

**COMMERCIAL CONDITIONS OF CONTRACT
FOR SERVICES CONTRACTS**

[CONTRACT REFERENCE NUMBER]

[CONTRACT TITLE]

These Services clauses MUST be read in conjunction with the Public Sector Standard Conditions of Contract.

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[NOTE TO BUYER: Any clauses in square brackets [] AND highlighted in yellow are optional clauses. Where optional clauses are not used, please delete the clause and put the words "NOT USED" beside the number in both the contents page and at the actual clause.]

1.0 Interpretation

- 1.1 These Commercial Conditions of Contract shall at all times be read in conjunction with the Public Sector Standard Conditions of Contract. If there is any ambiguity or inconsistency in or between the Public Sector Standard Conditions of Contract and the Commercial Conditions of Contract, the Commercial Conditions of Contract shall take precedence.
- 1.2 The definitions set out in the Public Sector Standard Conditions of Contract shall apply to the Contract, including to these Commercial Conditions of Contract, unless otherwise expressly defined in these Commercial Conditions of Contract. For the avoidance of doubt, any references to clauses stated in these Commercial Conditions of Contract shall be in relation to the clauses which are contained in the Commercial Conditions of Contract unless expressly stated otherwise.
- 1.3 In these Commercial Conditions of Contract, the following words will have the following meanings:¹

"Affiliates"	means 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 with, that body corporate from time to time.
"Client Data"	means:- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Contractor by or on behalf of the Client; or (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or (b) any Personal Data for which the Client is the Data Controller.
"Client System"	means the Client's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Client or the Contractor in connection with this Contract which is owned by the Client or licensed to it by a third party and which interfaces with the Contractor System or which is necessary for the Client to receive the Services.
"Contractor"	means all directors, officers, employees, agents,

Personnel”	consultants and contractors of the Contractor and/or of any sub-contractor engaged in the performance of the contractor's obligations under this Contract.
“Contractor Software”	means software which is proprietary to the Contractor (or an Affiliate of the Contractor) and which is or will be used by the Contractor for the purposes of providing the Services.
“Contractor System”	means the information and communications technology system used by the Contractor in implementing and performing the Services including the Software, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Client’s System).
“Control”	means the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “Controls” and “Controlled” shall be interpreted accordingly.”
“Controller” “Processor” “Data Subject” “Personal Data Breach” “Data Protection Officer”	have the meaning given in UK Data Protection Legislation .
“Data Loss Event”	means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
“Data Protection Impact Assessment”	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
“Data Protection Legislation”	means: i. the GDPR, the LED and any applicable national implementing Laws amended from time to time; ii. the DPA 2018 to the extent that it relates to processing of personal data and privacy; and iii. all applicable Law about processing of personal data and privacy.
“Data Protection	means the Schedule to the Commercial Conditions of

Schedule”	Contract entitled ‘ <i>Processing, Personal Data and Data Subjects.</i> ’
“Data Subject”	has the meaning given in the UK Data Protection Legislation .
“Data Subject Access Request”	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the UK Data Protection Legislation to access their Personal Data.
“DPA 2018”	means Data Protection Act 2018
“Equipment”	means the Contractor’s equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under this Contract.
“ UK GDPR”	means the UK General Data Protection Regulation.
“ICT Environment”	means the Client System and the Contractor System.
“Joint Controller”	means where two or more Controllers jointly determine the purposes and means of processing.
“Joint Controller Agreement Schedule”	means the Schedule to the Commercial Conditions of Contract entitled ‘Joint Controller Agreement’.
“Key Personnel”	means any persons specified as such in the Tender or the Specification (as the case may be), or otherwise notified by the Client to the Contractor in writing.
“Malicious Software”	means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.
“Personal Data”	means personal data (as defined in the UK Data Protection Legislation) which is Processed by the Contractor or any sub-contractor on behalf of the Client or the Authority pursuant to or in connection with this Contract.
“Process”	has the meaning given to it under UK Data Protection Legislation and “ Processed ” and “ Processing ” shall be construed accordingly.
“Protective Measures”	means appropriate technical and organisational measures which may include: pseudonymising and encrypting

	Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it.
“Purchase Order”	means the Client’s order for Services which has a unique number, and details the Services to be supplied by the Contractor to the Client in accordance with the terms of this Contract.
“Software”	means the Contractor’s Software or the Third Party Software.
Service Software	Means the software required to allow for the modification or maintenance of the equipment as directed by the OEM.
Software Updates and Upgrades	Means such software intended to rectify known or suspected operation anomalies, improve safety, enhance the operator or user’s experience of add/modify such functionality intended to improve ability to perform maintenance or diagnose faults.
“Sub-processor”	means any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement.
“Third Party Software”	means software which is proprietary to any third party (other than an Affiliate of the Contractor) which in any case will be or is proposed to be used by the Contractor for the purposes of providing the Services.
“UK Data Protection Legislation”	means: i) the UK GDPR; ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; iii) Part 3 of the DPA 2018, iv) all applicable Law about the processing of personal data and privacy.

2.0 Contract Period

2.1 The Contract shall take effect on the Commencement Date and shall continue until the end of the Contract Period.

[NOTE TO BUYER: Choose option A or B and use numbering 2.2 only.]

[Option A]

[2.2. The Client may, at any time prior to the Initial Contract Period Expiry Date, give notice in writing to the Contractor to invite the Contractor to agree to extend the

Contract for any period(s) up to and including [XX] Month(s) commencing from the Initial Contract Period Expiry Date

[OR]

[Option B]

[2.2. There shall be no extensions to the Initial Contract Period.]

- 2.3 In the event that (a) prior to the end of the Contract Period, the Trust commences a procurement exercise for the provision of the Services and (b) that:-
- i. the said procurement is not completed in full or in part prior to the end of the Contract Period due to delay or abandonment; or
 - ii. no contract (s) can be awarded prior to the end of the Contract Period as only irregular or unacceptable tenders were received in response to the said procurement; or
 - iii. no contract (s) can be awarded prior to the end of the Contract Period as no suitable tenders were received in response to the said procurement; or
 - iv. no contract (s) can be awarded prior to the end of the Contract Period as the said procurement is the subject of a legal challenge preventing the award of the contract(s),

the Client reserves the right to extend the Contract for a further period or periods, together totalling no more than 18 months, to facilitate a further procurement competition, or to make alternative arrangements for the provision of the Supplies/Service. Any such extension pursuant to this clause shall be subject to the same terms and conditions of Contract and the same price arrangements as applied immediately prior to the end of the Contract Period. The value of any extension(s) will be based on historic and/or projected usage over the period of the extension.

3.0 [Extension of the Contract Period²

3.1 If it is agreed by both Parties that the Contract is to be extended under clause 2.2 and/or clause 2.3 the provisions of the Contract will apply for the duration of any such extended period].

4.0 Contract Price

- 4.1 In consideration of the performance of the Contractor's obligations under the Contract, the Client shall pay the Contract Price in accordance with this clause, clause 5.0 and Pricing Schedule SS19a during the Contract Period.
- 4.2 All amounts stated must be in Sterling (GBP) and are exclusive of VAT and/or any other applicable taxes or levy, which will be charged in addition at the rate in force at the date as shown on the invoice.

[² Drafting note: clause 3 should be removed if there are no extensions of contract.]

4.3 Fixed Price Periods, Price Amendments and Cost Efficiencies

- i. Where a fixed price period is utilised, the Contract Price will be fixed for a minimum of [XX months Buyer to insert] from the Commencement Date, [if not applicable Buyer to insert – NOT USED against this sub-clause]
- ii. Any application(s) for a price decrease amendment during the Contract Period must be submitted to the Authority. Application forms are available from the Authority and must be forwarded at least [x] weeks prior to the requested effective date.
- iii. Any application(s) for a price increase amendment during the Contract Period may only be considered after the fixed price period, if applicable, providing such application is submitted to the Authority. Application forms are available from the Authority and must be forwarded at least [x] weeks prior to the requested effective date. Applications must have accompanying documentary evidence in support of the request. Any request for a price increase amendment received by the Authority which is not fully completed and without supporting documentary evidence will be returned to the Contractor without consideration by the Authority/Client
- iv. Requests for a price increase amendment can only be submitted utilising the most recent [Buyer should enter the Index to be utilised e.g. CPI] at the time of request. However the Authority reserves the right to accept a higher increase, should the documentary evidence supplied by the Contractor demonstrate that the increase requested is justifiable. The Authority's decision in regards to this will be final. A maximum of [X Buyer to insert] request[s] for a price increase may be submitted for consideration during any rolling [XX Buyer to insert] month period following the fixed price period.
- v. Provided any such requests falls within the terms and conditions set out in this clause, it will be considered by the Authority, but will only be binding once it has been unconditionally accepted in writing by a duly authorised signatory on behalf of the Authority.
- vi. If a price amendment outcome changes the Contract, so as it is no longer value for money, the Authority reserves the right to benchmark with the other Tenderers, and may terminate or not proceed with the extension of the Contract if better value for money can be achieved.
- vii. The Contract Price will not be varied unless any variation has been confirmed in writing by the Authority.
- viii. The Contractor will be required to endeavour to create efficiencies wherever possible over the Contract Period to potentially reduce service costs. Any efficiency should be discussed and agreed with the Client prior to implementing.

5.0 Payment

- 5.1 The Client will pay the Contractor the Contract Price for the Services no later than 30 days after the receipt of a valid invoice in accordance with Pricing Schedule SS19a.

- 5.2 The Client reserves the right to withhold or delay payment in relation to any invoice which is not submitted in accordance with the Specification and Schedule 2. The Client shall as soon as is reasonably practicable notify the Contractor accordingly of such a withholding or delay of payment in writing.
- 5.3 The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Client to substantiate the invoice. The characteristics of a valid invoice are detailed in Schedule 2.
- 5.4 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.
- 5.5 The Contractor shall indemnify the Client on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Client at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under this Contract. Any amounts due under this clause 5.5 shall be paid by the Contractor to the Client not less than 5 Working Days before the date upon which the tax or other liability is payable by the Client.
- 5.6 The Contractor shall make any payments due to the Client (whether overpayments made by the Contractor or otherwise) without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Client to the Contractor.

6.0 Recovery of Sums Due

- 6.1 Wherever under this Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Client in respect of any breach of this Contract), that sum may be deducted unilaterally by the Client from any sum then due, or which at any later time may become due, to the Contractor under this Contract.
- 6.2 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.
- 6.3 All payments due shall be made within a reasonable time unless otherwise specified in this Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

7.0 Supply of Services

- 7.1 In consideration of the amounts due under this Contract Price, the Contractor will provide the Services to the Client during the Contract Period in accordance with the Contract which shall include the Contractor complying with any obligations set out in the Specification.

- 7.2 If any Services provided to the Client were procured or obtained by the Contractor from third parties, then any guarantees, warranties, benefits or indemnities which the Contract holds from such third parties in respect of those Services will be held on trust for the Client.
- 7.3 In the event any subsequent contract is terminated in accordance with the provisions of the terms and conditions, the Client reserves the right to offer the second ranked supplier in this tender, the opportunity to enter into a contract, provided the original terms (including price) offered by that supplier remain unchanged from those originally offered by that supplier during the course of this tender. Should this not be the case and/or the second ranked supplier declines, the Client reserves the right to approach the next ranked supplier in turn on the same basis. This will continue until all ranked suppliers have been exhausted or if the Client determines, at its sole discretion, to retender. This right will exist throughout the initial contract period.
- 7.4 In providing the Services, the Contractor shall:
- 7.4.1 co-operate with the Client in all matters relating to the Services, and comply with all the Client's instructions;
 - 7.4.2 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and within sufficient numbers to ensure that the Contractor's obligations are fulfilled in accordance with this Contract;
 - 7.4.3 provide Staff with a form of identification that is acceptable to the Client and which staff shall display on their clothing at all times when they are fulfilling the requirements of the Contract.
 - 7.4.4 instruct its Staff not to smoke on the Client's Premises except where it is expressly permitted to do so.
 - 7.4.5 ensure that the Services will conform with all descriptions and requirements set out in the Specification;
 - 7.4.6 provide all Equipment, tools and vehicles and such other items as are required to provide the Services;
 - 7.4.7 at all times comply with the Quality Standards, and where applicable maintain registration with the relevant Quality Standards authorisation body; and
 - 7.4.8 the Contractor shall perform all its obligations under the Contract in accordance with all applicable Law and Good Industry Practice.
- 7.5 Without prejudice to any other right of remedy of the Client, if the Client informs the Contractor that it considers that any part of the Services does not meet the Specification or the requirements of the Contract or differs in any way (other than in a minor inconsequential way) from the Specification or its requirements, and this is other than as a result of Default or negligence on the part of the Client, the Contractor shall at its own expense re-schedule and re-perform any part of the Services correctly within such reasonable time as may be specified by the Client.

- 7.6 The Client envisages that it may require additional services and/or goods to be provided by the Contractor during the Contract Period. While the precise scope and extent of such additional services cannot be agreed at this time, the intention is for any such additional services to be included within the scope of this Contract in accordance with the Variation Procedure set out in Clause 11 of the Public Sector Standard Conditions of Contract, the precise scope and extent of such additional services being agreed between the Parties. Without limiting the generality of the above, as at the Commencement Date, the Client envisages that it may require those additional services identified within the Scoping and Specification SS20a. For the avoidance of doubt, the terms of the Contract shall apply to any such additional services.
- 7.7 In the event of a stock-out or shortage pertaining to the Service, the Contractor is required to give advance warning to the Authority and to the Client placing the order, stating the nature and expected duration of problem. In the event of such a shortage arising the Contractor will be responsible for sourcing alternative goods and/or Service provision.
- 7.7.1 The Authority and relevant Client must be notified of the sourcing of the alternative goods and/or Services and approve it prior to delivery. Any additional costs must be borne by the Contractor.
- 7.7.2 In an event where the Contractor fails to source suitable and/or acceptable goods and/or Services, the Authority and Client are entitled to source and purchase goods and/or Services of the same or similar description from an alternative supplier to make good such default. Any costs incurred by the Client will be recovered from the Contractor based on the amount by which the cost of purchasing alternative goods and/or Services exceeds the amount that would have been payable to the Contractor in respect of the goods and/or Services replaced by such purchase.
- 7.7.3 The use of a third party distributor will not be accepted as a reason for failure to comply with any of the requirements set out in the Contract documents.

8.0 Access to Premises

- 8.1 The Client may inspect and examine the manner in which the Contractor supplies the Services, at the Premises, during normal business hours, on reasonable notice to the Contractor.
- 8.2 If necessary, the Client will provide the Contractor with reasonable access at reasonable times to its Premises for the purpose of providing the Services.
- 8.3 Where passes and/or keys are required for admission to any premises, the Client shall issue them to the Contractor. The Contractor shall submit to the Client a list of the names of their personnel and any other information that the Client reasonably requires for this purpose. The passes and/or keys shall be returned at any time on the demand of the Client and in any case on completion of the Contract or when an individual to whom a pass and/or keys have been issued ceases to be employed by the Contractor. Any lost keys/cards will be replaced at the cost of the Contractor.

9.0 Provision and Removal of Equipment

- 9.1 The Contractor shall provide all the Equipment necessary for the supply of Services.
- 9.2 The Contractor shall not deliver any Equipment nor begin any work on the Premises without obtaining prior Approval.
- 9.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Client shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Client's Default. The Contractor 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 by both Parties in writing, Equipment brought onto the Premises will remain the property of the Contractor.
- 9.4 The Contractor shall maintain all their items of Equipment within the Premises in a safe, serviceable and clean condition.
- 9.5 The Client shall be entitled at any time during the Contract Period to order in writing, that the Contractor at its own expense and as soon as reasonably practicable:
- i. remove from the Premises any Equipment which in the reasonable opinion of the Client is either hazardous, noxious or not in accordance with the Contract; and
 - ii. replace such item with a suitable substitute item of Equipment.
- 9.6 If the Contractor provides Services from the Client's Premises, on completion of the Services, or upon the termination or expiry of the Contract (whichever is the earliest date) the Contractor will vacate the Client's Premises, remove his plant, Equipment and unused materials and will clear away from these Premises all rubbish arising out of the Services and leave the Premises in a clean, safe and tidy condition. The Contractor 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 Contractor or any Staff.

10.0 Inspection of Service Location(s)

- 10.1 The Contractor is deemed to have inspected the [applicable service location(s) (excluding patients'/Clients' private residences) – Buyer to amend as appropriate] before submitting its tender so as to have understood the nature and extent of the Services to be carried out and is satisfied in relation to all matters connected with the performance of its obligations under this Contract.

11.0 Late Delivery of Services

- 11.1 Time of delivery shall be of the essence and if the Contractor fails to deliver the Services within the time promised or specified in the Specification, the Client may release itself from any obligation to accept and pay for the Services and/or

terminate the Contract, in either case without prejudice to any other rights and remedies of the Client.

11.2 Repeated failure by the Contractor to provide the Services or any part of them within the time agreed shall entitle the Client to terminate this Contract and/or purchase other Services of the same or similar description to make good such default and recover from the Contractor the amount by which the cost of purchasing other Services (including any associated administration costs) exceeds the amount that would have been payable to the Contractor in respect of the Services replaced by such purchase.

12.0 Staff and Key Personnel

12.1 The Contractor warrants and represents that all Staff assigned to the performance of the Services shall possess and exercise such qualifications, skill and experience as are necessary for the proper performance of the Services.

12.2 The Contractor shall engage, employ and pay all monies due to Staff required to carry out this Contract and shall be entirely responsible for setting the pay and conditions of service for his Staff and for any compensation payments due to them howsoever arising.

12.3 If in the opinion of the Client any Staff of the Contractor has behaved inappropriately or is incapable of efficiently performing his duties, or it shall not be in the public interest for any person to be employed or engaged by the Contractor, the Contractor shall remove such a person without delay on being required to do so and cause the work to be performed by such other person as may be necessary, in default of which the Client may employ such other person as may be deemed necessary for the purposes of carrying out the work and recover from the Contractor the additional cost thereby incurred.

12.4 Any Key Personnel will not be released from supplying the Services without the agreement of the Client, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment, or other extenuating circumstances.

12.5 Any replacements to the Key Personnel will be subject to the agreement of the Client. Such replacements will be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

12.6 In the event that the Contractor is unable to provide replacement Staff, acceptable to the Client's representative, within reasonable time, then the Client reserves the right to obtain replacement Staff from other sources and pass any additional cost on to the Contractor. The Client reserves the right to terminate this Contract where the failure to provide a replacement has a detrimental effect to the timely provision of the Services in accordance with clause 40.0 (Termination of Contract, Public Sector Standard Conditions of Contract).

12.7 The Client shall not unreasonably withhold its agreement under clause 12.5. Such agreement shall be conditional on appropriate arrangements being made by the

Contractor to minimise any adverse impact on this Contract which could be caused by a change in Key Personnel.

13.0 Indemnity

13.1 Neither Party excludes or limits liability to the other Party for:

- i. Death or personal injury caused by its negligence; or
- ii. Fraud; or
- iii. Fraudulent misrepresentation; or
- iv. Any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

13.2 Subject to clause 13.3, the Contractor shall indemnify the Client and keep the Client 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 delay, late or purported supply, of the Services or the performance, non-performance or delay in performance by the Contractor of its obligations under the Contract or the presence of the Contractor 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 Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.

13.3 The Contractor 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 Client or by breach by the Client of its obligations under the Contract.

13.4 Subject always to clause 13.1, the liability of either Party for Defaults shall be subject to a financial limit of ten million pounds (£10,000,000GBP)

[If total contract value exceeds £25m then consider specialist insurance advice]

13.5 Subject always to clause 13.1; in no event shall either Party be liable to the other for any:

- i. loss of profits, business, revenue or goodwill; and/or
- ii. indirect or consequential loss or damage.

13.6 The provisions of clause 13.5 will not limit the Client's right to recover for;

- i. additional operational, administrative costs and/or expenses resulting from the direct Default of the Contractor;
- ii. wasted expenditure or charges rendered unnecessary and incurred by the Client arising from a Default by the Contractor;
- iii. additional cost of procuring replacement services for the remainder of the term of the Contract;

- iv. additional costs to maintain the Services arising from a Default by the Contractor;
- v. anticipated savings; and
- vi. any costs and losses arising from delay in performance.

13.7 The Contractor shall effect and maintain with a reputable company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.

13.8 The Contractor shall ensure against its liability under 13.4. The aggregate liability of either Party for all Defaults resulting in direct loss of or damage/injury to the property, staff or patients of the other under or in connection with this Contract shall be a minimum of:

- i. Ten million pounds (£10,000,000GBP) for Employer's Liability Insurance and
- ii. Ten million pounds (£10,000,000GBP) for Public Liability Insurance

[Buyer to enter limit required for each form of insurance equivalent to limit used in 13.4]

in respect of any one claim, or series of claims arising out of any one event, the number of claims for which cover is provided being unlimited in the period of the Contract.

13.9 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of this Contract the Client may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

13.10 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of any insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause 13.4.

14.0 Professional Indemnity

14.1 The Contractor shall effect and maintain appropriate professional indemnity insurance cover during the Contract Period and shall ensure that all agents, professional consultants and sub-contractors involved in the supply of the Services do the same. To comply with its obligations under this clause and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent, sub-contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than ten million pounds (£10,000,000GBP) for each individual claim or such higher limit as the Client may reasonably require (and as

required by law) from time to time. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Contract. [if not applicable Buyer to insert – NOT USED against this sub-clause]

15.0 Protection of Information Assurance

- 15.1 When handling Information belonging to or supplied by the Client, the Contractor will ensure the security of the data is maintained in line with the protective marking given to that data by the Client, as agreed with the Client and as set out in the Tender, Award Letter or Specification.
- 15.2 The Client reserves the right to inspect the physical location of the Information store or processing, back-up arrangements and review at appropriate intervals to be agreed with the Client any information assurance processes and procedures in place.

16.0 Break

- 16.1 The Client shall have the right to terminate the Contract in all or part at any time by giving [one/three - Buyer to amend as required] months' written notice to the Contractor.
- 16.2 In addition to clause 40.7 of the Public Sector Standard Conditions of Contract, termination of this Contract shall not affect the continuing rights, remedies or obligations of the Client or the Contractor under clauses 5.0 (Payment), 6.0 (Recovery of Sums Due), 13.0 (Liability), 14.0 (Professional Indemnity).
- 16.3 For the purposes of this contract, the Public Sector Standard Conditions of Contract for Supplies, Services and ICT Contracts Clause no 40.6 shall not apply.

17.0 Contractor's Premises Security

- 17.1 Where the Services are provided from the Contractor's Premises, the Contractor will, at their own cost, comply with all security requirements specified by the Client in writing.

18.0 Tax Arrangements of Public Sector Appointees

- 18.1 Where the Contractor is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA") and all other statutes and regulations relating to income tax in respect of that consideration.
- 18.2 Where the Contractor is liable to National Insurance Contributions ("NICs") in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits (Northern Ireland) Act 1992 or equivalent and all other statutes and regulations relating to NICs in respect of that consideration.
- 18.3 The Client may, at any time during the term of this contract, request the Contractor to provide information which demonstrates how the Contractor complies with clauses 18.1 and 18.2 above or why those clauses do not apply to them.

18.4 A request under clause 18.3 above may specify the information which the Contractor must provide and the period within which that information must be provided.

18.5 The Client may terminate this contract if:-

i. in the case of a request mentioned in Clause 18.3 above:-

- a) the Contractor fails to provide information in response to the request within a reasonable time; or
- b) the Contractor provides information which is inadequate to demonstrate either how the Contractor complies with clauses 18.1 and 18.2 above or why those Clauses do not apply to them;

ii. in the case of a request mentioned in clause 18.4 above, the Contractor fails to provide the specified information within the specified period; or

iii. it receives information which demonstrates that, at any time when clauses 18.1 and 18.2 apply to the Contractor, the Contractor is not complying with those clauses.

18.6 The Client may supply any information which it receives under clause 18.5(iii) to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

19.0 Monitoring of Contract Performance

19.1 The Contractor shall comply with the monitoring arrangements set out in Schedule 3 (Contract Management/Monitoring) to these Commercial Conditions of Contract including, but not limited to, providing such data and information as the Contractor may be required to produce under this Contract.

20.0 Social Considerations

20.1 The Contractor shall comply with the obligations set out in Schedule 4 (Social Considerations) to these Commercial Conditions of Contract in connection with social considerations.

21.0 Security

21.1 The Contractor shall comply with the obligations set out in Schedule 5 (Security Schedule) to these Commercial Conditions of Contract in connection with any security requirements.

22.0 NOT USED

23.0 [Intellectual Property Rights]

23.1 All IPRs arising in or relating to the Services provided under this Contract, including but not limited to, in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (“**the IP Materials**”):

i. furnished to or made available to the Contractor by or on behalf of the Client shall remain vested in the Client and its licensors; and

ii. generated by the Contractor for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall vest and remain vested in the Client and the Contractor hereby assigns the Intellectual Property Rights referred to in this clause 23.1 (ii) to the Client.

23.2 The Contractor hereby assigns all IPRs, as legal and beneficial owner, which may subsist in the IP Materials prepared in accordance with clause 23.1(ii). This assignment shall take effect on the Commencement Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the IPRs produced by the Contractor. The Contractor shall execute all documentation necessary to execute this assignment.

23.3 The Contractor shall ensure that the third party owner of any IPRs that are or which may be used to perform this Contract grants to the Client a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Client an authorised sub-licence, to use, reproduce, modify, develop and maintain the IPRs in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Client to sub-license, transfer, novate, or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying services to the Client.]

24.0 Data Protection

24.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Contractor is the Processor unless otherwise specified in the **UK** Data Protection Schedule. The only processing that the Contractor is authorised to do is listed in the Data Protection Schedule by the Client and may not be determined by the Contractor.

24.2 The Contractor shall notify the Client immediately if it considers that any of the Client’s instructions infringe **UK** Data Protection Legislation.

24.3 The Contractor shall provide all reasonable assistance to the Client in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Client, include:

(a) a systematic description of the envisaged processing operations and the purpose of the processing;

(b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;

- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

24.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- (a) process that Personal Data only in accordance with the Data Protection Schedule, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Client before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Client may reasonably reject (but failure to reject shall not amount to approval by the Client of the adequacy of the Protective Measures), having taken account of the:
 - i. nature of the data to be protected;
 - ii. harm that might result from a Data Loss Event;
 - iii. state of technological development; and
 - iv. cost of implementing any measures;

(c) ensure that:

- i. the Staff do not process Personal Data except in accordance with this Contract (and in particular the Data Protection Schedule);
- ii. it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Contractor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Client or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(d) not transfer Personal Data outside of the **UK or EEA** unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:

- i. the Client or the Contractor has provided appropriate safeguards in relation to the **transfer in accordance with UK Data Protection Legislation** as determined by the Client;

- ii. the Data Subject has enforceable rights and effective legal remedies;
 - iii. the Contractor complies with its obligations under the **UK** Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Client in meeting its obligations); and
 - iv. the Contractor complies with any reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
- (e) at the written direction of the Client, delete or return Personal Data (and any copies of it) to the Client on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.

24.5 Subject to clause 24.6, the Contractor shall notify the Client immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the **UK** Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

24.6 The Contractor's obligation to notify under clause 24.5 shall include the provision of further information to the Client in phases, as details become available.

24.7 Taking into account the nature of the processing, the Contractor shall provide the Client with full assistance in relation to either Party's obligations under **UK** Data Protection Legislation and any complaint, communication or request made under clause 24.5 (and insofar as possible within the timescales reasonably required by the Client) including by promptly providing:

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

- 24.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 Staff, unless:
- (a) the Client determines that the processing is not occasional;
 - (b) the Client determines the processing includes special categories of data as referred to in **UK Data Protection Legislation** or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Client determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 24.9 The Contractor shall allow for audits of its Data Processing activity by the Client or the Client's designated auditor.
- 24.10 The Contractor shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 24.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:
- (a) notify the Client in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Client;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 24.0 such that they apply to the Sub-processor; and
 - (d) provide the Client with such information regarding the Sub-processor as the Client may reasonably require.
- 24.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 24.13 The Contractor may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 24.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Client may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 24.15 Where the Parties include two or more Joint Controllers as identified in the Data Protection Schedule in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in the Joint Controller Agreement Schedule in replacement of Clauses 24.1-24.14 for the Personal Data under Joint Control.

[NOTE TO BUYER: Any clauses in square brackets [] AND highlighted in yellow are optional clauses. Where optional clauses are not used, please delete the clause and put the words "NOT USED" beside the number in both the contents page and at the actual clause.]

SCHEDULE 1 - SPECIFICATION SCHEDULE

Refer to Scoping and Specification SS20a

[POTENTIAL ADDITIONAL SERVICES]

Refer to Scoping and Specification SS20a

SCHEDULE 2 - PRICING SCHEDULE

Refer to Pricing Schedule SS19a

SCHEDULE 3 - CONTRACT MANAGEMENT/MONITORING SCHEDULE

Refer to Scoping and Specification SS20a

SCHEDULE 4 - SOCIAL CONSIDERATIONS SCHEDULE

Refer to Scoping and Specification SS20a

SCHEDULE 5 - SECURITY SCHEDULE

Refer to Scoping and Specification SS20a

SCHEDULE 6 - PROCESSING, PERSONAL DATA AND DATA SUBJECTS

Refer to Scoping and Specification SS20a

SCHEDULE 7 - JOINT CONTROLLER AGREEMENT

Refer to Scoping and Specification SS20a