

Dated

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and

[]

AGREEMENT RELATING TO THE SUPPLY OF

wardhadaway

Sandgate House
102 Quayside
Newcastle upon Tyne
NE1 3DX

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THIS AGREEMENT is made on [] [20][]

BETWEEN:

- (1) [] (the "Trust"); and
(2) [] [whose registered office is at] OR [of] [] (the "Supplier").

1. GENERAL PROVISIONS

1.1. Definitions and Interpretation

In this Agreement unless the context otherwise requires the following provisions shall have the meanings given to them below:

"Achieve"	in respect of the Requirements, "Achieved" and "Achievement" shall be construed accordingly;
"Affiliates"	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
"Approval"	the written consent of the Trust;
"Auditor"	the Trust's current external auditor from time to time;
"Business Continuity Plan"	has the meaning set out in clause 10.1;
"Change of Control"	if a person who Controls any body corporate ceases to do so or if another person acquires Control of it;
"Commencement Date"	[];
"Commercially Sensitive Information"	the Supplier's information (if any) listed in Schedule 8 (Commercially Sensitive Information) comprised of information: (a) which is provided by the Supplier to the Trust in confidence for the period set out in that Schedule; and/or (b) that constitutes a trade secret;
"Confidential Information"	information relating to the Trust (including patients/employees and sub-contractors of the Trust), the subject matter of this Agreement, users of the Services or supplies provided under this Agreement, and which is in the Supplier's possession, custody or control (however it was conveyed or on whatever media it is stored), including patient identifiable information, information subject to legal professional privilege, commercially sensitive information, trade secrets and all intellectual property rights or Know-How of the Trust and all Personal Data;
"Contracting Authority"	any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006;

"Contract Manager"	a person designated by the Supplier to act as the duly authorised representative of the Supplier for all purposes connected with this Agreement. For the avoidance of doubt, the Contract Manager will be Key Personnel under clause 18;
"Contract Period"	<p>the period from the Commencement Date to:</p> <p>(a) the date of expiry set out in clause 4.1 (Initial Contract Period); or</p> <p>(b) following an extension pursuant to clause 4.2 (Extension of Initial Contract Period), the date of expiry of the extended period;</p> <p>or such earlier date of termination or partial termination of this Agreement in accordance with the Law or the provisions of this Agreement;</p>
"Contract Price"	the price (exclusive of any applicable VAT) payable to the Supplier by the Trust under this Agreement, as set out in Schedule 4 (Price and Payment), for the full and proper performance by the Supplier of its obligations under this Agreement but before taking into account the effect of any adjustment of price either in accordance with clause 17.4 (Price Adjustment on Extension of Initial Contract Period) or as otherwise provided under this Agreement;
"Control"	has the same meaning as set out in section 1124 of the Corporation Tax Act 2010;
"Credits"	as being payable by the Supplier in respect of any failure by the Supplier to meet one or more Performance Levels;
"Critical Service Failure"	a failure to achieve a Performance Level to the extent specifically set out in the requirement (Performance of the Services/ Installation and Implementation of the Goods);
"Crown"	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments, NHS Foundation Trusts and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Data Controller"	has the same meaning as set out in section 1(1) of the DPA;
"Data Processor"	has the same meaning as set out in section 1(1) of the DPA;
"Data Processor Questionnaire"	the Trust's data processor questionnaire completed (if appropriate) by the Supplier set out at Schedule 9 (Data Processor Questionnaire);
"Data Subject"	has the same meaning as set out in section 1(1) of the DPA;

"Default"	any breach of the obligations of the relevant Party or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of this Agreement and in respect of which such Party is liable to the other;
"Delay Payments"	the payments due to the Trust from the Supplier in accordance with the Requirements;
"Department of Health Requirements"	<p>the requirements set out from time to time in the Department of Health's Information Governance Toolkit for Acute Trusts at:</p> <p>https://www.igt.connectingforhealth.nhs.uk/RequirementsList.aspx?tk=404704909971999&Inv=2&cb=297f9d11-cbc8-4894-80a6-5503b3916c2d&sViewOrgType=2&sDesc=Acute Trust</p> <p>and for Mental Health Trusts at:</p> <p>https://www.igt.connectingforhealth.nhs.uk/RequirementsList.aspx?tk=404704909971999&Inv=4&cb=16%3a01%3a56&sViewOrgType=5&sDesc=Mental%20Health%20Trust</p>
"Dispute Resolution Procedure"	the procedure detailed at clause 50.2;
"DPA"	the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government departments in relation to such legislation;
"Employment Regulations"	the Transfer of Undertakings (Protection of Employment) Regulations 2006 or any other enactment concerning the subject matter of those Regulations;
"Environmental Information Regulations"	the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
"Equipment"	the Supplier's equipment, plant, materials and such other items supplied and used by the Supplier in the performance of its obligations under this Agreement;
"Exit Plan"	has the meaning set out in clause 9.1;
"Expiry Date"	means [REDACTED];
"FOIA"	the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

"Force Majeure"	<p>any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire, flood, violent storm or any serious adverse weather, pestilence, explosion, malicious damage, armed conflict; acts of terrorism, nuclear, biological or chemical warfare, or any other disaster, natural or man-made, but excluding:</p> <ul style="list-style-type: none"> (a) any industrial action occurring within the Supplier's or any Sub-contractor's organisation; or (b) the failure by any Sub-contractor to perform its obligations under any sub-contract;
"Fraud"	any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Agreement;
"Good Industry Practice"	standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;
"Goods"	any such goods as are to be supplied by the Supplier as specified in the Requirements;
"Implementation Plan"	the plan set out in the Requirements;
"Information"	has the meaning given under section 84 of the FOIA;
"Initial Contract Period"	the period from the Commencement Date to the Expiry Date, or such earlier date of termination of this Agreement in accordance with the Law or the provisions of this Agreement;
"Installation Works"	<ul style="list-style-type: none"> (a) collectively, all works which the Supplier is to carry out at the beginning of the Contract Period to install the Goods in accordance with the Requirements; or (b) where there are a series of works to be carried out during the Contract Period to install the Goods in accordance with the Requirements, each set of installation works; <p>as the context so requires;</p>
"Insurances"	all or any of the insurances required to be maintained by the Supplier pursuant to this Agreement as set out in Section 26.6 (Insurance);
"Intellectual Property Rights"	patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names and website addresses, trade or business names, rights in Know-How

and Confidential Information, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;

"Key Personnel"	the individuals (if any) identified in paragraph 2 of Schedule 2 (Supplier Solution) together with any and all individuals notified by the Trust to the Supplier from time to time in accordance with clause 18.2;
"Know-How"	all ideas, concepts, schemes, information, knowledge, techniques, methodology and anything else in the nature of know-how relating to the Services but excluding know-how already in the Supplier's or the Trust's possession before the Commencement Date;
"Law"	any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Supplier is bound to comply;
"Milestone"	an event or task described in the Implementation Plan which must be completed by the corresponding date set out in such plan;
"Milestone Date"	the date set against the relevant Milestone in the Implementation Plan;
"Month"	calendar month;
"Party"	a party to this Agreement;
"Performance Levels"	any performance levels applicable to the provision of the Requirements;
"Personal Data"	has the meaning set out in section 1(1) of the DPA including sensitive personal data defined in section 2 of the DPA and means personal data of which the Trust is a Data Controller and which is disclosed to the Supplier pursuant to this Agreement, whether as the Trust's Data Processor or as a separate Data Controller;
"Premises"	the location where the Services are to be supplied and/or the Goods are to be delivered and/or, where relevant, installed, as set out in Schedule 1 (Requirements);
"Process"	has the meaning given to it in section 1(1) of the DPA and "Processing" shall be construed accordingly;
"Property"	the property, other than real property, issued or made available to the Supplier by the Trust in connection with this Agreement;
"Quality Standards"	the quality standards published by BSI British Standards, the

	National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with, and as may be further detailed in Schedule 1 (Requirements);
"Receipt"	The[physical or] electronic arrival of the invoice at the address of the Trust detailed at clause 49.3.1 or at any other address given by the Trust to the Supplier for the submission of invoices;
"Regulatory Bodies"	those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Trust and "Regulatory Body" shall be construed accordingly;
"Relevant Conviction"	a conviction that is relevant to the nature of the Goods and/or Services;
"Relevant Transfer"	the transfer of a business or service provision change to which the Employment Regulations apply;
"Replacement Supplier"	any third party supplier appointed by the Trust to supply any goods and/or services which are substantially similar to any of the Goods and/or Services and which the Trust receives in substitution for any of the Goods and/or Services following the expiry, termination or partial termination of this Agreement, whether those Goods and/or Services are provided by the Trust internally and/or by any third party;
"Request for Information"	a request for information under the FOIA or the EIR;
"Requirements"	those requirements of the Trust as set out in Schedule 1 (Requirements);
"Risk Assessment"	the Risk Assessment carried out prior to this Agreement between the Trust and the Supplier, which also covers the Supplier's Sub-contractors (if any) and as set out at Schedule 7 (Risk Assessment);
"Schedule"	a schedule attached to, and forming part of, this Agreement;
"Services"	the services to be supplied by the Supplier as specified in the Requirements;
"Staff"	all persons employed by the Supplier to perform its obligations under this Agreement together with the Supplier's servants, agents, suppliers and Sub-contractors used in the performance of its obligations under this Agreement;
"Staff Vetting Procedure"	the Trust's procedures for the vetting of personnel and as advised

to the Supplier by the Trust;

"Sub-contract"	any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Goods and/or Services or any part thereof or facilities, goods or services necessary for the provision of the Goods and/or Services or any part thereof or necessary for the management, direction or control of the Goods and/or Services or any part thereof;
"Sub-contractor"	the third party with whom the Supplier enters into a Sub-contract or its servants or agents and any third party with whom that third party enters into a Sub-contract or its servants or agents;
"Tender"	the document(s) submitted by the Supplier to the Trust in response to the Trust's invitation or request for quotation to suppliers for formal offers to supply it with the Goods and/or Services;
"Trust Representative"	the representative appointed by the Trust from time to time in relation to this Agreement;
"Trust Policies"	the policies of the Trust as amended and added to from time to time as set out in Schedule 6 (Trust Policies);
"Variation"	has the meaning given to it in clause 42 (Variation);
"Variation Procedure"	the procedure detailed at clause 42;
"VAT"	value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
"Working Day"	a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

1.2. Interpretation

The interpretation and construction of this Agreement shall be subject to the following provisions:

- 1.2.1. references to clauses and Schedules are references to the clauses and Schedules of this Agreement;
- 1.2.2. words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.3. words importing the masculine include the feminine and the neuter;
- 1.2.4. reference to a clause is a reference to the whole of that clause unless stated otherwise;
- 1.2.5. reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument

as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

- 1.2.6. reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.7. the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- 1.2.8. headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.

2. **DUE DILIGENCE**

2.1. The Supplier acknowledges that it:

- 2.1.1. has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Trust and has entered into this Agreement in reliance on its own due diligence alone and not on any representations or information made available by the Trust;
- 2.1.2. has received all information required by it in order to determine whether it is able to provide the Requirements in accordance with the terms of this Agreement; and
- 2.1.3. has raised all relevant due diligence questions with the Trust before the Commencement Date.

3. **BASIS OF CONTRACT**

All the terms of this Agreement shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

4. **CONTRACT PERIOD**

4.1. **Initial Contract Period**

This Agreement shall take effect on the **Commencement Date** and shall expire automatically on **End Date**, unless it is otherwise terminated in accordance with the provisions of this Agreement, or otherwise lawfully terminated, or extended under clause 4.2 (Extension of Initial Contract Period).

4.2. **Extension of Initial Contract Period**

The Trust may, by giving written notice to the Supplier not less than one Month prior to the last day of the Initial Contract Period extend this Agreement for a further period of up to **Twelve (12)** Month(s). The provisions of this Agreement will apply throughout any such extended period.

5. **SUPPLY OF GOODS**

5.1. This clause 5 shall apply where the Requirements include the Supply of Goods.

5.2. **The Requirements**

The Supplier shall supply and, where relevant, install the Goods in accordance with the Requirements.

5.3. The Goods

- 5.3.1. If requested by the Trust, the Supplier shall provide the Trust with samples of Goods for evaluation and approval, at the Supplier's cost and expense.
- 5.3.2. The Supplier shall ensure that the Goods are fully compatible with any existing equipment, to the extent specified in the Requirements.
- 5.3.3. The Supplier acknowledges that the Trust relies on the skill and judgment of the Supplier in the supply of the Goods and the performance of its obligations under this Agreement.

5.4. Delivery

- 5.4.1. The Supplier shall deliver the Goods at the time(s) and date(s) specified in the Requirements.
- 5.4.2. Unless otherwise stated in the Requirements, where the Goods are delivered by the Supplier, the point of delivery shall be when the Goods are safely and securely removed from the transporting vehicle at the Premises. Where the Goods are collected by the Trust, the point of delivery shall be when the Goods are safely and securely loaded on the Trust's vehicle.
- 5.4.3. Except where otherwise provided in the Requirements, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Supplier's carriers at such place as the Trust or duly authorised person shall reasonably direct.
- 5.4.4. Time of delivery shall be of the essence and if the Supplier fails to deliver the Goods within the time promised or specified in the Requirements, the Trust may release itself from any obligation to accept and pay for the Goods and/or terminate this Agreement, in either case without prejudice to any other rights and remedies of the Trust.
- 5.4.5. The Trust shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Trust elects not to accept such over-delivered Goods it shall give notice in writing to the Supplier to remove them within five (5) Working Days and to refund to the Trust any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Trust may dispose of such Goods and charge the Supplier for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Supplier unless they are accepted in writing by the Trust.
- 5.4.6. The Trust shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Requirements.
- 5.4.7. Unless expressly agreed to the contrary, the Trust shall not be obliged to accept delivery by instalments. If, however, the Trust does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Trust, entitle the Trust to terminate the whole of any unfulfilled part of this Agreement without further liability to the Trust.

5.5. Risk and Ownership

- 5.5.1. Subject to clause 5.4.5, risk in the Goods shall, without prejudice to any other rights or remedies of the Trust (including the Trust's rights and remedies under clause 5.7 (Inspection, Rejection and Guarantee) pass to the Trust at the time of delivery.
- 5.5.2. Ownership in the Goods shall, without prejudice to any other rights or remedies of the Trust (including the Trust's rights and remedies under clause 5.7 (Inspection, Rejection and Guarantee), pass to the Trust at the time of delivery (or payment, if earlier).

5.6. Non-Delivery

On dispatch of any consignment of the Goods the Supplier shall send the Trust an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. Where the Goods, having been placed in transit, fail to be delivered to the Trust on the due date for delivery, the Trust shall (provided that the Trust has been advised in writing of the dispatch of the Goods), within ten (10) Working Days of the notified date of delivery, give notice to the Supplier that the Goods have not been delivered and may request the Supplier to deliver substitute Goods free of charge within the timescales specified by the Trust or terminate this Agreement in accordance with clause 5.4 (Delivery).

5.7. Inspection, Rejection and Guarantee

- 5.7.1. The Trust or its authorised representatives may inspect or test the Goods either complete or in the process of manufacture during normal business hours on reasonable notice at the Supplier's premises and the Supplier shall provide all reasonable assistance in relation to any such inspection or test free of charge. No failure to make a complaint at the time of any such inspection or test and no approval given during or after such inspection or test shall constitute a waiver by the Trust of any rights or remedies in respect of the Goods and the Trust reserves the right to reject the Goods in accordance with clause 5.7.2.
- 5.7.2. The Trust may by written notice to the Supplier reject any of the Goods which fail to conform to the approved sample or fail to meet the Requirements. Such notice shall be given within a reasonable time after delivery to the Trust of such Goods. If the Trust rejects any of the Goods pursuant to this clause 5.7 the Trust may (without prejudice to other rights and remedies) either:
 - 5.7.2.1. have such Goods promptly, and in any event within five (5) Working Days, either repaired by the Supplier or replaced by the Supplier with Goods which conform in all respects with the approved sample or with the Requirements and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or
 - 5.7.2.2. treat this Agreement as discharged by the Supplier's breach and obtain a refund (if payment for the Goods has already been made) from the Supplier in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Trust in obtaining other goods in replacement provided that the Trust uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement goods.
- 5.7.3. The issue by the Trust of a receipt note for the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods, or the Trust's acceptance of them.
- 5.7.4. The Supplier hereby guarantees the Goods for the period from the date of delivery to the date [WORDS (FIGURE)] months thereafter against faulty materials or workmanship.

If the Trust shall within such guarantee period or within twenty-five (25) Working Days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies which the Trust may have) promptly remedy such defects (whether by repair or replacement as the Trust shall elect) free of charge.

- 5.7.5. Any Goods rejected or returned by the Trust as described in clause 5.7.2 shall be returned to the Supplier at the Supplier's risk and expense.

5.8. Labelling and Packaging

The Goods shall be packed and marked in a proper manner and in accordance with the Trust's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the contract number (or other reference number if appropriate) and the net, gross and unladen weights, the name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

5.9. Training

Where indicated in the Requirements, the Contract Price shall include the cost of instruction of the Trust's personnel in the use and maintenance of the Goods and such instruction shall be in accordance with the requirements detailed in the Requirements, the manufacturer's instructions and/or Good Industry Practice.

5.10. Contract Performance

- 5.10.1. The Supplier shall ensure that:

- 5.10.1.1. the Goods conform in all respects with the Requirements and, where applicable, with any sample approved by the Trust;
- 5.10.1.2. the Goods operate in accordance with the relevant technical specifications and correspond with the Requirements;
- 5.10.1.3. the Goods conform in all respects with all applicable Laws; and
- 5.10.1.4. the Goods are free from defects in design, materials and workmanship and are fit and sufficient for all the purposes for which such Goods are ordinarily used and for any particular purpose made known to the Supplier by the Trust.

5.11. Manner of Carrying out Installation Work

The Supplier shall complete any necessary Installation Works relevant to the Goods.

- 5.11.1. The Supplier shall not deliver any materials or plant nor commence any work on the Premises without obtaining prior Approval. Notwithstanding the foregoing, the Supplier shall, at the Trust's written request, remove from the Premises any materials brought into the Premises by the Supplier, which in the reasonable opinion of the Trust are either hazardous, noxious or not in accordance with this Agreement and substitute proper and suitable materials at the Supplier's expense as soon as reasonably practicable.

- 5.11.2. When the Supplier reasonably believes it has completed the Installation Works it shall notify the Trust in writing. Following receipt of such notice, the Trust shall inspect the Installation Works and shall, by giving written notice to the Supplier:
- 5.11.2.1. accept the Installation Works, or
 - 5.11.2.2. reject the Installation Works and provide reasons to the Supplier if, in the Trust's reasonable opinion, the Installation Works do not meet the requirements set out in the Requirements.
- 5.11.3. If the Trust rejects the Installation Works in accordance with clause 5.11.2.2, the Supplier shall immediately rectify or remedy any defects and if, in the Trust's reasonable opinion, the Installation Works do not, within five (5) Working Days, meet the requirements set out in the Requirements, the Trust may terminate this Agreement with immediate effect by notice in writing.
- 5.11.4. The Installation Works shall be deemed to be completed when the Supplier receives a notice issued by the Trust in accordance with clause 5.11.2.1. Notwithstanding acceptance of any Installation Works in accordance with that clause, the Supplier shall remain solely responsible for ensuring that the Goods and the Installation Works conform to the Requirements. No rights of estoppel or waiver shall arise as a result of the acceptance by the Trust of the Installation Works.
- 5.11.5. Throughout the Contract Period, the Supplier shall:
- 5.11.5.1. have at all times all licences, approvals and consents necessary to enable the Supplier and Staff to carry out the Installation Works;
 - 5.11.5.2. provide all tools and equipment (or procure the provision of all tools and equipment) necessary for completion of the Installation Works;
 - 5.11.5.3. not, in the performance of its obligations under this Agreement, in any manner endanger the safety or unlawfully interfere with the safety or convenience of the public.
- 5.11.6. On completion of any Installation Works the Supplier shall remove its plant, equipment and unused materials and shall leave the Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Premises or any objects contained therein, other than fair wear and tear, which is caused by the Supplier or any Staff.

6. **SUPPLY OF SERVICES**

- 6.1. This clause 6 shall apply where the Requirements include the supply of Services.
- 6.2. **The Services**
- 6.2.1. In consideration for the payment of the Contact Price, the Supplier shall supply the Services with effect from the Commencement Date:
 - 6.2.1.1. in a timely manner and in accordance with the Requirements;
 - 6.2.1.2. in accordance with the Trust's Requirements. The Trust may inspect and examine the manner in which the Supplier supplies the Services at any time

6.2.1.3. with reasonable skill and care in accordance with Good Industry Practice; and

6.2.1.4. in accordance with all applicable Laws.

6.2.2.

The Supplier shall provide the Requirements to meet or exceed the Performance Levels and any failure to meet the Performance Levels shall entitle the Trust to Credits calculated in accordance with the provisions of the Requirements or in the event of a Critical Performance Failure shall give rise to a right for the Trust to terminate this Agreement with immediate effect upon giving written notice to the Supplier

6.2.3. Subject to clause 6.3.2, time in relation to the supply of the Services shall be of the essence, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

6.2.4. Except where otherwise provided in this Agreement, the Services shall be provided by the Staff or the Sub-contractors at such place or places as set out in the Requirements or as otherwise reasonably directed by the Trust or its duly authorised person.

6.2.5. In the event that not all of the Services are provided by the relevant Milestone Dates specified in the Implementation Plan then the Trust shall be entitled to withhold payment of the Contract Price for such Services until such time as they are provided.

6.3. Provision and Removal of Equipment

6.3.1. The Supplier shall provide all the Equipment necessary for the supply of the Services.

6.3.2. The Supplier shall not deliver any Equipment nor begin any work at the Premises without obtaining prior Approval.

6.3.3. All Equipment brought onto the Premises shall be at the Supplier's own risk and the Trust shall have no liability for any loss of or damage to any Equipment unless the Supplier is able to demonstrate that such loss or damage was caused by the Trust in default of any of its obligations in this Agreement. The Supplier shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Supplier.

6.3.4. The Supplier shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.

6.3.5. The Supplier shall, at the Trust's written request, at its own expense and as soon as reasonably practicable:

6.3.5.1. remove from the Premises any Equipment which in the reasonable opinion of the Trust is either hazardous, noxious or not in accordance with this Agreement; and

6.3.5.2. replace such item with a suitable substitute item of Equipment.

6.3.6. On completion of the Services the Supplier shall remove the Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Supplier is solely responsible for

making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or any Staff.

6.4. **Manner of Carrying Out the Services**

- 6.4.1. The Supplier shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in this Agreement, the Supplier shall agree the relevant standard of the Services with the Trust prior to the supply of the Services and, in any event, the Supplier shall perform its obligations under this Agreement in accordance with the Law and Good Industry Practice.
- 6.4.2. The Supplier shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- 6.4.3. The Supplier shall employ sufficient instructed and supervised employees to ensure the Services are provided in accordance with the Performance Levels.
- 6.4.4. The Supplier shall ensure that a sufficient reserve of trained and competent employees is available to maintain the Performance Levels during staff holidays or absence due to sickness or otherwise.
- 6.4.5. The Supplier shall procure that the Staff shall work under the direction and control of the Trust when on the premises but the Supplier shall be responsible at no additional cost to the Trust for the conduct and discipline of the Staff.
- 6.4.6. The Supplier shall procure that Staff shall at all times during their engagement in the provision of the Services remain servants of the Supplier and the Supplier shall not be relieved of any statutory or other responsibilities in relation to the Staff by virtue of this Agreement.
- 6.4.7. **Relevant Convictions**
 - 6.4.7.1. The Supplier shall ensure that no person who discloses that he has a Relevant Conviction, or who is found by the Supplier to have any Relevant Convictions (whether as a result of a police check or through the Disclosure and Barring Service (DBS) procedures or otherwise), is employed or engaged in any part of the provision of the Services without Approval.
 - 6.4.7.2. For each member of Staff who, in providing the Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Trust owes a special duty of care, the Supplier shall (and shall procure that any relevant Sub-contractor shall) and shall provide evidence upon request that such obligations have been met:
 - a) carry out a police check;
 - b) conduct thorough questioning regarding any Relevant Convictions; and
 - c) obtain a valid disclosures check and such other checks as may be carried out through the Disclosure and Barring Service before the Supplier or any Sub-contractor engages the member of Staff in the provision of the Services;

and the Supplier shall not (and shall ensure that any Sub-contractor shall not) engage or continue to employ in the provision of the Services any person who has a Relevant Conviction or an inappropriate record.

- 6.4.7.3. The Supplier shall monitor the level and validity of the checks under this clause 6.4 for each member of staff. The Supplier shall use its reasonable endeavours to procure that the Trust is advised and kept informed at all times of any member of Staff who, subsequent to his/her commencement of employment as a member of Staff receives a Relevant Conviction or whose previous Relevant Convictions or inappropriate record become known to the Supplier
- 6.4.7.4. The Supplier warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or who will be employed or engaged by the Supplier in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulation made thereunder, as amended from time to time.
- 6.4.8. The Trust reserves the right to reject Staff whom they consider acting reasonably to be unsuitable for the duties proposed. Where Staff are rejected the Supplier shall supply alternative Staff. In addition, the Trust Representative may (but not unreasonably or vexatiously) instruct the Supplier to take disciplinary action against or to remove from work in or about the provision of the Services any person employed by the Supplier and the Supplier shall immediately comply with such instruction, and in the case of a removal from work shall, as soon as it is reasonably practicable thereafter provide a substitute.
- 6.4.9. The Supplier shall ensure that any employees to whom reference is made by name in the paragraph 3.2 of Schedule 2 (Supplier Solution) are actively involved in the provision of the Services or are only replaced with employees acceptable to the Trust Representative. The Supplier acknowledges that if it is ever the intention of the Supplier to change the partners and/or employees committed to provide the Services as provided for in the Requirements it shall first give notice of such intention to the Trust Representative explaining the reasons for such change together with full details of any proposed replacement partner and/or employee. The Trust shall be under no obligation to approve or accept any such replacement. If any of the partners or employees cease, in the reasonable opinion of the Trust, to provide and be responsible for the provision of the Services and the quality of those Services then the Trust may terminate this Agreement in accordance with clause 27 (default, disruption and termination) paying only for the Services properly provided up to the date of such delivery and/or termination.
- 6.4.10. The Supplier shall procure that the Trust is advised and kept informed at all times of any:
 - 6.4.10.1. disciplinary incident relating to the Staff involving visitors, patients or the Trust's staff or property; and
 - 6.4.10.2. incidence of serious misconduct involving the Staff.
- 6.4.11. The Supplier shall only employ Staff for the purposes of this Agreement who:
 - 6.4.11.1. fulfil any minimum training and qualification requirements of the Trust as set out in the Requirements and also all training and qualification requirements that may be deemed necessary by the Trust Representative, legislation, or any special bodies or associations;

- 6.4.11.2. are in good health and have a standard of oral and personal hygiene acceptable to the Trust; and
 - 6.4.11.3. are medically and physically fit in so far as the requirements of the work are concerned.
- 6.4.12. The Supplier shall not employ in or about the provision of the Services any person who has suffered from, has signs of, is under treatment for, or who is suffering from any medical condition which is known to, or does potentially, place the health of themselves or the Trust's staff, residents, patients or visitors at risk. In all such cases, the Supplier is required to notify the Trust Representative of each particular incident. The Supplier may receive and will accept such instruction as to the immediate and future working capability of the affected employee, upon the Premises. Such instruction may necessitate the need for further investigation, which shall be the duty and responsibility of the Supplier at his own expense.

6.4.13. **Medical Examination**

- 6.4.13.1. The Trust Representative may, but not unreasonably or vexatiously, require any person employed by the Supplier in or about the provision of the Services to be medically examined at any time during their employment;
- 6.4.13.2. Any medical examination or certification of any member of the Supplier's staff required by this Agreement shall be arranged by and shall be at the expense of the Supplier provided always that the Trust shall be entitled at their own expense to require any medical examination to be carried out by a medical practitioner nominated by the Trust.

6.4.14. **Staff Vetting Procedure**

- 6.4.14.1. The Supplier shall comply with the Staff Vetting Procedure in respect of all persons employed or engaged in the provision of the Services. The Supplier confirms that all persons employed or engaged by the Supplier were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedure;
- 6.4.14.2. The Trust may require the Supplier to ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service check as per the Staff Vetting Procedure. The Supplier shall ensure that no person who discloses that he/she has a Relevant Conviction, or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check or through the Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.

6.5. **Trust Policies**

The Supplier shall ensure that the supply of Goods and provision of the Services shall at all times comply with the Trust Policies, rules, procedures and standards (including any racial discrimination and equal opportunities policies).

7. **PREMISES**

7.1. **Inspection of Premises**

Save as the Trust may otherwise direct, the Supplier is deemed to have inspected the Premises before submitting its Tender and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under this Agreement.

7.2. Licence to occupy Premises

- 7.2.1. Any land or Premises made available from time to time to the Supplier by the Trust in connection with this Agreement shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under this Agreement. The Supplier shall have the use of such land or Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of this Agreement.
- 7.2.2. The Supplier shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under this Agreement and the Supplier shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Trust may reasonably request.
- 7.2.3. Should the Supplier require modifications to the Premises, such modifications shall be subject to prior Approval and shall be carried out by the Trust at the Supplier's expense. The Trust shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Trust.
- 7.2.4. The Supplier shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises and conduct of personnel at the Premises as determined by the Trust, and the Supplier shall pay for the cost of making good any damage caused by the Supplier or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes without limitation damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 7.2.5. The Parties agree that there is no intention on the part of the Trust to create a tenancy of any nature whatsoever in favour of the Supplier or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Agreement, the Trust retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

8. PROPERTY

- 8.1. Where the Trust issues Property free of charge to the Supplier such Property shall be and remain the property of the Trust and the Supplier irrevocably licences the Trust and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Property. The Supplier shall not in any circumstances have a lien or any other interest on the Property and the Supplier shall at all times possess the Property as fiduciary agent and bailee of the Trust. The Supplier shall take all reasonable steps to ensure that the title of the Trust to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-contractors and other appropriate persons and shall, at the Trust's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Trust.
- 8.2. The Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Trust otherwise within five (5) Working Days of receipt.
- 8.3. The Supplier shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with this Agreement and for no other purpose without prior Approval.

- 8.4. The Supplier shall ensure the security of the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Goods and/or Services, in accordance with the Trust's reasonable safety and security requirements as required from time to time.
- 8.5. The Supplier shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Trust's Default. The Supplier shall inform the Trust within two (2) Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

9. EXIT PLANNING

- 9.1. The Supplier shall, unless agreed otherwise, deliver to the Trust a plan (the "**Exit Plan**") which sets out the Supplier's proposed methodology for achieving orderly transition of the Requirements from the Supplier to the Trust and/or a Replacement Supplier on the expiry or termination of this Agreement within three (3) Months after the Commencement Date. Within thirty (30) days after submission of the draft Exit Plan (or any revised Exit Plan) the Parties will use their reasonable endeavours to agree its content and if they are unable to reach agreement then the dispute shall be referred to the Dispute Resolution Procedure. The Supplier will review and update the Exit Plan within one (1) month of each anniversary of the Commencement Date. The Supplier shall ensure that the Exit Plan shall include as a minimum:
 - 9.1.1. a detailed description of how the delivery of Requirements will be ceased and transferred to the Trust and/or a Replacement Supplier;
 - 9.1.2. details of the management structure to be employed to effectively transfer the Requirements;
 - 9.1.3. details of how relevant knowledge will be transferred; and
 - 9.1.4. details of assets and/or contracts (if any) which will be available for transfer upon expiry or termination of this Agreement together with any reasonable costs required to effect such transfer.
- 9.2. Updates to the Exit Plan shall reflect changes in the Requirements and other matters necessary to ensure that the Supplier is able to implement the Exit Plan at any time.
- 9.3. Following approval of the Exit Plan, the Supplier shall implement the Exit Plan.
- 9.4. The Supplier shall provide such support and assistance required in order to achieve a smooth transfer of the Requirements to the Trust or a Replacement Supplier before and after the Expiry Date ("**Transitional Assistance**") as specified by the Trust at any time prior to (or within ninety (90) days following) the occurrence of termination or expiry of this Agreement, in order to achieve a smooth transfer of the Services to the Trust or any Replacement Supplier following such termination or expiry.

10. BUSINESS CONTINUITY

- 10.1. The Supplier shall have robust contingency plans in place, agreed with the Trust, to ensure that supply of the Goods and/or Services will be maintained in the event of disruption (including, but not limited to, disruption to information technology systems) to the Supplier's operations, and those of Sub-contractors to the Supplier, however caused ("**Business Continuity Plan**").

- 10.2. The Supplier shall ensure that the Business Continuity Plan aligns and continues to be aligned with Good Industry Practice and the relevant provisions of ISO/IEC27002:2005/ISO 20000, ISO22301 (as amended) and all other industry standards from time to time in force.
- 10.3. The Supplier shall make the Business Continuity Plan available for the Trust to inspect and to practically test at any reasonable time and the Supplier shall promptly act upon and incorporate the Trust's reasonable comments upon the Business Continuity Plan.
- 10.4. The Supplier shall regularly review, test and update the Business Continuity Plan in accordance with Good Industry Practice, including:
 - 10.4.1. in the event of a change to the Supplier's business operations;
 - 10.4.2. in the event of a change to the provision of the Services;
 - 10.4.3. on the occurrence of any event which may increase the likelihood of the need to implement the Business Continuity Plan (including the identification of any threat to the Supplier, the Trust or the Services); and/or
 - 10.4.4. where requested by the Trust in accordance with clause 10.5.
- 10.5. The Trust may request (such request to be made reasonably) any additional reviews (over and above those provided for in clause 10.4) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Trust's written requirements.
- 10.6. In the event of a loss of service, the Supplier shall immediately invoke the Business Continuity Plan (and shall inform the Trust promptly of such invocation). In all other instances the Supplier shall only invoke or test the Business Continuity Plan with the prior consent of the Trust.

11. **MONITORING OF CONTRACT PERFORMANCE**

- 11.1. The Supplier shall comply with the monitoring arrangements set out in this clause 11 including, but not limited to, providing such data and information as the Supplier may be required to produce under this Agreement.
- 11.2. Within twenty (20) Working Days of the Commencement Date the Supplier shall provide the Trust with details of the system that it will implement in order to monitor and report on Performance Levels and the Parties will endeavour to agree such process as soon as reasonably possible. The Supplier agrees that the reports generated as part of the Performance Monitoring System shall contain, as a minimum, the following information in respect of the relevant period just ended:
 - 11.2.1. for each Performance Level, the actual performance achieved over the Performance Level for the relevant period;
 - 11.2.2. a summary of all failures to achieve Performance Levels that occurred during that period;
 - 11.2.3. any Critical Performance Failures and details in relation thereto;
 - 11.2.4. for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;

- 11.2.5. the Credits to be applied in respect of the relevant period indicating the failures and Performance Levels to which the Credits relate; and
- 11.2.6. such other details as the Trust may reasonably require from time to time.
- 11.3. Once agreed, the Supplier shall comply with the Performance Monitoring System.
- 11.4. Where reports are required to be submitted as part of the Performance Monitoring System, the Supplier shall render such reports at such time and in such form as may be specified or as otherwise agreed between the Parties.
- 11.5. The submission and receipt of reports as part of the Performance Monitoring System shall not prejudice the rights of either Party under this Agreement.
- 11.6. The Parties shall attend meetings to discuss Performance Level reports ("**Performance Review Meetings**") on a monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Supplier and the Trust of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):
 - 11.6.1. take place within one (1) week of the reports being issued by the Supplier;
 - 11.6.2. take place at such location and time (within normal business hours) as the Trust shall reasonably require unless otherwise agreed in advance;
 - 11.6.3. be attended by the Contract Manager and the Trust Representative; and
 - 11.6.4. be fully and accurately minuted by the Supplier. The prepared minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Trust Representative and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Contract Manager and the Trust Representative at each meeting.
- 11.7. The Trust shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Performance Levels.
- 11.8. The Supplier shall provide to the Trust such supporting documentation as the Trust may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Credits for any specified period.
- 11.9. The Supplier shall meet with the Trust following completion of the provision of the Requirements to discuss whether the Parties' objectives were met, whether anticipated benefits had been achieved and to identify any lessons learned for future projects. The Trust shall be permitted to share information arising from such meeting with other Contracting Authorities.
- 11.10. **Satisfaction Surveys**
 - 11.10.1. In order to assess the level of performance of the Supplier, the Trust may undertake satisfaction surveys in respect of the Supplier's provision of the Requirements ("**Satisfaction Surveys**");
 - 11.10.2. The Trust shall be entitled to notify the Supplier of and the Supplier shall correct any aspects of their provision of the Requirements which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Agreement;

- 11.10.3. All other suggestions for improvements to the Services shall be dealt with as part of the continuous improvement programme pursuant to clause 12.

11.11. Remedies in the event of inadequate performance

- 11.11.1. Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Supplier's obligations under this Agreement, then the Trust shall notify the Supplier, and where considered appropriate by the Trust, investigate the complaint. The Trust may, in its sole discretion, uphold the complaint and take further action in accordance with 27.2 (Termination on Default);
- 11.11.2. In the event that the Trust is of the reasonable opinion that there has been a material breach of this Agreement by the Supplier, then the Trust may, without prejudice to its rights under clause 27.2 (Termination on Default), do any of the following:
- 11.11.2.1. without terminating this Agreement, itself supply or procure the supply of all or part of the Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Trust that the Supplier will once more be able to supply all or such part of the Services;
 - 11.11.2.2. without terminating the whole of this Agreement, vary this Agreement in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
 - 11.11.2.3. terminate, in accordance with clause 27.2 (Termination on Default), the whole of this Agreement.
- 11.11.3. Without prejudice to its right under clause 17.3 (Recovery of Sums Due), the Trust may charge the Supplier for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Trust or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services and provided that the Trust uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 11.11.4. If the Supplier fails to supply any of the Services in accordance with the provisions of this Agreement and such failure is capable of remedy, then the Trust shall instruct the Supplier to remedy the failure and the Supplier shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten (10) Working Days or such other period of time as the Trust may direct.
- 11.11.5. In the event that:
- 11.11.5.1. the Supplier fails to comply with clause 11.11.4 above and the failure is materially adverse to the interests of the Trust or prevents the Trust from discharging a statutory duty; or
 - 11.11.5.2. the Supplier persistently fails to comply with clause 11.11.4 above, the Trust may terminate this Agreement with immediate effect by notice in writing.

12. CONTINUOUS IMPROVEMENT, VALUE FOR MONEY AND BENCHMARKING

- 12.1. The Supplier shall have an on going obligation throughout the Contract Period to identify value for money, improvements and benchmark the Goods and Services to demonstrate that throughout the Contract Period the Goods and Services accord/do not accord with Good Industry Practice and notify the Trust in writing, in relation to new or potential improvements to the Goods and/or Services.
- 12.2. The Supplier shall ensure that the information that it provides to the Trust in accordance with clause 12.1 shall be sufficient for the Trust to decide whether any improvement to the Goods and/or Services should be implemented. The Supplier shall provide any further information that the Trust requests in connection with any improvements to the Goods and/or Services identified by the Supplier. Should the Trust decide that an improvement to the Goods and/or Services should be implemented, a request for Variation shall be made in accordance with the Variation Procedure.
- 12.3. The Trust shall regularly benchmark the Contract Price and performance of the Goods and/or Services against other suppliers providing goods and/or services substantially the same as the Goods and/or Services during the Contract Period in order to compare the Contract Price and level of performance of the Goods and/or Services with charges and service offered by third parties so as to provide the Trust with information for comparison purposes.
- 12.4. The Trust shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking evaluation referred to in clause 12.3 above.
- 12.5. The Trust shall be entitled to disclose the results of any benchmarking of the provision of the Goods and/or Services to other Foundation Trusts.
- 12.6. The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the Trust in order to undertake the benchmarking referred to in this clause 12, such information requirements to be at the discretion of the Trust.

13. DISRUPTION

- 13.1. The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Agreement it does not disrupt the operations of the Trust, its employees or any other contractor employed by the Trust or the activities of patients or users of the Premises.
- 13.2. The Supplier shall immediately inform the Trust if any events occur which affect or might affect the Supplier's ability at any time to perform its obligations under this Agreement.
- 13.3. If the Supplier is temporarily unable to fulfil the requirements of this Agreement owing to disruption of normal business caused by the Trust or any other Trust Sub Contractor or agent, an appropriate allowance by way of extension of time will be approved by the Trust. In addition, the Trust will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

14. TRUST RESPONSIBILITIES

Save as otherwise expressly provided, the obligations of the Trust under this Agreement are obligations of the Trust in its capacity as a contracting counterparty and nothing in this Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Trust in any other capacity, nor shall the exercise by the Trust of its duties and powers in any other capacity lead to any liability under this Agreement (howsoever arising) on the part of the Trust to the Supplier.

15. LIQUIDATED DAMAGES

- 15.1. This clause 15 shall apply where the Requirements include the supply of Goods.
- 15.2. If the Supplier fails to deliver the Goods by the date(s) agreed, specified in the Requirements or (where an extension of time has been agreed by the Parties) the revised date for delivery (as the context requires) (the "**Agreed Delivery Date**"):
 - 15.2.1. the Supplier shall pay the Trust a sum by way of liquidated damages for each day between the Agreed Delivery Date and the date on which the Goods are delivered to the Trust, equal to **[WORDS]** per cent (**[FIGURES]**%) of the Contract Price for the relevant Goods, up to a maximum amount of **[WORDS]** per cent (**[FIGURES]**%) of the Contract Price for the relevant Goods ("**Liquidated Damages Threshold**"). Subject to clause 15.4, during the period in which liquidated damages are payable under this clause 15.2.1 ("**Liquidated Damages Period**") the liquidated damages payable in accordance with this clause 15.2.1 shall be the Trust's only remedy for any loss or damage suffered or incurred by the Trust in relation to the failure by the Supplier to deliver the Goods by the Agreed Delivery Date; and
 - 15.2.2. where the Liquidated Damages Threshold is met or exceeded (being that delivery continues not to be performed after the Liquidated Damages Threshold is met), the Trust shall be entitled to:
 - 15.2.2.1. claim any remedy available to it (whether under this Agreement or otherwise) for loss or damage incurred or suffered by it after the end of the Liquidated Damages Period; and
 - 15.2.2.2. without prejudice to clause 15.2.2.1, the Trust shall be entitled to terminate this Agreement with immediate effect by giving notice in writing to the Supplier.
- 15.3. The Supplier shall not be obliged to pay any sums pursuant to clause 15.2.1 if and to the extent that the failure by the Supplier to deliver the Goods by the Agreed Delivery Date directly results from the Trust's Default, provided that the Supplier notifies the Trust immediately of such circumstances in sufficient detail to enable the Trust to remedy the situation. Except as set out in this clause 15.3, no payment or concession to the Supplier by the Trust or other act or omission of the Trust shall in any way affect its rights to liquidated damages pursuant to clause 15.2 or be deemed to be a waiver of the right of the Trust to recover any damages unless such waiver has been expressly made in writing by the Trust.
- 15.4. Notwithstanding clause 15.2.1, the Supplier does not exclude responsibility for performing or re-performing the obligation or duty which gave rise to the relevant claim at its own cost in such manner as would (if possible) result in the same or substantively similar effect for the Trust, whether or not such performance or re-performance gives rise to additional costs for the Supplier and the cost of re-performance shall be borne solely by the Supplier and shall not be re-charged to the Trust whether by way of costs, reimbursement or otherwise.
- 15.5. Having given careful consideration to this matter, all monies payable by the Supplier under clause 15.2.1 are considered by the Parties to be a genuine pre-estimate of the losses which the Trust will incur in relation to the Supplier's failure to deliver the Goods by the Agreed Delivery Date, it being impossible to quantify the actual aggregate losses sustainable by the Trust in terms of both loss of revenue as well as loss of reputation and prestige (the Parties acknowledging that hypothetically the losses sufferable by the Trust might be more or less than the agreed liquidated damages calculation); arrived at without any inequality of bargaining position as between the Parties as a true bargain between the Parties; fair, given the nature and

circumstances of this Agreement neither excessive, extravagant, unconscionable or oppressive in all the circumstances and as such these monies are payable as liquidated damages such that the Supplier waives absolutely any entitlement to challenge the enforceability in whole or in part of this clause 15. The Parties' joint intention in agreeing a scheme of liquidated damages in such circumstances is to substantially reduce and, to the fullest extent possible in law, eliminate the risk of a dispute and potential litigation in relation to such circumstances.

15.6. Each Party confirms that:

15.6.1. it has taken specific legal advice on the effect of this clause 15; and

15.6.2. based on such advice, it does not enter into this Agreement in anticipation that, or with any expectation that, this clause 15 will be unenforceable for any reason.

16. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE SERVICES

16.1. Without prejudice to any other right or remedy which the Trust may have, if any Services are not supplied in accordance with, or the Supplier fails to comply with any of the terms of, this Agreement then the Trust may (whether or not any part of the Services have been provided) do any one or more of the following:

16.1.1. at the Trust's option, give the Supplier the opportunity at the Supplier's expense to either remedy the failure together with any damage resulting from such failure (where such failure is capable of remedy) or to supply replacement Services and/or Equipment and carry out any other necessary work to ensure that the terms of this Agreement are fulfilled;

16.1.2. suspend the performance or the delivery of the Services;

16.1.3. if the Requirements provides for the payment of Delay Payments, then the Supplier shall pay such amounts. The Delay Payments will accrue on a daily basis from the relevant Date and will continue to accrue until the date when the Requirement is Achieved;

16.1.4. carry out at the Supplier's expense any work necessary to make the Services comply with this Agreement;

16.1.5. without terminating this Agreement, itself supply or procure the supply of all or part of the Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Trust that the Supplier will once more be able to supply all or such part of the Services in accordance with this Agreement;

16.1.6. terminate this Agreement in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or

16.1.7. charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Trust (including any reasonable administration costs) in respect of the supply of any part of the Services by the Trust or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services and provided that the Trust uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

16.2. In the event that the Supplier:

- 16.2.1. fails to comply with clause 16.1 above and the failure is materially adverse to the interests of the Trust or prevents the Trust from discharging a statutory duty; or
- 16.2.2. persistently fails to comply with clause 16.1 above,

the Trust may terminate this Agreement with immediate effect by giving the Supplier notice in writing.

17. **PAYMENT AND CONTRACT PRICE**

17.1. **Contract Price**

- 17.1.1. In consideration of the Supplier's performance of its obligations under this Agreement, the Trust shall pay the Contract Price in accordance with clause 17.2 (Payment and VAT) or in accordance with such other arrangement as agreed by the Parties.
- 17.1.2. The Trust shall, in addition to the Contract Price and following Receipt of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Goods and/or Services supplied in accordance with this Agreement.
- 17.1.3. The Supplier shall, where it offers the same or substantially the same Goods and/or Services to third parties during the Contract Term at a lower price than the Contract Price, charge the Trust the lower price in substitution for the Contract Price.

17.2. **Payment and VAT**

- 17.2.1. The Trust shall pay all sums due to the Supplier within thirty (30) days of Receipt of a valid invoice, submitted monthly in arrears; all payments will be made electronically.
- 17.2.2. The Supplier shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Goods and/or Services supplied and that it is supported by any other documentation reasonably required by the Trust to substantiate the invoice.
- 17.2.3. Where the Supplier enters into a Sub-contract with a supplier for the purpose of performing its obligations under this Agreement, it shall ensure that a provision is included in such a Sub-contract which requires payment to be made of all sums due by the Supplier to the Sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.
- 17.2.4. The Supplier shall add VAT to the Contract Price at the prevailing rate as applicable.
- 17.2.5. The Supplier shall indemnify the Trust on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Trust at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Agreement. Any amounts due under this clause 17.2.5 shall be paid by the Supplier to the Trust not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Trust.
- 17.2.6. The Supplier shall not suspend the supply of the Goods and/or Services unless the Supplier is entitled to terminate this Agreement under clause 27.2 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Trust on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

17.3. Recovery of Sums Due

- 17.3.1. Wherever under this Agreement any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Trust in respect of any breach of this Agreement), the Trust may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under this Agreement or under any other agreement or contract with the Trust.
- 17.3.2. Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 17.3.3. The Supplier shall make all payments due to the Trust without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Trust to the Supplier.
- 17.3.4. Unless otherwise specified in this Agreement, all payments due shall be made within a reasonable time in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

17.4. Price adjustment on extension of the Initial Contract Period

- 17.4.1. The Contract Price shall apply for the Initial Contract Period and shall also apply during any period of extension to the Initial Contract Period pursuant to clause 4.2 (Extension of Initial Contract Period).
- 17.4.2. If the Parties are unable to agree a Variation in the Contract Price in accordance with clause 17.4.1, this Agreement shall terminate at the end of the Initial Contract Period.
- 17.4.3. If a Variation in the Contract Price is agreed between the Trust and the Supplier, the revised Contract Price will take effect from the first day of any period of extension and shall apply during such period of extension.

17.5. Payment of Sub-Contractors

Where the Supplier enters into a Sub-contract with a supplier or contractor for the purpose of performing this Agreement it shall cause a term to be included in such a Sub-contract that requires payment to be made of undisputed sums by the Supplier to the Sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice, as defined by the Sub-contract requirements.

17.6. Euro

- 17.6.1. Any requirement of Law to account for the Goods and/or Services in Euro, (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Supplier free of charge to the Trust.
- 17.6.2. The Trust shall provide all reasonable assistance to facilitate compliance with clause 17.6.1 by the Supplier.

18. **KEY PERSONNEL**

- 18.1. In respect of the supply of Services, the Supplier shall make available the Key Personnel. The Supplier shall provide, in Schedule 2 (Supplier Solution), a list of the names and business addresses of all those regarded by the Supplier as key personnel. The Supplier shall, upon request of the Trust from time to time, provide a list of the names and business addresses of all other persons who may be at any time concerned with the provision of the Services or any part of such provision. In each case, the Supplier shall specify the capacities in which such personnel are so concerned and shall provide such other particulars and evidence of identity and other supporting evidence as the Trust shall reasonably require.
- 18.2. The Trust may, at any time by written notice to the Supplier, request that any person concerned with the provision of the Services, or any part of such provision be designated a key person and the Trust and the Supplier shall discuss and agree, in good faith, such request accordingly. Once agreed such persons shall become Key Personnel for the purposes of this Agreement.
- 18.3. Where practicable the Supplier shall and shall procure that any Sub-contractor shall obtain Approval before removing or replacing any Key Personnel during the Contract Period.
- 18.4. Where practicable the Supplier shall provide the Trust with at least one (1) month's written notice of its intention to replace any member of Key Personnel.
- 18.5. The Trust shall not unreasonably delay or withhold its consent to the appointment of a replacement for any relevant Key Personnel by the Supplier or Sub-contractor. The Trust may interview the candidates for Key Personnel positions before they are appointed.
- 18.6. The Supplier acknowledges that the Key Personnel are essential to the proper provision of the Services to the Trust. The Supplier shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement shall be as qualified and experienced or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
- 18.7. The Trust may also require the Supplier to remove any Key Personnel that the Trust considers (acting reasonably) in any respect unsatisfactory. The Trust shall not be liable for the cost of replacing any Key Personnel.

19. **SUPPLIER'S STAFF**

- 19.1. The Supplier shall ensure that, where appropriate, Staff are paid at least the national minimum wage in accordance with the National Minimum Wage Act 1998.
- 19.2. **Admission to the Premises**
 - 19.2.1. The Trust may, by written notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Premises:
 - 19.2.1.1. any member of the Staff;
 - 19.2.1.2. any person employed or engaged by any member of the Staff; whose admission or continued presence would, in the reasonable opinion of the Trust, be undesirable.
 - 19.2.2. The decision of the Trust as to whether any person is to be refused access to the Premises and as to whether the Supplier has failed to comply with clause 19.2.1 shall be final and conclusive.

- 19.2.3. At the Trust's written request, the Supplier shall provide a list of the names and addresses of all persons who may require admission in connection with this Agreement to the Premises, specifying the capacities in which they are concerned with this Agreement and giving such other particulars as the Trust may reasonably require.
- 19.2.4. If the Supplier fails to comply with clause 19.2.3 within two (2) Months of the date of the request, the Trust may terminate this Agreement, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Trust.
- 19.2.5. The Supplier's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or within the boundaries of the Premises.

19.3. Employment Regulations

[The Supplier and the Trust hereby acknowledge and agree that the provision of the Goods and/or Services pursuant to this Agreement will not give rise to a Relevant Transfer and that no employees of the Trust are intended to transfer to the Supplier as a result of the commencement of the provision of the Goods and/or Services.]

OR

[The parties agree to any Relevant Transfer of employees under this Agreement.]

20. OFFERS OF EMPLOYMENT

For the duration of this Agreement and for a period of twelve (12) months thereafter neither the Trust nor the Supplier shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Services without that other Party's prior written consent.

21. STAFFING SECURITY

- 21.1. Any notice, information, instruction or other communication given or made to the Contract Manager shall be deemed to have been given or made to the Supplier.
- 21.2. The Supplier shall ensure that the Contract Manager, or a competent deputy who is duly authorised to act on his behalf, is available to the Trust at all times when any Staff is on duty for the provision of the Requirements.
- 21.3. The supplier shall inform the Trust Representative of the identity of any person authorised to act for any period as deputy for the Contract Manager before the start of that period.
- 21.4. The Contract Manager or his deputy shall consult the Trust Representative and such other of the Trust's own supervisory staff as may from time to time be specified by the Trust Representative as often as may reasonably be necessary for the efficient provision of the Requirements in accordance with this Agreement.
- 21.5. The Supplier shall provide a sufficient complement of supervisory staff in addition to the Contract Manager to ensure that the Staff engaged in and about the provision of the Requirements at the Premises are adequately supervised and properly perform their duties at all times.

- 21.6. The Supplier shall ensure that his Staff carry out their duties and behave while on the Premises in an orderly manner and in as quiet a manner as may reasonably be practicable having regard to the nature of the duties being performed by them. The Staff shall not cause any unreasonable or unnecessary disruption to the routines, practices and procedures of the Trust's patients or visitors, or any of the Trust's staff or any other contractors.

22. SECURITY

- 22.1. The Trust shall provide the Supplier upon request copies of its written security procedures and shall afford the Supplier upon request with an opportunity to inspect its physical security arrangements.
- 22.2. The Supplier shall comply with all security requirements of the Trust while on the Premises and shall ensure that all Staff comply with such requirements.

23. INTELLECTUAL PROPERTY RIGHTS

- 23.1. All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "**IP Materials**"):
- 23.1.1. furnished to or made available to the Supplier by or on behalf of the Trust shall remain the property of the Trust; and
 - 23.1.2. prepared by or for the Supplier on behalf of the Trust for use, or intended use, in relation to the performance by the Supplier of its obligations under the Contract shall belong to the Trust; and the Supplier shall not, and shall ensure that the Staff shall not (except when necessary for the performance of this Agreement) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.
- 23.2. The Supplier hereby assigns to the Trust, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause 23.1. This assignment shall take effect on the date of this Agreement or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Supplier. The Supplier shall execute all documentation necessary to execute this assignment.
- 23.3. The Supplier shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Supplier in the performance of this Agreement.
- 23.4. The Supplier shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform this Agreement grants to the Trust a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Trust an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Trust to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Supplier or to any other third party supplying services to the Trust.
- 23.5. The Supplier shall not infringe any Intellectual Property Rights of any third party in supplying the Goods and/or the Services and the Supplier shall, during and after the Contract Period, indemnify and keep indemnified and hold the Trust and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Trust or the Crown may suffer or incur as a result of or in connection with any breach of this clause 23, except where any such claim arises from:

- 23.5.1. items or materials based upon designs supplied by the Trust; or
- 23.5.2. the use of data supplied by the Trust which is not required to be verified by the Supplier under any provision of this Agreement.
- 23.6. The Trust shall notify the Supplier in writing of any claim or demand brought against the Trust for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Supplier.
- 23.7. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Supplier, provided always that the Supplier:
 - 23.7.1. shall consult the Trust on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 23.7.2. shall take due and proper account of the interests of the Trust; and
 - 23.7.3. shall not settle or compromise any claim without Approval (not to be unreasonably withheld or delayed).
- 23.8. The Trust shall at the request of the Supplier afford to the Supplier all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Trust or the Supplier by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Supplier's obligations under this Agreement and the Supplier shall indemnify the Trust for all costs and expenses (including legal costs and disbursements) incurred in doing so. The Supplier shall not, however, be required to indemnify the Trust in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause 23.5.1 or 23.5.2.
- 23.9. The Trust shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Trust or the Supplier in connection with the performance of its obligations under this Agreement.
- 23.10. If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with this Agreement or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall notify the Trust and, at its own expense and subject to the consent of the Trust (not to be unreasonably withheld or delayed), use its best endeavours to:
 - 23.10.1. modify any or all of the Goods and/or Services without reducing the performance or functionality of the same, or substitute alternative Goods and/or Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutates mutandis to such modified Goods and/or Services or to the substitute Goods and/or Services; or
 - 23.10.2. procure a licence to use and supply the Goods and/or Services, which are the subject of the alleged infringement, on terms which are acceptable to the Trust,

and in the event that the Supplier is unable to comply with clauses 23.7.1 or 23.7.2 within twenty (20) Working Days (or such other timescale reasonably required by the Trust) of receipt of the Supplier's notification the Trust may terminate this Agreement with immediate effect by notice in writing.

- 23.11. The Supplier grants to the Trust a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Supplier owned or developed prior to the Commencement Date and which the Trust reasonably requires in order to exercise its rights and take the benefit of this Agreement including the Goods and/or Services provided.

24. PROTECTION OF INFORMATION

- 24.1. The Parties acknowledge that English law does not permit the Trust to allow the Supplier to access or use its Confidential Information unless the Trust complies, and can demonstrate that it complies, with certain requirements. Those requirements are found in the DPA and the law of confidence. In addition, the Department of Health holds the Trust responsible for obtaining appropriate contractual assurance in respect of compliance with information governance requirements from all bodies that have access to the Trust's information or conduct any form of information processing on its behalf. This is particularly important where the Information is about identifiable individuals.

24.2. Data Protection Obligations of the Trust

- 24.2.1. The Trust shall comply with its obligations as a Data Controller under the DPA including those as to notification of the Information Commissioner under Part III and as to security in accordance with the seventh data protection principle.
- 24.2.2. The Trust acknowledges that in carrying out its obligations under this Agreement, it determines the purposes for which and the manner in which the Personal Data are, or are to be, processed alone and not jointly or in common with the Supplier.

24.3. Data Protection Obligations of the Supplier as Data Controller

- 24.3.1. This clause 24.3 shall apply where the Supplier is the Data Controller of any Personal Data.
- 24.3.2. The Supplier shall comply with its obligations as a Data Controller under the DPA including those as to notification of the Information Commissioner under Part III and as to security in accordance with the seventh data protection principle.
- 24.3.3. The Supplier acknowledges that in carrying out its obligations as a Data Controller under this Agreement, it determines the purposes for which and the manner in which the Personal Data are, or are to be, processed alone and not jointly or in common with the Trust.

24.4. Data Protection Obligations of the Supplier as Data Processor

- 24.4.1. This clause 24.4 shall apply where the Supplier is the Data Processor of any Personal Data and shall only apply to those Personal Data of which it is a Data Processor.
- 24.4.2. The Supplier shall act only on Trust's instructions and shall:
- 24.4.2.1. Process the Personal Data only to the extent, and in such a manner, as is necessary for the purposes of the Supplier's performance of this Agreement and in accordance with the Trust's instructions from time to time (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified by the Trust to the Supplier during the term of this Agreement) and shall not Process the Personal Data for any other purpose. The Supplier will

keep a record of any Processing of Personal Data it carries out on behalf of the Trust;

24.4.2.2. promptly comply with any request from the Trust requiring the Supplier to amend, transfer or delete the Personal Data; and

24.4.2.3. not transfer the Personal Data outside the European Economic Area without the prior written consent of the Trust and subject to such conditions as the Trust may impose to ensure compliance with the DPA.

24.4.3. The Supplier shall keep the Personal Data secure and shall:

24.4.3.1. implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data; and

24.4.3.2. notify the Trust immediately if at any time the Supplier suspects or has reason to believe that Personal Data has or may become corrupted, lost or sufficiently degraded in any way for any reason and inform the Trust of the remedial action the Supplier proposes to take. The Supplier will restore the Personal Data at its own expense and will provide the Trust with as much information as it reasonably requires in relation to the incident, the cause and its resolution.

24.4.4. In relation to subject access requests, the Supplier shall:

24.4.4.1. notify the Trust as soon as reasonably practicable and in any event within five (5) Working Days of receipt of a request from a Data Subject for access to that person's Personal Data;

24.4.4.2. provide the Trust with full co-operation and assistance in relation to any such request; and

24.4.4.3. not disclose the Personal Data to any Data Subject or to a third party other than in accordance with the Trust's written instructions.

24.5. **General Obligations of the Supplier**

24.5.1. This clause 24.5 shall apply whether the Supplier is a Data Controller of any Personal Data or the Trust's Data Processor of any Personal Data and to any other Confidential Information in the Supplier's possession or custody or under its control pursuant to this Agreement.

24.5.2. If the Supplier receives any complaint, notice or communication which relates directly or indirectly to the processing of the Confidential Information or to either Party's compliance with the DPA or duty of confidence in relation to the subject matter of this Agreement, it shall immediately notify the Trust and it shall provide the Trust with full co-operation and assistance in relation to any such complaint, notice or communication. The Supplier shall not do anything or enter into any communication with such third party unless expressly authorised to do so by the Trust or required to do so by law or by a regulatory authority.

- 24.5.3. The Supplier shall comply with, and procure the compliance of its employees with, the Department of Health Information Security NHS Code of Practice 2007 currently: <http://www.connectingforhealth.nhs.uk/systemsandservices/infogov/codes/securitycode.pdf> and shall promptly notify the Trust in writing of any unauthorised or unlawful Processing, loss of, damage to or destruction of the Personal Data or breach of security requirement in relation to the Confidential Information under this clause 24.5.3.
- 24.5.4. The Supplier shall notify the Trust if it becomes aware of any advance in technology and methods of working or regulatory requirements which mean that either Party should revise the security measures used in relation to Confidential Information under this Agreement.
- 24.5.5. In respect of ownership of and rights to use the Confidential Information:
- 24.5.5.1. the Supplier agrees that, as between the Parties, the Confidential Information and all intellectual property rights in the Confidential Information shall belong to the Trust absolutely;
 - 24.5.5.2. to the extent that any intellectual property rights in the Confidential Information vest in the Supplier (whether by operation of law or otherwise), the Supplier hereby assigns and shall procure that its agents (if any) and Sub-contractors (if any) shall assign (by way of present and future assignment) absolutely with full title guarantee all its rights, title and interest (if any) in respect of the Confidential Information and the intellectual property rights in and to the Confidential Information with the intent that such property and intellectual property rights shall, if they are in existence, immediately vest in the Trust and shall, if they are yet to come into existence, vest in the Trust immediately upon the same coming into existence; and
 - 24.5.5.3. the Trust hereby grants the Supplier a royalty-free licence during the term of this Agreement to use, copy and store the Confidential Information solely for the purposes of performing and fulfilling its rights and obligations under this Agreement (but for no other purpose).
- 24.5.6. At the Trust's request, the Supplier shall provide to the Trust a copy of all Confidential Information held by it in the format and on the media and by the means of transmission reasonably specified by the Trust.

24.6. Confidentiality

- 24.6.1. The Supplier shall ensure that access to the Confidential Information is limited to:
- 24.6.1.1. those employees who need access to the Confidential Information to meet the Supplier's obligations under this Agreement; and
 - 24.6.1.2. in the case of any access by any employee, such part or parts of the Confidential Information as is strictly necessary for performance of that employee's duties.
- 24.6.2. The Supplier shall ensure that:
- 24.6.2.1. it shall treat the Confidential Information as confidential and safeguard it accordingly and shall not disclose the Confidential Information to any other person without the prior written consent of the Trust, except to such persons and to such extent as may be necessary for the performance of this Agreement or except

- where disclosure is otherwise expressly permitted by the provisions of this Agreement;
- 24.6.2.2. all employees are informed of the confidential nature of the Confidential Information and are bound by written obligations to keep the Confidential Information confidential and to comply with the standards set out in the Department of Health Confidentiality NHS Code of Practice 2003, currently: <http://systems.hscic.gov.uk/infogov/codes/confcode.pdf>
 - 24.6.2.3. all employees have undertaken training in the laws relating to handling personal data and confidential information including the DPA and the law of confidence; and
 - 24.6.2.4. all employees are aware both of the Supplier's duties and their personal duties and obligations under those laws and this Agreement.
- 24.6.3. The Supplier shall take reasonable steps to ensure the reliability of any of the Supplier's employees who have access to the Confidential Information.
 - 24.6.4. The Supplier shall, if so required by the Trust, submit to and participate in training organised by the Trust in Caldicott/confidentiality and data protection.

24.7. Freedom of Information

- 24.7.1. The Supplier acknowledges that the Trust is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with the Trust (at the Supplier's expense) to enable the Trust to comply with these Information disclosure requirements.
- 24.7.2. The Supplier shall and shall procure that its Sub-contractors (if any) shall:
 - 24.7.2.1. transfer to the Trust all Requests for Information that it receives as soon as practicable and in any event within three (3) working days of receiving a Request for Information;
 - 24.7.2.2. provide the Trust with a copy of all Information in its possession or power in the form that the Trust requires within five (5) working days (or such other period as the Trust may specify) of the Trust's request; and
 - 24.7.2.3. provide all necessary assistance as reasonably requested by the Trust to enable the Trust to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 24.7.3. The Trust shall be responsible for determining in its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
 - 24.7.3.1. is exempt from disclosure in accordance with the provisions of the FOIA or the EIR; or
 - 24.7.3.2. is to be disclosed in response to a Request for Information;

and in no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Trust.
- 24.7.4. The Supplier acknowledges that the Trust may, acting in accordance with the Secretary of State's Code of Practice on the Discharge of the Functions of Public Authorities under

Part I of the Freedom of Information Act 2000 be obliged under the FOIA, or the EIR to disclose Information:

- 24.7.4.1. without consulting with the Supplier; or
- 24.7.4.2. following consultation with the Supplier and having taken its views into account.
- 24.7.5. The Supplier shall ensure that all information produced in the course of this Agreement or relating to this Agreement is retained for disclosure in accordance with the Department of Health Records Management NHS Code of Practice 2006 currently: <http://systems.hscic.gov.uk/infogov/codes> and shall permit the Trust to inspect such records as requested from time to time.
- 24.7.6. The Supplier acknowledges that the list of Commercially Sensitive Information in Schedule 8 is of indicative value only and that the Trust may be obliged to disclose it in accordance with clause 24.7 or clause 25.

24.8. **Transparency**

- 24.8.1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information. The Trust shall be responsible for determining in its absolute discretion whether any of the content of this Agreement is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Agreement, the Supplier hereby gives its consent for the Trust to publish this Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to this Agreement, to the general public.
- 24.8.2. The Trust may consult with the Supplier to inform its decision regarding any exemptions but the Trust shall have the final decision in its absolute discretion.

24.9. **Monitoring and review**

- 24.9.1. The Trust is entitled, on giving at least two (2) days' notice to the Supplier, to inspect or appoint representatives to inspect all facilities, equipment, documents and electronic data relating to the processing of Confidential Information by the Supplier.
- 24.9.2. The requirement under clause 24.9.1 to give notice will not apply if the Trust believes that the Supplier is in breach of any of its obligations under this Agreement.
- 24.9.3. The Supplier will co-operate with the Trust's requirement to monitor the Supplier on a regular basis, including completion of a data processor questionnaire (if the Supplier is a Data Processor), production of information or documents or other mechanisms that the Trust reasonably considers are required to assure the Trust that the requirements (insofar as they apply to the Services) set out from time to time in the Department of Health's Information Governance Toolkit for commercial third parties, at: <https://www.igt.hscic.gov.uk/> have been met, that the Services are being delivered and that controls are being adhered to. The Parties will use reasonable endeavours to maintain good communication and to ensure issues are resolved efficiently.

25. **WARRANTIES AND REPRESENTATIONS**

- 25.1. The Supplier warrants and represents that:

- 25.1.1. it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under this Agreement and that this Agreement is executed by a duly authorised representative of the Supplier;
- 25.1.2. in entering this Agreement it has not committed any Fraud;
- 25.1.3. as at the Commencement Date, all information contained in the Tender (if applicable) remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Trust prior to execution of this Agreement and shall indemnify the Trust in respect of any extra costs occasioned by any discrepancies, errors or omissions therein;
- 25.1.4. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under this Agreement;
- 25.1.5. it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
- 25.1.6. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- 25.1.7. it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under this Agreement;
- 25.1.8. its responses (if any) recorded in the Trust's Data Processor Questionnaire are true;
- 25.1.9. in the three (3) years prior to the date of this Agreement:
 - 25.1.9.1. it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - 25.1.9.2. it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - 25.1.9.3. it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under this Agreement.

26. **LIABILITY, INDEMNITY AND INSURANCE**

- 26.1. Neither Party excludes or limits liability to the other Party for:
 - 26.1.1. death or personal injury caused by its negligence;
 - 26.1.2. fraud;
 - 26.1.3. fraudulent misrepresentation; or

- 26.1.4. any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.
- 26.2. Subject to clauses 26.3 and 26.4, the Supplier shall indemnify the Trust and keep the Trust indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of the supply, or the late or purported supply, of the Goods and/or Services or the performance or non-performance by the Supplier of its obligations under this Agreement or the presence of the Supplier or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, losses arising under Trust agreements with third parties or any other loss which is caused directly or indirectly by any act or omission of the Supplier.
- 26.3. The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Trust or by breach by the Trust of its obligations under this Agreement.
- 26.4. The Supplier shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Supplier.
- 26.5. Subject always to clause 26.1, the Trust shall not be liable to the Supplier for any:
- 26.5.1. loss of profits, business, revenue or goodwill;
 - 26.5.2. loss of savings (whether anticipated or otherwise); and/or
 - 26.5.3. indirect or consequential loss or damage.
- 26.6. Subject always to clause 26.1, the liability of the Trust for Defaults shall be subject to the following financial limits. To comply with its obligations under clause 26 and as a minimum the Supplier shall ensure that:
- 26.6.1. professional indemnity insurance is held by the Supplier and by any agent, Sub-contractor or consultant involved in the supply of the Services which has a minimum limit of indemnity for each individual claim or such higher limit as the Trust may reasonably require (and as required by Law) from time to time;
 - 26.6.2. public liability insurance adequate to cover all risks in the performance of this Agreement from time to time is held with a minimum limit for each individual claim or such higher limit as the Trust may reasonably require (and as required by Law) from time to time; and
 - 26.6.3. employers' liability insurance is held with a minimum limit of indemnity of such amount as may be required by Law from time to time.

<i>Contract Value</i>	<i>Level of Insurance</i>
<i>£1,000,000</i>	<i>five million pounds (£5,000,000)</i>
<i>£500,000 - £999,999</i>	<i>four million pounds (£4,000,000)</i>
<i>£100,000 - £499,999</i>	<i>two million pounds (£2,000,000)</i>

<i>£20,000 - £99,999</i>	<i>one million pounds (£1,000,000)</i>
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26.7. The Supplier shall take out and maintain or procure the maintenance of the Insurances in accordance with the provisions of Section 26.6 (Insurance).

27. DEFAULT, DISRUPTION AND TERMINATION

27.1. Termination on insolvency and change of control

27.1.1. The Trust may terminate this Agreement with immediate effect by notice in writing where:

27.1.1.1. the Supplier:

- a) suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts;
- b) (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- c) (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 168 of the Insolvency Act 1986; or
- d) (being a partnership) has any partner to whom any of the foregoing apply;

27.1.1.2. (being a company) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);

27.1.1.3. the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

27.1.1.4. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company); or

27.1.1.5. the holder of a qualifying floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;

27.1.1.6. a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;

27.1.1.7. the Supplier (being an individual) is the subject of a bankruptcy petition or order;

27.1.1.8. a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within fourteen (14) days;

- 27.1.1.9. any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 27.1.1.1 to 27.1.1.7 (inclusive);
 - 27.1.1.10. the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
 - 27.1.1.11. the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 27.1.2. The Supplier shall notify the Trust immediately if the Supplier undergoes a Change of Control. The Trust may terminate this Agreement by notice in writing with immediate effect within six (6) months of:
- 27.1.2.1. being notified that a Change of Control has occurred; or
 - 27.1.2.2. where no notification has been made, the date that the Trust becomes aware of the Change of Control, but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

27.2. Termination on Default

- 27.2.1. The Trust may terminate this Agreement by written notice to the Supplier with immediate effect if the Supplier commits a Default and if:
- 27.2.1.1. the Supplier has not remedied the Default to the satisfaction of the Trust within ten (10) Working Days, or such other period as may be specified by the Trust, after issue of a written notice specifying the Default and requesting it to be remedied; or
 - 27.2.1.2. the Default is not, in the opinion of the Trust, capable of remedy; or
 - 27.2.1.3. the Default is a material breach of this Agreement.
- 27.2.2. In the event that through any Default of the Supplier, data transmitted or processed in connection with this Agreement is either lost or sufficiently degraded as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data and shall reimburse the Trust in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- 27.2.3. If the Trust fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Trust in writing of such failure to pay. If the Trust fails to pay such undisputed sums within one hundred and thirty (130) Working Days of the date of such written notice, provided that the undisputed sums exceed Fifty Thousand pounds (£50,000) or 25% of the contract value whichever is less, the Supplier may terminate this Agreement in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Trust exercising its rights under clause 17.3 (Recovery of Sums Due).

27.3. Break

The Trust shall have the right to terminate this Agreement at any time by giving three (3) Months' written notice to the Supplier.

27.4. Disruption

- 27.4.1. The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Agreement it does not disrupt the operations of the Trust, its employees, third parties or any other supplier employed by the Trust.
- 27.4.2. The Supplier shall immediately inform the Trust of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under this Agreement.
- 27.4.3. In the event of industrial action by the Staff, the Supplier shall seek Approval to its proposals to continue to perform its obligations under this Agreement.
- 27.4.4. If the Supplier's proposals referred to in clause 27.4.3 are considered insufficient or unacceptable by the Trust acting reasonably, then this Agreement may be terminated with immediate effect by the Trust by notice in writing.
- 27.4.5. If the Supplier is temporarily unable to fulfil the requirements of this Agreement owing to disruption of normal business of the Trust, the Supplier may request a reasonable allowance of time.

27.5. Recovery upon Termination

- 27.5.1. On the termination of this Agreement for any reason, the Supplier shall:
 - 27.5.1.1. immediately return to the Trust all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-contractors, which was obtained or produced in the course of providing the Goods and/or Services;
 - 27.5.1.2. immediately deliver to the Trust all Property (including materials, documents, information and access keys) provided to the Supplier under clause 8. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
 - 27.5.1.3. assist and co-operate with the Trust to ensure an orderly transition of the provision of the Goods and/or Services to the Replacement Supplier and/or the completion of any work in progress; and
 - 27.5.1.4. promptly provide all information concerning the provision of the Goods and/or Services which may reasonably be requested by the Trust for the purposes of adequately understanding the manner in which the Goods and/or Services have been provided or for the purpose of allowing the Trust or the Replacement Supplier to conduct due diligence.
- 27.5.2. If the Supplier fails to comply with clauses 27.5.1.1 and 27.5.1.2, the Trust may recover possession thereof and the Supplier grants a licence to the Trust or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted suppliers or Sub-contractors where any such items may be held.

- 27.5.3. Where the end of the Contract Period arises due to the Supplier's Default, the Supplier shall provide all assistance under clauses 27.5.1.3 and 25.5.1.4 free of charge.

28. CONSEQUENCES OF EXPIRY OR TERMINATION

- 28.1. Where the Trust terminates this Agreement under clause 27.2 (Termination on Default) and then makes other arrangements for the supply of Goods and/or Services, the Trust may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Trust throughout the remainder of the Contract Period. The Trust shall take all reasonable steps to mitigate such additional expenditure. Where this Agreement is terminated under clause 27.2 (Termination on Default), no further payments shall be payable by the Trust to the Supplier (for Goods and/or Services supplied by the Supplier prior to termination and in accordance with this Agreement but where the payment has yet to be made by the Trust), until the Trust has established the final cost of making the other arrangements envisaged under this clause 28.
- 28.2. Save as otherwise expressly provided in this Agreement:
- 28.2.1. termination or expiry of this Agreement shall be without prejudice to any rights, remedies or obligations accrued under this Agreement prior to termination or expiration and nothing in this Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- 28.2.2. termination of this Agreement shall not affect the continuing rights, remedies or obligations of the Trust or the Supplier under clauses 5.7 (Inspection, Rejection and Guarantee), 17.2 (Payment and VAT), 17.3 (Recovery of Sums Due), 23 (Intellectual Property Rights), 24 (Protection of Information), 26 (Liability, Indemnity and Insurance), 27.5 (Recovery upon Termination), 28 (Consequences of Expiry or Termination), 32 (Prevention of Corruption), 33 (Records and Audit Access), 40 (Cumulative Remedies) and 50.1 (Governing Law and Jurisdiction).
- 28.3. On termination or expiry of this Agreement, the Supplier shall, at the request of the Trust, and shall procure that any agents or Sub-contractors it engages shall, promptly deliver, or procure the prompt delivery, to the Trust of all Confidential Information, materials, documentation (including all copies in every form and media) in its power, possession or control and shall assign and agreements associated with this Agreement as required by the Trust.
- 28.4. Following completion of the Services or at any time at the written request of the Trust, the Supplier shall securely and fully delete and/or destroy the Confidential Information including all copies.
- 28.5. The Trust shall be entitled at any time, by giving written notice to the Supplier, to suspend the Supplier's processing of Confidential Information and, immediately on receipt of such notice the Supplier shall, and shall procure that its employees and any agents and Sub-contractors shall, comply with the requirements of such suspension notice.

29. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 29.1. Without prejudice to the Trust's obligations under the FOIA, neither Party shall make any press announcement or publicise this Agreement or any part thereof in any way, except with the written consent of the other Party.
- 29.2. Both Parties shall take reasonable steps to ensure that their servants, employees, agents, Sub-contractors, suppliers, professional advisors and consultants comply with clause 29.1.

- 29.3. The Supplier shall not do anything, or permit or cause anything to be done, which may damage the reputation of the Trust or bring the Trust into disrepute.

30. HEALTH AND SAFETY

- 30.1. The Supplier shall promptly notify the Trust of any health and safety hazards which may arise in connection with the performance of its obligations under this Agreement.
- 30.2. While on the Premises, the Supplier shall comply with any health and safety measures implemented by the Trust in respect of Staff and other persons working there.
- 30.3. The Supplier shall notify the Trust immediately in the event of any incident occurring in the performance of its obligations under this Agreement on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 30.4. The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under this Agreement.
- 30.5. The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Trust on request.
- 30.6. The Supplier and its Staff shall follow a system of accident recording in accordance with the Trust's accident recording procedure and the Supplier's own accident reporting procedures.
- 30.7. All notifiable accidents shall immediately be brought to the attention of the Trust Representative.
- 30.8. The Supplier shall comply with the Control of Substances Hazardous to Health (COSHH) Regulations (as amended), COSHH hazard management control and the Trust Policies.

31. ENVIRONMENTAL REQUIREMENTS

- 31.1. The Supplier shall, when working on the Premises, perform its obligations under this Agreement in accordance with the Trust's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 31.2. The Supplier shall consider, and wherever possible address, sustainability issues when supplying the Goods and/or Services. The Supplier shall also have regard to and comply with the Trust's own sustainability and corporate social responsibility policies, standards and targets when supplying the Goods and/or Services.

32. PREVENTION OF CORRUPTION

- 32.1. The Supplier shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Trust or any other public body or any person employed by or on behalf of the Trust or any other public body any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Agreement or any other contract with the Trust or any other public body or person employed by or on behalf of the Trust (including its award to the Supplier, execution or any rights and obligations contained in it), or

for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract. The attention of the Supplier is drawn to the criminal offences under the Bribery Act 2010.

32.2. The Supplier warrants that it has not paid commission or agreed to pay commission to the Trust or any other public body or any person employed by or on behalf of the Trust or any other public body in connection with this Agreement.

32.3. If the Supplier, its Staff or any person acting on the Supplier's behalf, engages in conduct prohibited by clauses 32.1 or 32.2, the Trust may:

32.3.1. terminate this Agreement with immediate effect by giving notice in writing to the Supplier and recover from the Supplier the amount of any loss suffered by the Trust resulting from the termination, including the cost reasonably incurred by the Trust of making other arrangements for the supply of the Goods and/or Services and any additional expenditure incurred by the Trust throughout the remainder of the Contract Period; and/or

32.3.2. recover in full from the Supplier any other direct or indirect loss sustained by the Trust in consequence of any breach of those clauses.

33. **RECORDS AND AUDIT ACCESS**

33.1. The Supplier shall keep and maintain, during the Contract Period and for thirty-six (36) months after the expiry of the Contract Period or following termination of this Agreement (or as long a period as may be required by the Trust), full and accurate records and accounts of the operation of this Agreement including the Services provided under it, and the amounts paid by the Trust.

33.2. The Supplier shall keep the records and accounts referred to in clause 33.1 above in accordance with Good Industry Practice and generally accepted accounting principles.

33.3. The Supplier shall on request afford the Trust, the Trust Representative, the Auditor and/or any person engaged by the Trust to carry out an ISO 27001 audit access to such records and accounts (which may include working papers if reasonably requested) as may be required by the Trust from time to time.

33.4. The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) during the Contract Period and for thirty-six (36) months after the date of termination or expiry of this Agreement to the Trust and the Auditor.

33.5. The Trust shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Trust.

33.6. Subject to the Trust's rights in respect of Confidential Information as set out in clause 24.6, the Supplier shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each audit, including but not limited to:

33.6.1. all information requested by the Trust within the scope of the audit;

33.6.2. reasonable access to sites controlled by the Supplier and to Equipment used in the provision of the Services; and

33.6.3. access to the Staff.

33.7. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 33, unless the audit reveals a material Default by the Supplier in which case the Supplier shall reimburse the Trust for the Trust's reasonable costs incurred in relation to the audit.

34. ASSISTANCE IN RELATED PROCUREMENTS

34.1. Sharing of information

34.1.1. In any case where the Trust wishes to procure goods and/or services ("**New Supplies**") in circumstances where the Supplier or an Affiliate of the Supplier is already providing (or due to provide) goods and/or services ("**Legacy Supplies**") to the Trust which is related to or which interfaces with or is intended to interface with or be replaced by the New Services, the Supplier shall promptly provide the Trust and any supplier bidding for those New Services ("**Relevant Supplier**") with all reasonable information and assistance as may be required from time to time to:

34.1.1.1. carry out appropriate due diligence with respect to the New Supplies;

34.1.1.2. effect a smooth transfer and/or inter-operation (as the case may be) between the Legacy Supplies and the New Supplies;

34.1.1.3. enable the Trust to carry out a fair competition (in whatever form) for the New Supplies; and

34.1.1.4. enable the Trust and Relevant Supplier to make a proper assessment as to the risk related to the New Supplies.

34.1.2. When performing its obligations in clause 34.1.1 the Supplier shall act consistently, applying principles of equal treatment and non-discrimination, with regard to requests for assistance from and dealings with each Relevant Supplier.

34.1.3. For the avoidance of doubt the Trust shall comply with its legal obligations in procuring the New Supplies and shall apply the principles of equal treatment and non-discrimination.

34.2. Information Barrier Arrangements

34.2.1. If the Supplier wishes to be considered as a supplier of New Supplies to the Trust where it (or any Affiliate of the Supplier) is already providing Legacy Supplies to the Trust, the Trust may require, as a pre-condition of involvement in any competition for the procurement of the New Supplies (whether such involvement is as a supplier, or as a Sub-contractor to a supplier) that the Supplier shall (and shall ensure that its Affiliates and/or Sub-contractors shall) establish and maintain an appropriate "Information Barrier" arrangement approved by the Trust (such approval not to be unreasonably withheld or delayed) or put in place such other protections as the Trust considers to be reasonable between the personnel who are involved in operational aspects of the Legacy Supplies and the personnel who are bidding for the New Supplies.

35. **DISCRIMINATION**

35.1. The Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex, religion or belief, sexual orientation, pregnancy or maternity status, gender reassignment or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or any other relevant legislation, or statutory modification or re-enactment thereof.

35.2. The Supplier shall take all reasonable steps to secure the observance of clause 35.1 by all Staff.

36. **PREVENTION OF FRAUD**

36.1. The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Supplier (including its shareholders, members and directors) in connection with the receipt of monies from the Trust.

36.2. The Supplier shall notify the Trust immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

36.3. If the Supplier or its Staff commits Fraud in relation to this Agreement or any other contract with the Trust, the Trust may:

36.3.1. terminate this Agreement with immediate effect by giving the Supplier notice in writing and recover from the Supplier the amount of any loss suffered by the Trust resulting from the termination, including the cost reasonably incurred by the Trust of making other arrangements for the supply of the Goods and/or Services and any additional expenditure incurred by the Trust throughout the remainder of the Contract Period; or

36.3.2. recover in full from the Supplier any other direct or indirect loss sustained by the Trust in consequence of any breach of this clause 36.

37. **TRANSFER AND SUBCONTRACTING**

37.1. Except where clauses 37.4 and 37.5 apply, the Supplier shall not assign, novate, sub-contract or in any other way dispose of this Agreement or any part of it without prior Approval. Sub-contracting any part of this Agreement shall not relieve the Supplier of any of its obligations or duties under this Agreement.

37.2. The Supplier shall be responsible for the acts and omissions of its Sub-contractors as though they are its own.

37.3. Where the Trust has consents to the placing of Sub-contracts, copies of each Sub-contract shall, at the request of the Trust, be sent by the Supplier to the Trust as soon as reasonably practicable.

37.4. Notwithstanding clause 37.1, the Supplier may assign to a third party (the “**Assignee**”) the right to receive payment of the Contract Price or any part thereof due to the Supplier under this Agreement (including any interest which the Trust incurs under clause 17.2.6). Any assignment under this clause 37.4 shall be subject to:

37.4.1. reduction of any sums in respect of which the Trust exercises its right of recovery under clause 17.3 (Recovery of Sums Due);

- 37.4.2. all related rights of the Trust under the contract in relation to the recovery of sums due but unpaid; and
- 37.4.3. the Trust receiving notification under both clauses 37.5 and 37.6.
- 37.5. In the event that the Supplier assigns the right to receive the Contract Price under clause 37.4, the Supplier or the Assignee shall notify the Trust in writing of the assignment and the date upon which the assignment becomes effective.
- 37.6. The Supplier shall ensure that the Assignee notifies the Trust of the Assignee's contact information and bank account details to which the Trust shall make payment.
- 37.7. The provisions of clause 17.2 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Trust.
- 37.8. The Trust may assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to:
 - 37.8.1. any Contracting Authority;
 - 37.8.2. any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Trust; or
 - 37.8.3. any private sector body which performs the functions of the Trust; provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under this Agreement.
- 37.9. Any change in the legal status of the Trust such that it ceases to be a Contracting Authority shall not, subject to clause 37.8, affect the validity of this Agreement. In such circumstances, this Agreement shall bind and inure to the benefit of any successor body to the Trust.
- 37.10. The Trust may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under this Agreement. In such circumstances the Trust shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier's obligations under this Agreement and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- 37.11. Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of this Agreement.

38. FORCE MAJEURE

- 38.1. Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under this Agreement (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under this Agreement for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under this Agreement for a period in excess of six (6) Months, either Party may terminate this Agreement with immediate effect by notice in writing.

- 38.2. Any failure or delay by the Supplier in performing its obligations under this Agreement which results from any failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, Sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Supplier.
- 38.3. If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause 38.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

39. **WAIVER**

- 39.1. The failure of either Party to insist upon strict performance of any provision of this Agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Agreement.
- 39.2. No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 49 (Notices).
- 39.3. A waiver of any right or remedy arising from a breach of this Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Agreement.

40. **CUMULATIVE REMEDIES**

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

41. **FURTHER ASSURANCES**

Each Party undertakes at the request of the other, and at the cost of the requesting Party, to do all acts and execute all documents which may be necessary to give effect to the meaning of this Agreement,

42. **VARIATION**

- 42.1. Subject to the provisions of this clause 42, the Trust may request a variation to the Requirements provided that such variation does not amount to a material change to the Requirements. Such a change is hereinafter called a "**Variation**".
- 42.2. The Trust may request a Variation by notifying the Supplier in writing of the Variation and giving the Supplier sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation. The Trust shall specify a time limit within which the Supplier shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Supplier accepts the Variation it shall confirm the same in writing.
- 42.3. The Supplier shall accept the Variation unless it is prohibited from so doing by Law.
- 42.4. Other than where the Variation is a Variation under clause 17.4, in the event that the Supplier is unable to accept the Variation to the Requirements, the Trust may;

- 42.4.1. allow the Supplier to fulfil its obligations under this Agreement without the Variation;
- 42.4.2. terminate this Agreement with immediate effect, except where the Supplier has already delivered all or part of the Goods and/or Services or where the Supplier can show evidence of substantial work being carried out to fulfil the requirements of the Requirements; and in such case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.

43. **SEVERABILITY**

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Agreement shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated, provided that the original intent of this Agreement and the Parties can be achieved.

44. **SUPPLIER'S STATUS**

At all times during the Contract Period the Supplier shall be an independent Supplier and nothing in this Agreement shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of this Agreement.

45. **CONFLICTS OF INTEREST**

- 45.1. The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff is placed in a position where, in the reasonable opinion of the Trust, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Trust under the provisions of this Agreement. The Supplier will disclose to the Trust full particulars of any such conflict of interest which may arise.
- 45.2. The Trust reserves the right to terminate this Agreement immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Trust, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Trust under the provisions of this Agreement. The actions of the Trust pursuant to this clause 46 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Trust.

46. **ENTIRE AGREEMENT**

- 46.1. This Agreement constitutes the entire agreement between the Parties in respect of the matters dealt with therein. This Agreement supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause 47 shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.
- 46.2. In the event of, and only to the extent of, any conflict between the clauses of this Agreement, any document referred to in those clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
 - 46.2.1. the clauses of this Agreement;

46.2.2. the Schedules; and

46.2.3. any other document referred to in the clauses of this Agreement.

47. **THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a Party to this Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause 48 does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.

48. **NOTICES**

48.1. Except as otherwise expressly provided within this Agreement, no notice or other communication from one Party to the other shall have any validity under this Agreement unless made in writing by or on behalf of the Party concerned.

48.2. Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 49.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

48.3. For the purposes of clause 49.2, the address of each Party shall be:

48.3.1. For the Trust:

[REDACTED]

Address:
Bede House
Belmont Business Park
Durham
DH1 1TW

For the attention of: County Durham Procurement Consortium
Tel: [REDACTED]
Email: procurement@cddft.nhs.uk

48.3.2. For the Supplier:

[REDACTED]

Address:
[REDACTED]

For the attention of: [REDACTED]
Tel: [REDACTED]
Email: [REDACTED]

- 48.4. Either Party may change its address for service by serving a notice in accordance with this clause 49.

49. **DISPUTES AND LAW**

49.1. **Governing Law and Jurisdiction**

Subject to the provisions of clause 50.2, the Trust and the Supplier accept the exclusive jurisdiction of the English courts and agree that this Agreement and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

49.2. **Dispute Resolution**

- 49.2.1. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Agreement within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the immediate line manager of the Trust Representative and this Agreement Manager.
- 49.2.2. Nothing in the Dispute Resolution Procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 49.2.3. If the dispute cannot be resolved by the Parties pursuant to clause 50.2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 50.2.5 unless (a) the Trust considers that the dispute is not suitable for resolution by mediation; or (b) the Supplier does not agree to mediation.
- 49.2.4. The obligations of the Parties under this Agreement shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Supplier and the Staff shall comply fully with the requirements of this Agreement at all times.
- 49.2.5. The procedure for mediation and consequential provisions relating to mediation are as follows:
- 49.2.5.1. A neutral adviser or mediator (the "**Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the request to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("**CEDR**") to appoint a Mediator;
- 49.2.5.2. The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure;
- 49.2.5.3. Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;

- 49.2.5.4. If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- 49.2.5.5. If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause 50.2.6.
- 49.2.6. Subject to clause 50.2.2, the Parties shall not institute court proceedings until the procedures set out in clauses 50.2.1 and 50.2.3 have been completed save that:
 - 49.2.6.1. the Trust may at any time before court proceedings are commenced, serve a notice on the Supplier requiring the dispute to be referred to and resolved by arbitration in accordance with clause 50.2.7;
 - 49.2.6.2. if the Supplier intends to commence court proceedings, it shall serve written notice on the Trust of its intentions and the Trust shall have twenty-one (21) days following receipt of such notice to serve a reply on the Supplier requiring the dispute to be referred to and resolved by arbitration in accordance with clause 50.2.7;
 - 49.2.6.3. the Supplier may request by notice in writing to the Trust that any dispute be referred and resolved by arbitration in accordance with clause 50.2.7, to which the Trust may consent as it sees fit.
- 49.2.7. In the event that any arbitration proceedings are commenced pursuant to clause 50.2.6:
 - 49.2.7.1. the arbitration shall be governed by the provisions of the Arbitration Act 1996;
 - 49.2.7.2. the Trust shall give a written notice of arbitration to the Supplier (the "**Arbitration Notice**") stating:
 - a) that the dispute is referred to arbitration; and
 - b) providing details of the issues to be resolved;
 - 49.2.7.3. the London Court of International Arbitration ("**LCIA**") procedural rules in force at the date that the dispute was referred to arbitration in accordance with 47.2.7.2 shall be applied and are deemed to be incorporated by reference to this Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
 - 49.2.7.4. the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
 - 49.2.7.5. if the Parties fail to agree the appointment of the arbitrator within Ten (10) days of the Arbitration Notice being issued by the Trust under clause 50.2.7.2 or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
 - 49.2.7.6. the arbitration proceedings shall take place in London and in the English language; and

49.2.7.7. the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

50. COSTS AND EXPENSES

Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.

51. COUNTERPARTS

This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full original of this Agreement for all purposes.

52. EXECUTION

The Trust shall be entitled to authorise any person to execute this Agreement on behalf of the Trust and execution of this Agreement by any such authorised person shall be valid.

IN WITNESS of which this Agreement has been duly executed by the Parties:

For and on behalf of the Trust:

Name and Title	
Signature	
Date	

For and on behalf of the Supplier:

Name and Title	
Signature	
Date	

SCHEDULE 1 - Requirements

[INSERT SPECIFICATION FILE]



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SCHEDULE 3 - Price and Payment

1. **Contract Price payable by the Trust (including applicable discount but excluding VAT), payment profile and method of payment.**

[Guidance: Insert Suppliers submitted pricing schedule file.]



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2. **Invoicing and Payment**

The Supplier shall issue invoices [monthly]/[quarterly] in arrears. The Trust shall pay the Supplier within thirty (30) days of receipt of a valid invoice, submitted in accordance with this paragraph 2, the payment profile set out in paragraph 1 above and the provisions of this Agreement.

[Guidance: Delete the appropriate wording above to indicate whether the Supplier is required to invoice monthly or quarterly.]

SCHEDULE 4 - Trust Policies

[IF TRUST POLICIES ARE AVAILABLE ELECTRONICALLY:]

The Trust Policies may be found at: [].

[Choose link from the following list:

County Durham and Darlington NHS Foundation Trust:

<http://www.cddft.nhs.uk/search.aspx?search=policy&page=0&st=&nd=1052&md=0&dr=>

South Tees Hospitals NHS Foundation Trust: <http://www.southtees.nhs.uk>

NHS County Durham and Darlington: <http://www.cdd.nhs.uk/search-result?query=policies>

Tees, Esk and Wear Valleys NHS Foundation Trust: <http://www.tewv.nhs.uk/About-the-Trust/Policies/>

North Tees & Hartlepool NHS Foundation Trust: [policies not available electronically]

NHS Middlesbrough: [policies not available electronically]

NHS Stockton on Tees: [policies not available electronically]

NHS Hartlepool: [policies not available electronically]

NHS Redcar and Cleveland: [policies not available electronically]

SCHEDULE 5 - Risk Assessment

[Guidance: Insert risk assessment carried out by CDDFT on the Supplier (and the Supplier's Sub-contractors, if any), the assessment having regard to the nature and level of access to the Confidential Information.]

SCHEDULE 7 - Data Processor Questionnaire

[Guidance: Insert the Data Processor Questionnaire, completed by the Supplier.]

SCHEDULE 8 - Employment Regulations

Part 1: Transfer of employees

1. Definitions

The definitions in this paragraph apply in this Schedule:

Effective Date	the date(s) on which the Services (or any part of the Services) transfer from the Trust or any Third Party Employer to the Supplier or Sub-contractor, and a reference to Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Supplier or Sub-contractor;
Employee Liability Information	<p>the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of the Employment Regulations:</p> <ul style="list-style-type: none">(a) the identity and age of the employee; and(b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996); and(c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where [the Employment Act 2002 (Dispute Resolution) Regulations 2004 (SI 2004/752) and/or] a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years; and(d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Supplier arising out of the employee's employment with the transferor; and(e) information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of the Employment Regulations;
Employment Liabilities	all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract,

statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses;

Redundancy Costs

statutory redundancy payments, contractual redundancy payments and contractual notice pay payable by the Supplier to the Redundant Transferring Employees, but excluding any payments or liabilities arising from any claim as to the fairness of the dismissal and/or unlawful discrimination;

Redundant Transferring Employees

Transferring Employees whom the Supplier has dismissed following a lawful redundancy within [NUMBER] months of the Effective Date;

Relevant Employees

those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Trust or a Replacement Supplier by virtue of the application of the Employment Regulations;

Supplier's Final Staff List

the list of all the Supplier's and Sub-contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date;

Supplier's Provisional Staff List

the list prepared and updated by the Supplier of all the Supplier's and Sub-contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list;

Service Transfer Date

the date on which the Services (or any part of the Services), transfer from the Supplier or Sub-contractor to the Trust or any Replacement Supplier;

Staffing Information

in relation to all persons detailed on the Supplier's Provisional Staff List, in an anonymised format, such information as the Trust may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services

Third Party Employee

employees of Third Party Employers whose contract of employment transfer with effect from the Effective Date to the

Supplier or Sub-contractor by virtue of the application of the Employment Regulations as listed in Part 2 of this Schedule 2;

Third Party Employer

a Supplier engaged by the Trust to provide some of the Services to the Trust and whose employees will transfer to the Supplier on the Effective Date; and

Transferring Employees

employees of the Trust whose contracts of employment transfer with effect from the Effective Date to the Supplier by virtue of the application of the Employment Regulations as listed in Part 2 of this Schedule 10.

2. Transfer of employees to the Supplier

- 2.1. The Trust and the Supplier agree that where the identity of the provider of any of the Services changes, this shall constitute a Relevant Transfer and the contracts of employment of any Transferring Employees and Third Party Employees shall transfer to the Supplier or Sub-contractor. The Supplier shall comply and shall procure that each Sub-contractor shall comply with their obligations under the Employment Regulations. The first Relevant Transfer shall occur on the Effective Date.
- 2.2. The Trust shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Effective Date. The Trust shall provide and, where necessary, update the Employee Liability Information for the Transferring Employees to the Supplier, as required by the Employment Regulations. The Trust shall warrant that such information is complete and accurate as it is aware or should reasonably have been aware as at the date it is disclosed.
- 2.3. Subject to paragraph 2.4, the Trust shall indemnify and keep indemnified the Supplier against any losses, except indirect losses incurred by the Supplier or any relevant Sub-contractor in connection with any claim or demand by any Transferring Employee arising out of the employment of any Transferring Employee. This indemnity shall apply provided that it arises from any act, fault or omission of the Trust in relation to any Transferring Employee prior to the Effective Date (except where such act, fault or omission arises as a result of the Supplier or any relevant Sub-contractor's failure to comply with regulation 13 of the Employment Regulations) and any such claim is not in connection with the transfer of the Services by virtue of the Employment Regulations on the Effective Date.
- 2.4. The Supplier shall be liable for and indemnify and keep indemnified the Trust and any Third Party Employer against Employment Liabilities arising from or as a consequence of:
 - 2.4.1. any proposed changes to terms and conditions of employment the Supplier or Sub-contractor may consider taking on or after the Effective Date;
 - 2.4.2. any of the employees informing the Trust and any Third Party Employer they object to being employed by the Supplier or Sub-contractor; and
 - 2.4.3. any change in identity of the Transferring Employees' and Third Party Employees' employer as a result of the operation of the Employment Regulations or as a result of

any proposed measures the Supplier or Sub-contractor may consider taking on or after the Commencement Date.

- 2.5. The Supplier shall be liable for and indemnify and keep indemnified the Trust and any Third Party Employer against any failure to meet all remuneration, benefits, entitlements and outgoings for the Transferring Employees, the Third Party Employees, and any other person who is or will be employed or engaged by the Supplier or any Sub-contractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise from and including the Effective Date.
- 2.6. The Supplier shall immediately on request by the Trust and/or the Third Party Employer provide details of any measures that the Supplier or any Sub-contractor of the Supplier envisages it will take in relation to any Transferring Employees and the employees of any Third Party Employer including any proposed changes to terms and conditions of employment. If there are no measures, the Supplier shall give confirmation of that fact, and shall indemnify the Trust and any Third Party Employer against all Employment Liabilities resulting from any failure by it to comply with this obligation.

3. **Employment exit provisions**

- 3.1. This Agreement envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part ("**Subsequent Transfer**"). If a Subsequent Transfer is a Relevant Transfer then the Trust or Replacement Supplier will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.
- 3.2. The Supplier shall and shall procure that any Sub-contractor shall on receiving notice of termination of this Agreement or otherwise, on request from the Trust and at such times as required by the Employment Regulations, provide in respect of any person engaged or employed by the Supplier or any Sub-contractor in the provision of the Services, the Supplier's Provisional Staff List and the Staffing Information together with any additional information required by the Trust, including information as to the application of the Employment Regulations to the employees. The Supplier shall notify the Trust of any material changes to this information as and when they occur.
- 3.3. At least 14 days prior to the Service Transfer Date, the Supplier shall and shall procure that any Sub-contractor shall prepare and provide to the Trust and/or, at the direction of the Trust, to the Replacement Supplier, the Supplier's Final Staff List, which shall be complete and accurate in all material respects. The Supplier's Final Staff List shall identify which of the Supplier's and Sub-contractor's personnel named are Relevant Employees.
- 3.4. The Trust shall be permitted to use and disclose the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Supplier for any services that are substantially the same type of services as (or any part of) the Services.
- 3.5. The Supplier warrants that the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information (the "**Employment Regulations Information**") will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Supplier's Final Staff List.

- 3.6. The Supplier shall and shall procure that any Sub-contractor shall ensure at all times that it has the right to provide the Employment Regulations Information under Data Protection Legislation.
- 3.7. Any change to the Employment Regulations Information which would increase the total employment costs of the staff in the six (6) months or agree timescale between parties prior to termination of this Agreement shall not (so far as reasonably practicable) take place without the Trust's prior written consent, unless such changes are required by law. The Supplier shall and shall procure that any Sub-contractor shall supply to the Trust full particulars of such proposed changes and the Trust shall be afforded reasonable time to consider them.
- 3.8. The Supplier shall indemnify and keep indemnified in full the Trust and at the Trust's request each and every Replacement Supplier against all Employment Liabilities relating to:
- 3.8.1. any person who is or has been employed or engaged by the Supplier or any Sub-contractor in connection with the provision of any of the Services; or
- 3.8.2. any trade union or staff association or employee representative (where such claim arises as a result of any act, fault or omission of the Supplier and/or any Sub-contractor),
- arising from or connected with any failure by the Supplier and/or any Sub-contractor to comply with any legal obligation, whether under regulation 13 or 14 of the Employment Regulations or any award of compensation under regulation 15 of the Employment Regulations, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.
- 3.9. The Parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.
- 3.10. The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraph 3.1 to paragraph 3.8, to the extent necessary to ensure that any Replacement Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Supplier by the Supplier or the Trust in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 3.11. Despite paragraph 3.10, it is expressly agreed that the Parties may by agreement rescind or vary any terms of this contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

4. [Supplier Pension Scheme]

The Trust's actuary shall determine the terms for bulk transfers from the [NAME OF PENSION SCHEME] to the Supplier's scheme following the Effective Date and any subsequent bulk transfers on termination or expiry of this Agreement.]