Services in schedule G to the achievement of Service Levels as determined under the provisions of clause 25.4.

25.6 Failure to meet Service Levels

- 25.6.1 If the Contractor fails to achieve any Service Levels, as determined under the provisions of clause 25.4, the Contractor shall carry out a programme of corrective actions agreed at the time between the parties, such agreement not to be delayed or withheld unreasonably.
- 25.6.2 If, notwithstanding any corrective actions taken in accordance with sub-clause 25.6.1, the Contractor persistently fails in any material respect, to achieve any Service Level, such failure shall be considered to be a material breach of its obligations and shall entitle the Commissioner to terminate the Contract in accordance with the provisions of clause 10.2 paragraph (b) provided that neither party shall be prevented from determining that any other breach of the Contract constitutes a material breach. For the purposes of this sub-clause 25.6.2, persistent failure to meet a Service Level shall be defined in the Contractor Undertakings.
- 25.6.3 For the avoidance of doubt, the Contractor shall be liable for failure to meet any Service Levels due to the occurrence of any event of force majeure specified in clause 3 above if such failure is due to the lack of or improper performance of the procedures or services specified in sub-clause 3.3.5(c).

25.7 Rights and remedies unaffected

- 25.7.1 The provisions of this clause 25 shall apply without prejudice to any other rights or remedies available to the Commissioner.
- 25.7.2 If MS Charges earned by the Contractor differ from the relevant Contract Charges for the same period, the amount of such difference shall be excluded from any aggregation for the purposes of establishing either party's liability for Defaults under the provisions of sub-clause 8.1.2 paragraph (c).

26 Transfer of undertakings

- 26.1 Any provisions relating to the transfer of personnel which results from the transition of responsibility for the operation of the Facilities, and to which TUPE shall apply, shall be specified in schedule A as part of a Transition Project. The parties shall be responsible for the fulfilment of obligations in respect of such personnel which result from such transfer and which may be specified in schedule C, (for obligations of the Contractor) and schedule D, (for obligations of the Commissioner). Provisions and / or obligations which are subsequently agreed shall be added to schedules A, C and D, as appropriate, as Contract changes in accordance with the change control procedure contained in schedule H.

27 Code of Practice on Workforce Matters

- 27.1 The Contractor is committed to complying with and undertakes to comply with the principles and detail of the Code of Practice on Workforce Matters in Public Sector Contracts (the Code), the Cabinet Office Statement: Staff Transfers in the Public Sector 2000 (the Statement) and the Annex to the Statement entitled A Fair Deal for Pensions (the Annex).
- 27.2 The Contractor hereby indemnifies and shall keep indemnified the Commissioner against all losses, costs, demands, claims, awards, expenses, damages, compensation and any other liabilities arising from or connected with any failure by the Contractor to comply with and or fully implement the Code, the Statement or the Annex.
- 27.3 In accordance with the Code the Contractor agrees that it shall only offer to employ and shall only employ Recruits on terms and conditions of employment which are fair and reasonable and which are, overall, no less favourable than those enjoyed by the Employees immediately before the transfer of their employment from the Commissioner to the Contractor.
- 27.4 The Contractor shall provide to the Recruits a pension scheme which meets the requirements of paragraph 10 of the Code.
- 27.5 The Contractor hereby indemnifies and shall keep indemnified the Commissioner against all losses, costs, demands, claims, awards, expenses, damages, compensation and any other liabilities arising from or connected with any failure by the Contractor to comply with Clause 27.3, or Clause 27.4.
- 27.6 The Commissioner shall monitor the Contractor's compliance with the Code, the Statement and the Annex.
- 27.7 In order to enable the Commissioner to undertake the monitoring and to assist the Commissioner in such monitoring the Contractor shall immediately upon request by the Commissioner, such request to be in writing, provide to the Commissioner all information requested which is necessary to allow the Commissioner effectively to monitor the Contractor's compliance with the Code, the Statement and the Annex.
- 27.8 The information to be provided under Clause 27.7 will be that which is required or necessary to enable the Commissioner to monitor the Contractor's compliance with the Code, the Statement and the Annex.
- 27.9 The information provided pursuant to Clause 27.7 shall, if appropriate be anonymised or, if the Commissioner considers it necessary to receive information which will or may amount to personal data or sensitive personal data within the meaning of the Data Protection Act 1998, the Contractor shall ensure that it obtains appropriate and necessary consent from the Employees and the Recruits to disclose such information for the purpose of the monitoring and the Commissioner agrees to respect the confidentiality of the information so provided.
- 27.10 The Contractor shall warrant the accuracy of the information provided to the Commissioner under Clause 27.7 and hereby indemnifies and shall keep indemnified the Commissioner from against all losses, costs, demands, claims, awards, expenses, damages, compensation and any other liabilities arising from or connected with any claim arising from any inaccurate or misleading information provided by the Contractor to and used by the Commissioner.

- 27.11 If the Commissioner considers that the Contractor has failed to comply with or may fail to comply with the Code, the Statement or the Annex then:
- 27.11.1 it will raise any concerns it has with the Contractor in the first instance and seek an explanation for the actual or potential failure;
 - 27.11.2 if the Commissioner is not satisfied with the Contractor's explanation it will require, in writing, the Contractor to remedy the fault and the Contractor undertakes and agrees to do so as soon as is reasonably practicable;
 - 27.11.3 if for any reason the Contractor fails to remedy or fails within a reasonable time to remedy the fault it will be in breach of this Contract and the Commissioner shall be entitled to enforce the terms of this Contract against the Contractor.
- 27.12 The parties agree that Annex A to the Code is expressly incorporated into this Contract and that it and not the Dispute Resolution Procedure set out in Clause 9 shall be used by the parties to resolve disputes about the application of the Code.

28 Third party rights

- 28.1 A Person who is not a party to this Agreement shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 (*the Third Parties Rights Act*) to enforce any term of this Agreement. Any right or remedy of a third party, which exists or is available apart from the Third Parties Rights Act is not affected.

29 Environmental considerations

- 29.1 The Contractor shall comply in all material respects with applicable environmental laws and regulations in force from time to time in relation to the products/services the subject of the Contract. Where the provisions of any such legislation are implemented by the use of voluntary agreements or codes of practice, the Contractor shall comply with such agreements or codes of practice as if they were incorporated into English law subject to those voluntary agreements being cited in the tender documentation. Without prejudice to the generality of the foregoing, the Contractor shall:-
- (a) comply with all reasonable stipulations of the Commissioner aimed at minimising the packaging in which the products the subject of the Contract, or any products supplied by the Contractor to the Commissioner as part of performance of the services, are supplied;
 - (b) promptly provide such data as may reasonably be requested by the Commissioner from time to time regarding the weight and type of packaging according to material type used in relation to all products supplied to the Commissioner under or pursuant to the Contract;
 - (c) comply with all obligations imposed on it in relation to the products/services the subject of the Contract by the Producer Responsibility Obligations (Packaging Waste) Regulations 2005 (or any other equivalent legislation giving effect in any part of the European Economic Area to the Packaging and Packaging Waste Directive 94/62/EC);

- (d) label all products supplied to the Commissioner under the Contract, and the packaging of those products, to highlight environmental and safety information as required by applicable UK and EU legislation;
- (e) unless otherwise agreed with the Commissioner, insofar as any products supplied under the Contract comprise or include electrical or electronic equipment, manage the said equipment and associated consumables at end of life to Facilitate recovery, treatment and recycling and provide any information which the Commissioner may reasonably require from time to time regarding the costs of such activity;
- (f) promptly provide all such information regarding the environmental impact of any products supplied or used under the Contract as may reasonably be required by the Commissioner to permit informed choices by end users;
- (g) where goods are imported into the United Kingdom then for the purposes of the Producer Responsibility Obligations (Packaging Waste) Regulations 2005 the Contractor shall assume the rolled-up obligations for all the activities performed outside the United Kingdom in relation to the goods and the packaging which is used for the containment, protection, handling, delivery and presentation of the goods in addition to any other obligations he may have pursuant to the said Regulations.

29.2 The Contractor shall meet all reasonable requests by the Commissioner for information evidencing the Contractor's compliance with the provisions of this clause.

30 Equality and Non-Discrimination

30.1 The Contractor shall not:

30.1.1 discriminate directly or indirectly or by way of victimisation or harassment against any person on racial grounds within the meaning of the Race Relations Act 1976 (as amended) ("**the 1976 Act**") contrary to Part II (Discrimination in the Field of Employment) and/or Part III (Discrimination in Other Fields) of the 1976 Act;

30.1.2 contravene Part IV (Other Unlawful Acts) of the 1976 Act.

30.2 The Contractor shall notify the Commissioner immediately of any investigation of or proceedings against the Contractor under the 1976 Act and shall cooperate fully and promptly with any requests of the person or body conducting such investigation or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested.

30.3 The Contractor shall indemnify the Commissioner against all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by the Commissioner arising out of or in connection with any investigation conducted or any proceedings brought under the 1976 Act due directly or indirectly to any act or omission by the Contractor, its agents, employees or sub-contractors.

30.4 The Contractor shall impose on any sub-contractor obligations substantially similar to those imposed on the Contractor by this Clause 30.

30.5 In addition to its obligations under this Clause 30 relating to race equality, the Contractor shall:

- 30.5.1 ensure that it complies with all current employment legislation and in particular, does not unlawfully discriminate within the meaning of the Race Relations Act 1976 (as amended), the Equal Pay Act 1970, the Sex Discrimination Act 1975 (as amended), the Disability Discrimination Act 1995 (as amended), the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, the Equality Act 2006, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003, the Equality Act (Sexual Orientation) Regulations 2007, the Employment Equality (Sex Discrimination) Regulations 2005, the Employment Equality (Age) Regulations 2006, or any other relevant legislation relating to discrimination in the employment of employees for the purpose of providing the Managed Services. The Contractor shall take all reasonable steps (at its own expense) to ensure that any employees employed in the provision of the Managed Services do not unlawfully discriminate within the meaning of this Clause 30.5 and shall impose on any sub-contractor obligations substantially similar to those imposed on the Contractor by this Clause 30.5; and
- 30.5.2 in the management of its affairs and the development of its equality and diversity policies, the Contractor shall co-operate with Commissioner in light of the Commissioner's obligations to comply with statutory equality duties. The Contractor shall take such steps as the Commissioner considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age in the provision of the Managed Services.

For and on behalf of the Commissioner

(CCG Name)

Authorised signatory:

Name:

Title:

Date:

For and on behalf of the Contractor

Health Intelligence Ltd

Authorised Signatory:

Name: Philip Kirby

Title: Managing Director

Date:

Schedules to the Contract

Schedule A - Contractor Undertakings

A1 Contract timing

A1.1 Initial period of Contract

In accordance with clause 17.2, the initial period of the Contract will be twelve months commencing **Date to and from.**

A1.2 Minimum period of notice

The minimum period of notice for termination of the Contract in accordance with clause 17.2 is three months.

A1.3 Duration of Contract

The Contract shall expire on the **Date**, unless at the discretion of the Commissioner, the contract term is extended.

A1.4 Service cover time

The periods during which the Contractor provides the Managed Services shall be from **Date to and from.**

A2 Managed Services

The Managed Services specified below are to be provided by the Contractor:

A2.1 Functionality of the Managed Services

A2.1.1 System functions

A2.1.1.1 Compatibility and inter-operability

The Contractor will ensure that there are regular exports of the patient data held within GP Practice clinical systems. The Contractor will ensure the data is used to update the HI Hub system with the new data supplied. A monthly based export service is commissioned through this contract.

The Contractor will ensure the GP Practice Exports run each month; where there are issues with the automated export process, initiate manual exports via a secure Away from My Desk remote desktop facility, to ensure the service is delivered.

A2.1.1.2 System management

The Contractor will ensure that the system is made available throughout the working day via the N3 network.

A2.1.1.3 Data and database Facilities

The Contractor will ensure all GP Practice sourced Patient Data is loaded consistently and in a timely manner into the HI Hub database.

A2.1.1.4 System security and access

A Security Policy supports the HI Hub service. It is further supported by a Data Access Agreement(s), which General Practice (all other NHS user organisations) sign to commit themselves to the Security Policy; thus ensuring there is a robust Security Framework within which the HI Hub service is delivered.

HI Hub implementation includes the implementation of the Security Policy.

HI Hub has an Administration Account type, which is provided to each User Organisation to enable a nominated use(s) to establish and maintain user accounts for their Organisations.

Different types of users will have different menu driven data access controls that are user defined.

A2.1.1.5 Reporting

The focus of HI Hub is reporting. The reports to be delivered are detailed **on pages 8** of this document.

A2.1.1.6 Development

New Developments are to be directed by a HI Hub Project Board and a Change Control Process will be used to confirm the objectives, scope and deliverables (& associated costs) for all extensions to the service.

A2.1.2 Date change commitment

None

A2.2 Capacity of the Managed Services

The Managed Service has no restrictions in terms of the number of records held; the number of GP Practices; the number of users; or their usage. The only restriction is that this service is for GP Practices and users within each CCG

A3 Responsibilities in provision of Managed Services

A3.1 Operations

All aspects of Operations are the responsibility of the Contractor.

A3.2 Security and access management

The Contractor confirms that the NHS owns the data held by the service.

The Contractor is responsible for the issue of a Security Incident Report and the maintenance of a Security Incident Log for all actual or perceived security issues.

The Contractor through the Data Sharing Agreement(s) will implement the Commissioner's requirements for data sharing through access control management.

A3.3 Monitoring / reporting

The Contractor is responsible for the provision of a Service Report noting the availability of the HI Hub Managed Service.

A3.4 Alternate and back-up services

In the event of a failure of the Managed Service, the Contractor will recover as soon as possible and reinstate the service. There is an options, in the event of the Data Centre being unavailable, to re-locate the service to the Commissioner's premises in order to resume the service promptly.

A3.5 Responsibilities for Commissioner Software

Whilst the Commissioner has no direct responsibilities associated with the provision of the managed service, there are other responsibilities noted within Schedule D –Commissioner's Responsibilities which will support the implementation of HI Hub.

In addition the Commissioner is responsible for resolving any access problems experienced as a result of network, firewall configuration associated with access to the HI Hub managed service by users within each CCG.

The Commissioner is responsible for providing any updates to the Practice Reference Data, in order to assist the Contractor maintain up to date reference data.

A3.5.1 Commissioner Software

None

A3.6 Commissioner / Contractor contact and service reviews

The Contractor will provide a Help Desk and Support Service which will assist users in the operation of the HI Hub service. Calls will be logged, responded to and problems/issues managed through to successful resolution.

The HI Hub Project Board will receive reports covering the usage of the Help Desk Service.

A3.6.1 Help / support / service desk

The Contractor Help Desk will be the key method through which issues/ problems will be identified. The Help Desk operates from 9:00am to 5:30pm Monday to Friday (excluding Bank Holidays).

Training and ongoing support is a feature of the managed service offered. Ongoing technical assistance, making use of secure Logmein (remote desktop) facility

A3.6.2 Problem / issue management

The Contractor Help Desk will establish the priority of the call and then refer the call to a relevant referral group. The Contractor Help Desk will be responsible for ensuring all calls are resolved within a time frame agreed within the Contract.

A3.6.3 Service reviews

A3.7 Product updating

The Contractor will provide new software releases as required in support of the HI Hub service. Significant new releases of the reporting functionality will be accompanied by User Training Manuals. All new software or hardware upgrades will take place outside of the normal working hours.

A3.7.1 New Software releases

All new software releases will be tested against the different web-browsers supported. Namely, currently Microsoft Internet Explorer 6 and above and Firefox 1 and above are supported.

A3.7.2 Software upgrades

Software upgrades will be the responsibility of the Contractor, who following appropriate testing will implement software upgrades outside standard working hours.

A3.7.3 Hardware upgrades

The Contractor will proactively monitor the performance of the Managed Service and schedule any required hardware upgrades.

A3.7.4 Hardware engineering changes

All hardware engineering changes will be undertaken outside standard working hours, unless this is in response to a complete systems failure due to a hardware failure. Hardware support contracts will be in place for the duration of the Managed Service Contract.

A3.8 Commissioner's security procedures

The following is a list of the Commissioner's security documentation provided to the Contractor in accordance with clause 12.1 and by which the Contractor agrees to abide:

The Contractor will ensure that the HI Hub Security Policy is fully implemented in support of a secure and confidential service.

Audit Trail

The Contractor will maintain a full list of actions by users within its Audit Trail for the period of the Contract.

The Contractor will interrogate the Audit Trail and provide a report on user access in response to a request from the Commissioner.

Backup

Whilst the HI Hub application is a reporting solution and data is always obtainable from the source, namely General Practice, nevertheless it is important to ensure data and application backups are routinely undertaken.

The Contractor will undertake backups on a daily basis [working days]. These backups are encrypted for security purposes. Once per week an off site backup will be undertaken and securely stored.

A4 Transition Project - implementation of Managed Services

The Contractor will provide an Implementation Plan to support the initial deployment of the service. The plan will note responsibilities of the Commissioner and of the Contractor.

A4.1 Implementation plan

The Contractor is required to provide an Implementation Plan and to monitor delivery against this plan, raising any issues with the Commissioner's HI Hub Project Board.

A4.2 Hardware / Software

A4.3 Data conversion / transfer / loading

The Commissioner will provide details of all reference data required to support the establishment of the managed service.

The Contractor will ensure all reference data is loaded and that data from General Practice is loaded in its original format. Additionally the Contractor will form Clinical Data Classes to support the analysis of the data and the production of reports.

A4.4 Interfaces

HI Hub supports outputs to screen, printers or files. As HI Hub is accessed using a standard browser, such as Internet Explorer, all the facilities normally available are permissible.

A4.5 Development of procedures

A4.6 Documentation

The Contractor will provide all required user documentation consisting of User Training Manuals and Guides required in order to realize the benefits of using the HI Hub Reporting Service.

A4.7 Training

With the instruction of the Commissioner, the Contractor can provide training to both the Commissioner and the participating GP Practices, however the Commissioner is obliged to pay the Contractor an agreed cost for each training session as training is not covered within this agreement.

A4.8 Provisions for the transfer of personnel (TUPE)

None apply

A5 Performance of Managed Services

Reference should also be made to the SLA documentation for the Contract

A5.1 Measurement of performance

(a) Availability of Managed Services

The Contractor will ensure the HI Hub web-based reporting service is available within standard service hours 9:00am to 5:30pm Monday- Friday (excluding Bank Holidays). Outside of these times the system will be available, except during periods of system upgrade.

(b) Transaction response times

The Contractor will size the system to meet the following target response times.

<u>Transaction Type</u>	<u>Target Response Time</u>
Patient level searches	15 seconds
Performance Reporting Summaries	90 seconds

(c) Services response times

The Help Desk Service is operated between 9:00am and 5:30pm Mon – Fri (excluding Bank Holidays). There are no specific targets regarding availability, response times or resolution times, however the Contractor will provide a Report detail the number of calls raised within a quarter period and their status.

(d) GP Practice Data Export

The Contractor will ensure that a data export is undertaken from all participating GP Practices once per month for the duration of the contract.

A5.2 Service Levels

(a) Availability of Managed Services

The Contractor will ensure the HI Hub service is available within standard service hours Mon- Fri 9:00am to 5:30pm (Excluding Bank Holidays) the Service Level is 95% availability within standard service hours. Outside of these times the system will be available (except during periods of system upgrade)

(b) Transaction response times

Failure to meet the service target response times will result in corrective action being prompted.

(c) Service response times

No service levels apply to the Help Desk Service.

(d) GP Practice Data Export

The Contractor will ensure that 90% of Practices has a successful Data Export undertaken each quarter (unless otherwise agreed with the Commissioner). For clarity, any GP Practices whom prevent access to the Contractor, for whatever reason will be excluded from the calculation of target service level.

A6 Standards

A7 Exit Plan

The HI Hub managed service is a reporting solution. At the end of the contract term, the service will become unavailable and all patient data will either be:

- Deleted from the system or
- Arrangements will be made for its migration to another supplier.

In the event that the data is to be migrated, the Commissioner will agree with the Contractor the specific requirements of a migration plan and confirm the associated price for this service.

The Contractor will confirm the timescales for delivery of any migration service, once the scope of the data migration is confirmed.

A8 Force majeure

Additional item(s) constituting an event of force majeure (clause 3.3.2(f)).

None

Appendix I to schedule A - Published Specifications

[Where Published Specifications are used to specify the functionality of applications or products in section A2, they should be attached in this appendix or, at least, referenced in such a way it is clear how access may be obtained to them.]

The specifications for the reporting services are delivered as part of the deployment of the managed service and are therefore implementation stage products.

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Schedule B - Facilities

The Contractor will manage a server assigned (although not necessarily exclusively) for the Commissioner HI Hub within its Data Centre in Sandbach and maintain access by users in each CCG via its N3 connection.

The Contractor will provide all hardware, software, operating and other licences that are required to host the service.

The solution is a browser-based service and therefore access to the service is delivered using a PC connected on to N3 using a browser e.g. Internet Explorer.

In compliance with the HI Hub Security Policy a regular back-up of the Commissioner's data will be maintained.

B1 Hardware

B1.1 Contractor Hardware

The Contractor will provide hardware and an associated IT infrastructure suitable for the provision of the HI Hub managed service.

The Contractor will be responsible at its own cost for upgrading this infrastructure in the event that the performance of the reporting solution is not acceptable.

B2 Software

B2.1 Commissioner Software

None

B2.2 Contractor Software

The HI Hub application, which operates as a browser-based service. The backend database is Oracle.

B3 Any other Facilities or equipment to be managed

None

B4 Sites and Contractor Premises

The Contractor facilities are provided within its secure monitored alarmed premises at:

Saxon House,
Moston Road,
Sandbach,
Cheshire,
CW11 3HL

This site may be inspected by representatives of the Commissioner in order to assure the Commissioner regarding the security arrangements.

Appendices to schedule B

None

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Schedule C - Other responsibilities of the Contractor

C1 Contractor's Authorised Officer

Phil Kirby (Managing Director) or Antony Keay (Sales Director)

C2 Contractor's address for communications

Saxon House
Moston Road
Sandbach
Cheshire
CW11 3HL

C3 Contractor's key personnel

Name, Job Title.

C4 Approved sub-contractors

Apollo Medical Systems Ltd and Black Pear Ltd , whom are engaged by Health Intelligence to support the automated extraction of data from General Practice.

In the event of any changes to the Contractor's sub-contractor(s) the Commissioner will be notified.

C5 Project management

Health Intelligence will appoint a dedicated Project Manager after the contract has been signed. The Project Manager will take overall responsibility for the Implementation of the HI Hub reporting services and will therefore project manage the implementation.

C6 Quality management system

Health Intelligence has attained the ISO9001:2000 Quality Standard.

Schedule D - Commissioner's responsibilities

[Note:- Schedule D identifies the areas where the Commissioner is required to provide information or take responsibility, in order that the Contractor is able to perform its obligations. In particular, information will be included that is required by various clauses and identified in the Transition Project in schedule A.]

D1 Commissioner's Authorised Officer

Name, Job Title.

D2 Commissioner's address for communications

CCG Address:

D3 Commissioner's key personnel

Name, Job Title, CCG Area.

D4 Implementation

D4.1 Provision, installation or maintenance of Software

None

D4.2 Special requirements - preparation of the Site

None

D4.3 Commissioner's actions required to enable the services

None

D5 Commissioner Software

None

Schedule E - Timetable

The key milestones are associated with the provision of the reporting services.

Embedded supporting documents.

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Schedule F - Financial obligations

As detailed within Figure 1 on page 6, the following table notes the financial obligations of the Commissioner .

Organisation	Discounted cost per GP Practice	Total No. of GP Practices	Total Cost
CCG Name	£Price	XX	£Price
Total Cost			£Price

Terms & Conditions

Full payment of the contract to be invoiced to Date

Prices are exclusive of VAT

Payment terms are 30 days net of invoice

Prices are inclusive of maintenance and support

CCG/GP Practices allow the use of remote 'Away from My Desk' sessions for manual data exports

Schedule G - Procedures specified under the Contract

[Note:- Schedule G contains the details of the procedures to be used as specified in the clauses.]

G1 Change control principles and procedure

G1.1 Principles

- G1.1.1 Where the Commissioner or the Contractor, during the term of the Contract, see the need for *change* (as defined in clause 6.2) to the functions or performance of the Managed Services, the environment in which the Managed Services are performed or the Transition Project, or to any details of the Contract, the Commissioner or the Contractor may at any time request such change and propose an amendment to the Contract in accordance with the formal change control procedure (CCP) as set out in H1.2 below.
- G1.1.2 Neither the Commissioner nor the Contractor shall unreasonably withhold its agreement to any change.
- G1.1.3 Unless the Commissioner and the Contractor otherwise agree in writing there shall be no presumption that the obligations undertaken by either party in connection with the Contract are in any way changed until an amendment to the Contract has been effected in accordance with the CCP.
- G1.1.4 No amendments to the Contract shall be valid unless they have been agreed in writing on behalf of the Commissioner and the Contractor by or on behalf of their respective Authorised Officers.

G1.2 Procedures

- G1.2.1 The Commissioner and the Contractor shall discuss changes requested (Change Control Notices) by either party and such discussion shall result in:
 - (a) agreement not to proceed further; or
 - (b) rejection of the request by the non-requesting party; or
 - (c) agreement to proceed in principle.
- G1.2.2 Where it is agreed in principle to proceed with a requested change:
 - (a) if the request was initiated by the Commissioner, the Commissioner shall submit a written request for change, which describes the requirements in detail;
 - (b) if the request was initiated by the Contractor or the Contractor has received a written request in accordance with paragraph (a), the Contractor shall submit a *change control note* (hereinafter referred to as a CCN) to the Commissioner within a reasonable time, (agreed between the parties at the time). The CCN may be complete and include appropriate information as specified in section H1.2.3 below or, in the case of changes, which propose to vary the Managed Services, partially complete as described in section H1.2.6 below.

G1.2.3 Each complete CCN shall contain:

- (a) the title of the change;
- (b) the originator and the date of the request for the change;
- (c) the reason for the change;
- (d) full details of the change including any specifications and user Facilities;
- (e) the price, if any, for implementing the change;
- (f) any changes to the Contract Charges and a revised payment schedule, if appropriate;
- (g) an implementation timetable
- (h) the impact, if any, of the change on other aspects of the Contract including but not limited to:
 - i. the timetable contained in schedule E;
 - ii. the Implementation Charge / Contract Charges;
 - iii. the overall payment schedule contained in schedule G;
 - iv. the Managed Services;
 - v. other relevant issues in the Contractor Undertakings;
 - vi. resources;
 - vii. Contractual issues;
- (i) the date of expiry of the CCN;
- (j) provision for signature by the Commissioner and the Contractor.

G1.2.4 For each complete CCN submitted the Commissioner shall, within the period of validity of the CCN:

- (a) allocate a sequential number to the complete CCN, if it has not already been numbered in accordance with section H1.2.6 below;
- (b) evaluate the complete CCN and as appropriate either:
 - i. request further information; or
 - ii. approve the CCN; or
 - iii. notify the Contractor of rejection of the CCN;
- (c) arrange for two (2) copies of an approved CCN to be signed on behalf of the Commissioner and the Contractor, one copy signed by both parties to be provided to the Contractor, the other copy to be retained by the Commissioner .

G1.2.5 Receipt by the Contractor of a copy of any CCN signed by both the Commissioner and the Contractor shall advise the Contractor of the acceptance of such CCN and shall constitute a formal amendment to the Contract.

G1.2.6 Submission of partially complete CCN

- G1.2.6.1 In the event that, having received a written request for a change from the Commissioner and the requested change is for a variation of the Managed Services, the Contractor cannot complete a CCN without information obtained from further investigations into the viability of such variation or from testing its impact on the Managed Services and / or without incurring significance costs in obtaining such information, it may submit a partially complete CCN.
- G1.2.6.2 A partially complete CCN shall contain, as far as it is available, the information specified in section H1.2.3 and, in addition, the Contractor shall submit details of such investigations and testing as may be required to obtain information necessary to complete the CCN with the costs, if any, associated therewith.
- G1.2.6.3 For each partially complete CCN submitted to it, the Commissioner shall, within a period agreed at the time:
- (a) allocate a sequential number to the CCN; and
 - (b) evaluate the CCN and as appropriate either:
 - i. request further information or modification of details of the CCN or any other information submitted; or
 - ii. give approval for the Contractor to complete the CCN by undertaking the investigation and / or testing specified in relation to it; or
 - iii. notify the Contractor of rejection of the CCN;
- G1.2.7 If the change control procedure does not result in agreement to a requested variation of Managed Services, whether due to rejection of such a request by one party or non-acceptance by the Commissioner of a response or a lack of response to such a request, the parties shall seek agreement through the escalation procedure specified in H1.2.8 and H2 below before recourse to any other resolution.
- G1.2.8 If, after fully exercising the escalation procedure in accordance with paragraph H1.2.7, the parties have not reached agreement, either party may, by notice in writing to the other, refer the proposed variation and response thereto for assessment to a Person, acting as an expert, agreed by the parties, (hereinafter referred to as the *assessor*). Failing agreement on an assessor within fourteen (14) days of the date of such notice, an assessor shall be appointed at the request of either party by the president of the British Computer Society or his nominee.

G2 Reference to an assessor

- G2.1 The terms of reference of an assessor shall be set out in an agreement to be signed by the parties and the assessor and shall include that:
- (a) the assessor shall establish procedures for the assessment after his appointment;
 - (b) the assessor shall consider information submitted by each party and may request, and the parties shall provide, any additional information required to enable him to understand the issues to be

assessed and the parties' positions thereon. The assessor may, at his discretion and with regard to its confidentiality, make any such information available to the other party;

- (c) the assessor may consider information from any other source that he deems to be relevant;
- (d) the assessor shall, on the basis of his own opinion and information available to him, assess the reasonableness of the parties' positions on the relevant issues and submit such assessments, with recommendations for the resolution of such issues, to the parties in writing. The parties shall not unreasonably reject the recommendations;
- (e) the assessor shall undertake not to disclose any information in respect of the reference to any Person other than the parties without their permission and further, not to disclose any information submitted to him by the parties which is designated as confidential, to any Person, including the other party, without the consent of the owning party;

G2.2 Applicable fees and expenses shall be specified in the agreement of the terms of reference, to be paid by the parties in equal shares. The assessor shall be entitled to fees in respect of time spent on the assessment and reasonable expenses, irrespective of whether the parties reach agreement.

G2.3 The parties shall treat as confidential, in accordance with the provisions of clause 11, any information obtained in relation to the reference and the assessments and recommendations resulting from it.

G3 Fault reporting procedure

The Contractor's Help Desk (available Monday – Friday 9.00am – 5.30pm excluding bank holidays and weekends) should be contacted by either the Commissioner and/or GP Practices within each CCG to report all faults by using the following:

Tel No: 01270 527373

Fax: 01270 765078

Email: supportdesk@health-intelligence.com

Schedule H (Implementation Evaluation Criteria)

H1 The Commissioner will evaluate the progress of the implementation within **CCG Name** from **Date** and after two months from the commencement date of the contract.

H1.1 The Contractor will assist and support the Commissioner with the evaluation of the implementation and provide the necessary information for the Commissioner

H1.2 The Commissioner will consider expanding the service provision across **Area**, if the Contractor achieves each of the key performance indicators as detailed in the Implementation Evaluation Criteria Key Performance Indicators (clause H1.3)

H1.3 Implementation Evaluation Criteria Key Performance Indicators

Key Performance Indicator Description	Measurement
100% agreement by General Practice to the project	100%
95% of those GPs that have agreed to the service having a successful export of data	95%
100% of those GPs that have agreed to the service and have received training	100%
100% of patients (whom have been referred to the DESP programme) are successfully received by the local DESP programme)	100%
100% of changes to registration details or status (for those patients whom have been referred to the DESP programme) are successfully received by the local DESP programme	100%
100% of engagement with the respective LMC for those GP Practices whom either fail to engage with the pilot or who initially engage, but do not use the IT Tool	100%

H1.4 The key performance indicators will be supplied by the Contractor to the Commissioner on every third Monday from the previous from the commencement of the contract