

Dated _____ [2021]

(1) NATIONAL HEALTH SERVICE COMMISSIONING BOARD

-AND-

(2) [PROVIDER]

COMMUNITY DIAGNOSTIC HUBS FRAMEWORK AGREEMENT

[Note to Bidders: This document contains the draft Framework Agreement for the purposes of the procurement process for the Community Diagnostic Hubs Framework. It is not capable of acceptance in its current form.]

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THIS AGREEMENT is entered into the day of [2021]

BETWEEN:

- (1) **NATIONAL HEALTH SERVICE COMMISSIONING BOARD** of Quarry House, Quarry Hill, Leeds LS2 7UE which uses the operational name NHS England (the “**Authority**”); and
- (2) **[PROVIDER]** of [address] (the “**Provider**”)

The Authority and the Provider are each a “**Party**” and together the “**Parties**”.

INTRODUCTION:

- (A) The Authority wishes to support Participating Authorities’ ability to procure community diagnostic hubs by enabling the purchase of services from providers.
- (B) The Authority published a contract notice on the Find a Tender Service (reference: [REFERENCE]) on [DATE] and on Contracts Finder on [DATE] in relation to a new arrangement for the provision of services relating to community diagnostic hubs.
- (C) In response to that contract notice, the Provider submitted a tender to the Authority on [DATE].
- (D) On the basis of that tender, the Authority selected the Provider to enter into this Agreement along with a number of other providers appointed to provide the services.
- (E) This Agreement sets out the award and call-off procedure to be used by any Participating Authority seeking to procure the services from a Provider, the minimum terms and conditions for any call-off agreement and the rights and obligations of the Authority, any Participating Authority and the Provider during and after the term of this Agreement.
- (F) The procurement of this Agreement and the Community Diagnostic Hubs Framework was undertaken pursuant to Section 7 of Part 2 of the Public Contracts Regulations 2015 (Social and Other Specific Services). For the avoidance of doubt, neither this Agreement or the Community Diagnostic Hubs Framework are subject to Regulation 33 (Procurement Framework Agreements) or 34 (Dynamic Purchasing Systems: General Features) of the Public Contracts Regulations 2015 and they have been designed to take into account the specificities of the services in accordance with Regulation 76(1) and the flexibility permitted under 76(2).

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 References to any statute or order shall include any statutory extension, modification or re-enactment, and any order, regulation, bye-law or other subordinate legislation.
- 1.2 References to any legal entity shall include any body that takes over responsibility for the functions of such entity.
- 1.3 References in this Agreement to a “Schedule”, or to a “Clause” are to schedules and clauses of this Agreement.
- 1.4 Reference to this Agreement includes Schedule 1 (Definitions) and the Schedules.
- 1.5 References in this Agreement to a day or to the calculation of time frames are references to a calendar day unless expressly specified as an Operational Day.
- 1.6 The headings are for convenience only and shall not affect the interpretation of this Agreement.
- 1.7 Words denoting the singular shall include the plural and vice versa.

- 1.8 Where a term of this Agreement provides for a list of one or more items following the word “including” or “includes” then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.
- 1.9 Where a document is required under this Agreement, the Parties may agree in writing that this shall be in electronic format only.
- 1.10 Subject to Clause 1.11, for the purposes of interpreting this Agreement, then in the event and to the extent only of a conflict between any of the provisions of this Agreement, the conflict shall be resolved in accordance with the following descending order of precedence:
- 1.10.1 the Clauses and Schedule 1 (Definitions);
 - 1.10.2 Schedule 2 (Information Governance Provisions);
 - 1.10.3 Schedule 3 (Specification);
 - 1.10.4 Schedules 5 - 10 inclusive; then
 - 1.10.5 Schedule 4 (Tender Response Document).
- 1.11 Where Schedule 4 (Tender Response Document) contains provisions which are more favourable to the Authority in relation to the rest of the Agreement, such provisions of the Tender Response Document shall prevail over the less favourable provisions of the rest of the Agreement. The Authority shall in its absolute and sole discretion determine whether any provision in the Tender Response Document is more favourable to it in relation to this Agreement.
- 1.12 To avoid doubt, for the purpose of interpreting the provisions of a Contract, in the event and to the extent only of a conflict between any of the provisions of the Contract and the provisions of this Agreement, the provisions of the Contract shall prevail.

2. PROVIDER'S APPOINTMENT

- 2.1 The Authority appoints the Provider to the Community Diagnostic Hubs Framework as a potential provider of the Services and the Provider shall be eligible to be considered for the award of Contracts during the Term.
- 2.2 In consideration of the Authority agreeing to appoint the Provider to the Community Diagnostic Hubs Framework in accordance with Clause 2.1 and the mutual exchange of promises and obligations under this Agreement, the Provider undertakes to provide the Services under Contracts placed with the Provider.
- 2.3 The Provider agrees that the Call-Off Terms and Conditions shall, as a minimum, apply to all supplies of the Services made by the Provider to a Participating Authority pursuant to this Agreement. The Provider agrees that it will not in its dealings with a Participating Authority seek to impose or rely on any other contractual terms which in any way vary or contradict the relevant Contract. For the avoidance of doubt, nothing in this Clause 2.3 shall prevent any Participating Authority and the Provider from agreeing contractual terms that are additional or supplementary to the relevant Contract to the extent that they do not vary or contradict the existing terms of the relevant Contract.
- 2.4 The Provider shall comply fully with its obligations set out in this Agreement, the Specification, the Tender Response Document, the Call-off Terms and Conditions and any other provisions of Contracts entered into under and in accordance with this Agreement.

- 2.5 In complying with its obligations under this Agreement, the Provider shall, and shall procure that all Staff shall, act in accordance with the NHS values as set out in the NHS Constitution from time to time.
- 2.6 The Provider shall bear the cost of complying with its obligations under this Agreement.
- 2.7 The Authority reserves the right at any time during the Term to conduct further procurement procedures in relation to the Community Diagnostic Hubs Framework and to appoint new Framework Providers. The Provider shall not be required to participate in any such further procurement procedure in relation to the Services provided that, if the Authority extends the scope of the services covered by the Community Diagnostic Hubs Framework beyond the scope of the Services, the Provider shall be entitled to participate in that procurement procedure in relation to such additional services that are not within the scope of the Services.

3. AUTHORITY COMMITMENTS

- 3.1 The Provider acknowledges that:
- 3.1.1 there is no obligation on the Authority or any Participating Authority to purchase any Services from the Provider during the Term;
- 3.1.2 no undertaking or any form of statement, promise, representation or obligation has been made by the Authority and/or any Participating Authority in respect of the total volumes or value of the Services to be ordered by them pursuant to this Agreement and the Provider acknowledges and agrees that it has not entered into this Agreement on the basis of any such undertaking, statement, promise or representation;
- 3.1.3 in entering this Agreement, no form of exclusivity has been granted by the Authority and/or any Participating Authority;
- 3.1.4 the Authority and/or any Participating Authority is at all times entitled to enter into other contracts and agreements with other suppliers for the provision of any or all services which are the same as or similar to the Services; and
- 3.1.5 the Authority may inform the Provider at the commencement of this Agreement that a specific range of Services is likely to be the focus of call-off arrangements in the period following the Commencement Date but that this does not in any way prevent a Participating Authority from calling-off any Services later during the Term.

4. CALL-OFF PROCEDURE

- 4.1 A Participating Authority may enter into Contracts in accordance with the Call-off Procedure.

5. PARTICIPATING AUTHORITIES

- 5.1 For the purpose of this Agreement and the Community Diagnostic Hubs Framework, the following Contracting Authorities are considered to be Participating Authorities:
- 5.1.1 any Clinical Commissioning Group;
- 5.1.2 any NHS Trust or NHS Foundation Trust; and
- 5.1.3 the NHS Commissioning Board,
- and for the avoidance of doubt, any successor bodies of any of the entities described in this Clause 5 are also to be considered Participating Authorities.

6. REASONABLE ASSISTANCE

- 6.1 Upon the written request of any Participating Authority, the Provider shall provide such Participating Authority with any reasonable and proportionate information that it holds about the Services it supplies under this Agreement including, without limitation, alongside other related services, to enable the Participating Authority to complete any necessary due diligence before purchasing such Services, or any connected or replacement Services.

7. BUSINESS CONTINUITY

- 7.1 Throughout the Term, the Provider will ensure its Business Continuity Plan provides for continuity during a Business Continuity Event. The Provider confirms and agrees such Business Continuity Plan details and will continue to detail robust arrangements that are reasonable and proportionate to:

7.1.1 the criticality of this Agreement to the Participating Authorities; and

7.1.2 the size and scope of the Provider's business operations,

regarding continuity of the provision of the Services during and following a Business Continuity Event.

- 7.2 The Provider shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Agreement to Participating Authorities and the size and scope of the Provider's business operations. The Provider shall promptly provide to a Participating Authority, at the Participating Authority's written request, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that the Provider tests its Business Continuity Plan in accordance with the requirements of this Clause 7.2 and reasonable and proportionate information regarding the outcome of such tests. The Provider shall provide to a Participating Authority that requested a copy of its Business Continuity Plan, a copy of any updated or revised Business Continuity Plan within fourteen (14) Operational Days of any material update or revision to the Business Continuity Plan.

- 7.3 A Participating Authority may suggest reasonable and proportionate amendments to the Provider regarding the Business Continuity Plan at any time. Where the Provider, acting reasonably, deems such suggestions made by a Participating Authority to be relevant and appropriate, the Provider will incorporate into the Business Continuity Plan all such suggestions made by the Participating Authority in respect of such Business Continuity Plan. Should the Provider not incorporate any suggestion made by a Participating Authority into such Business Continuity Plan it will explain the reasons for not doing so to the Participating Authority.

- 7.4 Should a Business Continuity Event occur at any time, the Provider shall implement and comply with its Business Continuity Plan and provide regular written reports to any Participating Authority with whom it has entered into a Contract and the Authority on such implementation.

- 7.5 During and following a Business Continuity Event, the Provider shall use reasonable endeavours to continue to fulfil its obligations in accordance with this Agreement.

8. PROVIDER PERFORMANCE

- 8.1 The Provider shall perform all Contracts entered into under this Agreement by a Participating Authority in accordance with:

8.1.1 the requirements of this Agreement; and

8.1.2 the provisions of the respective Contracts.

9. **THE AUTHORITY'S OBLIGATIONS**

9.1 The Authority shall, as appropriate, provide copies of or give the Provider access to such of the Policies that are relevant to the Provider complying with its obligations under this Agreement.

9.2 The Authority shall comply with the Authority's Obligations, if any.

10. **GUARANTEE**

10.1 Where:

10.1.1 prior to the Authority and the Provider entering into this Agreement, the Authority indicated to the Provider that the Authority required a valid Guarantee and the Authority has not been provided with such a Guarantee; or

10.1.2 following the Authority and the Provider entering into this Agreement, the Authority notifies the Provider that the Authority requires a valid Guarantee,

then the Provider shall deliver to the Commissioner within a timescale determined by the Commissioner:

10.1.3 an executed Guarantee from a Guarantor; and

10.1.4 a certified copy extract of the board minutes and/or resolution of the Guarantor approving the execution of the Guarantee.

10.2 In addition to any other consequence set out in this Agreement, failure to deliver a Guarantee, and/or extract of the board minutes and/or resolution, that complies with this Clause 10 to the Authority within the timescale determined by the Authority may result in the Provider not being awarded a Contract.

11. **CONTRACT MANAGEMENT**

11.1 Each Party shall appoint and retain a Contract Manager who shall be the primary point of contact for the other Party in relation to matters arising from this Agreement. Should the Contract Manager be replaced, the Party replacing the Contract Manager shall promptly inform the other Party in writing of the name and contact details for the new Contract Manager. Any Contract Manager appointed shall be of sufficient seniority and experience to be able to make decisions on the day to day operation of this Agreement. The Provider confirms and agrees that it will be expected to work closely and cooperate fully with the Authority's Contract Manager.

11.2 The Contract Managers at the commencement of this Agreement are:

11.2.1 for the Authority: [insert name and role]; and

11.2.2 for the Provider: [insert name and role].

11.3 Each Party shall ensure that its representatives (to include, without limitation, its Contract Manager) shall attend review meetings on a regular basis (or such other frequency as reasonably required by the Authority) to review the performance of the Provider under this Agreement and to discuss matters arising generally under this Agreement. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day to day operation of this Agreement. For the avoidance of doubt, such review meetings referred to in this Clause 11.3 shall be in addition to any review meetings set out in the Call-off Terms and Conditions.

11.4 At any time, the Authority may require the Provider to provide to the Authority management, reporting or other information relating in any way to this Agreement or the Community Diagnostic Hubs Framework or to the Services that the Provider carries

out under any or all Contracts. Where the Authority requires such information, the Authority shall indicate to the Provider:

- 11.4.1 the activity, financial or other data that the information is to include;
- 11.4.2 where the reporting information is to be provided regularly, the frequency that such information is to be provided;
- 11.4.3 any specific dates on which, or times of the month, the information is to be provided;
- 11.4.4 the form/format in which the reporting information is to be provided; and/or
- 11.4.5 how the information is to be submitted to the Authority,

and the Provider confirms and agrees that it will provide the information to the Authority as required by the Authority and that the Authority may share the information provided with third parties in order for those third parties to assist the Authority. The provision of information pursuant to this Clause 11.4 is in addition to any reporting requirements set out in the Call-off Terms and Conditions that the Provider may be required to comply with under any Contract.

- 11.5 Where requested to do so, the Provider shall provide any information required by the Authority, including but not limited to the information required by the Authority under Clause 11.4, to another Contracting Authority, whose role it is to analyse such management information in accordance with UK government policy (to include, without limitation, for the purposes of analysing public sector expenditure and planning future procurement activities) ("**Third Party Body**"). The Provider confirms and agrees that the Authority may itself provide the Third Party Body or any Participating Authority with information relating to the Services ordered and any payments made under this Agreement or any Contracts and any other information relevant to the operation of this Agreement.
- 11.6 Upon receipt of information supplied by the Provider, the Parties hereby consent to the Third Party Body, the Authority and/or a Participating Authority:
 - 11.6.1 storing and analysing the information and producing statistics; and
 - 11.6.2 sharing the information, or any statistics produced using the information with any other Contracting Authority.
- 11.7 If the Third Party Body and/or the Authority and/or a Participating Authority shares the information, any Contracting Authority receiving the management information shall, where such management information is subject to obligations of confidence under this Agreement and such management information is provided direct by the Third Party Body and/or the Authority and/or a Participating Authority to such Contracting Authority, be informed of the confidential nature of that information by the organisation sharing the information and shall be requested by the organisation sharing the information not to disclose it to any body that is not a Contracting Authority (unless required to do so by Law).
- 11.8 The Authority may, at any time in writing to the Provider, make changes to the type of information required to be provided by the Provider and the frequency, timescales, form/format and method of submission of that information by the Provider.
- 11.9 The Provider shall ensure that no Personal Data is disclosed to the Authority under this Clause 11 unless the Authority expressly requests this in writing in advance of the disclosure. If the Authority makes such a request it shall provide a written explanation of why the disclosure does not breach the Data Protection Legislation.
- 11.10 The Provider shall during and after the Term indemnify the Authority against all Losses incurred by, awarded against or agreed to be paid by the Authority (whether before or

after the making of the demand pursuant to the indemnity hereunder) arising from a breach of Clause 11.9 by the Provider.

12. PRICE AND PAYMENT

- 12.1 The Prices for each Contract shall be set in accordance with the relevant Call-off Procedure for the relevant Contract. The payment provisions for each Contract shall be as set out in the Call-off Terms and Conditions for the relevant Contract.
- 12.2 Where any payments are to be made under this Agreement by either Party in addition to any payments to be made by a Participating Authority under any Contracts, the details of such payments and the invoicing arrangements shall be agreed in writing between the Parties.

13. ACCESS TO NHS SUPPLY CHAIN AND PERSONAL PROTECTIVE EQUIPMENT

- 13.1 The Provider may have in place arrangements with an NHS Trust or NHS Foundation Trust to purchase consumables and/or medical devices from NHS Supply Chain for the purposes of providing Services under a Contract.
- 13.2 The Provider must ensure that, where it purchases consumables and/or medical devices through NHS Supply Chain under the arrangements set out in Clause 13.1, at least an equivalent number of the same consumables and/or medical devices are used in the provision of Services to Service Users under Contracts. Where fewer of the same consumables and/or medical devices are used in the provision of Services to Service Users than were purchased by the Provider under such arrangements, the Provider must agree and follow a process with the relevant NHS Trust or NHS Foundation Trust to either:
 - 13.2.1 return the relevant number of consumables and/or medical prices; or
 - 13.2.2 pay to the NHS Trust or NHS Foundation Trust the difference in value between the price at which the relevant number of consumables and/or medical devices were purchased and the price that the Provider would have been charged by NHS Supply Chain for the relevant number of consumables and/or medical devices if the arrangements with the NHS Trust or NHS Foundation Trust were not in place.
- 13.3 Notwithstanding that the Provider is required to comply with the obligations set out in Clause 13.2, the Authority has no obligation to the Provider in respect of enabling the Provider to enter into the arrangements set out in Clause 13.1.
- 13.4 The Provider may have in place arrangements with the Department of Health and Social Care to access supplies of personal protective equipment for the purposes of providing Services under a Contract.
- 13.5 The Provider must ensure that, where it obtains personal protective equipment through the Department of Health and Social Care under the arrangements set out in Clause 13.4, at least an equivalent number of the same items of personal protective equipment are used in the provision of Services to Service Users under Contracts. Where fewer of the same items of personal protective equipment are used in the provision of Services to Service Users than were obtained by the Provider under such arrangements, the Provider must either:
 - 13.5.1 return the relevant number of items of personal protective equipment; or
 - 13.5.2 pay the Department of Health and Social Care an amount equal to the price that the Provider would have been reasonably expected to be charged for the relevant number of items of personal protective equipment.

- 13.6 Notwithstanding that the Provider is required to comply with the obligations set out in Clause 13.5, the Authority has no obligation to the Provider in respect of enabling the Provider to enter into the arrangements set out in Clause 13.4.

14. **WARRANTIES**

- 14.1 The Provider warrants and undertakes that:
- 14.1.1 it will comply with the terms of all Contracts entered into by any Participating Authority under this Agreement;
 - 14.1.2 it will fully and promptly respond to all requests for information and/or requests for answers to questions regarding this Agreement, the Services, any Contracts, any complaints and any disputes arising out of or in connection with this Agreement at the frequency, in the timescales and in the format that the Authority and/or any Participating Authority may reasonably require from time to time;
 - 14.1.3 all information included within the Provider's responses to any documents issued by the Authority as part of the procurement relating to the award of this Agreement (to include, without limitation, as referred to in the Tender Response Document, the Specification and the Commercial Schedule) and all accompanying materials was accurate at the time it was provided and shall remain accurate;
 - 14.1.4 it has and shall as relevant maintain all rights, consents, authorisations, licences and accreditations required to enter into and comply with its obligations under this Agreement;
 - 14.1.5 it has the right and authority to enter into this Agreement and that it has the capability and capacity to fulfil its obligations under this Agreement;
 - 14.1.6 it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Agreement and the documents referred to in this Agreement;
 - 14.1.7 all necessary actions to authorise the execution of and performance of its obligations under this Agreement have been taken before such execution;
 - 14.1.8 there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Provider;
 - 14.1.9 there are no material agreements existing to which the Provider is a party which prevent the Provider from entering into or complying with this Agreement;
 - 14.1.10 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Agreement;
 - 14.1.11 it has satisfied itself as to the nature and extent of the risks assumed by it under this Agreement and has gathered all information necessary to perform its obligations under this Agreement and all other obligations assumed by it;
 - 14.1.12 it shall: (i) comply with all relevant Law and Guidance and shall use Good Industry Practice to ensure that there is no slavery or human trafficking in its supply chains; and (ii) notify the Authority immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains;
 - 14.1.13 it shall at all times conduct its business in a manner that is consistent with any anti-slavery Policy of the Authority and shall provide to the Authority any

reports or other information that the Authority may request as evidence of the Provider's compliance with this Clause 14.1.13 and/or as may be requested or otherwise required by the Authority in accordance with its anti-slavery Policy.

- 14.2 The Provider warrants that all information, data and other records and documents required by the Authority or any Participating Authority (as relevant) as set out in the Specification, the Tender Response Document and the Call-off Terms and Conditions shall be submitted to the Authority or any Contracting Authority (as relevant) in the format and in accordance with any timescales set out in the Specification and the Tender Response Document and/or the Call-off Terms and Conditions (as appropriate).
- 14.3 The Provider must immediately notify the Authority if there is any change to the information included within the Provider's responses to any documents issued by the Authority as part of the procurement relating to the award of this Agreement. This includes, but is not limited to, any changes to the Provider's position that may result in the Provider failing to:
- 14.3.1 meet the Mandatory and Discretionary Criteria;
 - 14.3.2 meet the Financial Standing Requirements; or
 - 14.3.3 satisfy the Minimum Requirements under the Specification,
- and the Authority shall be entitled to require the Provider to provide such evidence as the Authority may reasonably require to verify that the Provider continues to meet or satisfy the above requirements at any time during the Term.
- 14.4 The Provider warrants and undertakes to the Authority that it shall comply with any eProcurement Guidance as it may apply to the Provider and shall carry out all reasonable acts required of the Provider to enable the Authority to comply with such eProcurement Guidance.
- 14.5 The Provider warrants and undertakes to the Authority that, as at the Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance. If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Provider shall:
- 14.5.1 notify the Authority in writing of such fact within five (5) Operational Days of its occurrence; and
 - 14.5.2 promptly provide to the Authority:
 - (a) details of the steps which the Provider is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- 14.6 The Provider further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that any of the warranties set out in this Clause 14 have been breached or there is a risk that any warranties may be breached.
- 14.7 Any warranties provided under this Agreement are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.

15. STATUTORY COMPLIANCE

- 15.1 The Provider shall comply with all Law and Guidance relevant to its obligations under this Agreement and any Contracts.
- 15.2 Without limitation to Clause 15.1, the Provider shall be responsible for obtaining any statutory licences, authorisations, consents or permits required in connection with its performance of its obligations under this Agreement and any Contracts including any CQC registration required in relation to the Services in accordance with the Health and Social Care Act 2008.

16. INDEPENDENCE OF PARTICIPATING AUTHORITIES

- 16.1 The Provider acknowledges that each Participating Authority is independently responsible for the conduct of its award of Contracts under this Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:
 - 16.1.1 the conduct of Participating Authorities other than the Authority in relation to the operation of this Agreement; or
 - 16.1.2 the performance or non-performance of any Participating Authorities other than the Authority under any Contracts between the Provider and such other Participating Authorities entered into under this Agreement.

17. LIMITATION OF LIABILITY

- 17.1 Nothing in this Agreement shall exclude or restrict the liability of either Party:
 - 17.1.1 for death or personal injury resulting from its negligence;
 - 17.1.2 for fraud or fraudulent misrepresentation;
 - 17.1.3 in any other circumstances where liability may not be limited or excluded under any applicable law; or
 - 17.1.4 to make any payments agreed in accordance with Clause 12.
- 17.2 Subject to Clauses 17.1, 17.3 and 17.5, the total liability of each Party to the other under or in connection with this Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to one million GBP (£1,000,000). The Parties agree that this limitation of liability does not extend or apply in any way to any liability pursuant to a Contract. To avoid all doubt, the liability of each Party under or in connection with a Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be as set out in that Contract.
- 17.3 There shall be no right to claim Indirect Losses under or in connection with this Agreement whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise.
- 17.4 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which that Party is entitled to bring a claim against the other pursuant to this Agreement.
- 17.5 The Provider shall not agree or seek to agree with the Authority or any Participating Authority (as relevant) any cap or limitation of liability under or in connection with any proposed or existing Contract.

18. INDEMNITY ARRANGEMENTS

- 18.1 The Parties agree that the requirements in respect of Indemnity Arrangements set out in this Clause 18 do not extend or apply in any way to a Contract. To avoid all doubt,

requirements in respect of indemnity arrangements under or in connection with a Contract are set out in that Contract.

- 18.2 Subject to Clauses 18.3 and 18.4, and unless otherwise confirmed in writing by the Authority, as a minimum level of protection the Provider shall put in place and/or maintain in force at its own cost Indemnity Arrangements in respect of employer's liability, public liability and professional indemnity in accordance with Good Industry Practice with the minimum cover per claim of five million pounds (£5,000,000).
- 18.3 The terms of any Indemnity Arrangements or the amount of cover shall not relieve the Provider of any liabilities under this Agreement. It shall be the responsibility of the Provider to determine the amount of indemnity cover that will be adequate to enable it to satisfy its potential liabilities under this Agreement. Accordingly, the Provider shall be liable to make good any deficiency if the proceeds of any indemnity cover are insufficient to cover the settlement of any claim.
- 18.4 The Provider warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) allow others to take action or fail to take any reasonable action, as a result of which any Indemnity Arrangements put in place in accordance with Clause 18.2 may be rendered wholly or partly void, voidable, unenforceable, or be suspended or impaired or which may otherwise render any sum paid out under those Indemnity Arrangements wholly or partly repayable.
- 18.5 Within five (5) Operational Days following written request from the Authority, the Provider must provide documentary evidence that Indemnity Arrangements required under Clause 18.2 are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
- 18.6 If the proceeds of any Indemnity Arrangements are insufficient to cover the settlement of any claim relating to this Agreement the Provider must make good any deficiency.
- 18.7 Upon the expiry or earlier termination of this Agreement, the Provider shall ensure that any ongoing liability it has or may have arising out of this Agreement shall continue to be the subject of appropriate Indemnity Arrangements for the period of twenty one (21) years from termination or expiry of this Agreement or until such earlier date as that liability may reasonably be considered to have ceased to exist.

19. **TERM AND TERMINATION**

- 19.1 This Agreement shall commence on the Commencement Date and, unless terminated earlier in accordance with the terms of this Agreement or the general law, shall continue until the end of the Term.
- 19.2 The Authority shall be entitled to extend the Term on one or more occasions by giving the Provider written notice no less than three (3) months prior to the date on which this Agreement would otherwise have expired, provided that the duration of this Agreement shall be no longer than five (5) years in total.
- 19.3 The Authority shall have the right to terminate this Agreement any time after the Commencement Date by giving at least three (3) months' written notice to the Provider.
- 19.4 In the case of a breach of any of the terms of this Agreement by either Party that is capable of remedy, the non-breaching Party shall, without prejudice to its other rights and remedies under this Agreement, issue notice of the breach and allow the Party in breach the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Party in breach ("**Remedial Proposal**") before exercising any right to terminate this Agreement in accordance with Clause 19.5.1(b). Such Remedial Proposal must be agreed with the non-breaching Party (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Party in breach in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Party in breach to:

- 19.4.1 put forward and agree a Remedial Proposal with the non-breaching Party in relation to the relevant default or breach within a period of ten (10) Operational Days (or such other period as the non-breaching Party may agree in writing) from written notification of the relevant default or breach from the non-breaching Party;
- 19.4.2 comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be thirty (30) days unless otherwise agreed between the Parties); and/or
- 19.4.3 remedy the default or breach notwithstanding the implementation of such Remedial Proposal in accordance with the agreed timescales for implementation,

shall be deemed, for the purposes of Clause 19.5.1(b), a material breach of this Agreement by the Party in breach which has not been remedied in accordance with an agreed Remedial Proposal.

19.5 Either Party may terminate this Agreement forthwith by notice in writing to the other Party if such other Party:

- 19.5.1 commits a material breach of any of the terms of this Agreement which is:
 - (a) not capable of remedy; or
 - (b) in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal; or
- 19.5.2 has been served with at least two (2) previous notices of breach as a result of any material breaches which are capable of remedy within any twelve (12) month rolling period whether or not the Party in breach has remedied the breach in accordance with a Remedial Proposal.

19.6 The Authority may terminate this Agreement forthwith by notice in writing to the Provider:

- 19.6.1 if an Insolvency Event affecting the Provider occurs;
- 19.6.2 if the Provider undergoes a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 (other than for an intra-group change of control) without the prior written consent of the Authority and the Authority shall be entitled to withhold such consent if, in the reasonable opinion of the Authority, the proposed change of control will have a material impact on the performance of this Agreement or the reputation of the Authority;
- 19.6.3 if the Provider purports to assign, sub-contract, novate, create a trust in or otherwise transfer or dispose of this Agreement in breach of Clause 32.1;
- 19.6.4 pursuant to and in accordance with Clauses 19.7, 22.8.1, 26.9, 28.2, 28.4 and 33.2;
- 19.6.5 if the warranty given by the Provider pursuant to Clause 14.5 is materially untrue, the Provider commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause 14.5, or the Provider fails to provide details of proposed mitigating factors as required by Clause 14.5 that in the reasonable opinion of the Authority are acceptable;
- 19.6.6 if a Participating Authority terminates a Contract for the Provider's breach of that Contract;

- 19.6.7 if the Provider has not procured a Guarantee and/or extract of the board minutes and/or resolution that complies with Clause 10 in the timescale indicated by the Authority pursuant to Clause 10;
- 19.6.8 if the Provider has procured a Guarantee pursuant to Clause 10 and:
- (a) the Guarantor withdraws the Guarantee for any reason whatsoever;
 - (b) the Guarantor is in breach or anticipatory breach of the Guarantee;
 - (c) an Insolvency Event occurs in respect of the Guarantor; or
 - (d) the Guarantee becomes invalid or unenforceable for any reason whatsoever;
- and in each case the Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Authority or Participating Authorities (as relevant);
- 19.6.9 if the Provider fails to provide the documentation required by Clause 10.1 by the date so specified by the relevant Participating Authority in accordance with Clause 10.1;
- 19.6.10 if the Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure;
- 19.6.11 if the Authority has become aware that the Provider should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Agreement;
- 19.6.12 if there are any changes to the Provider's position that may result in the Provider failing to:
- (a) meet the Mandatory and Discretionary Criteria;
 - (b) meet the Financial Standing Requirements; or
 - (c) satisfy the Minimum Requirements under the Specification,
- or the Provider fails to provide such evidence as the Authority may reasonably require to verify that the Provider continues to meet or satisfy the above requirements in accordance with Clause 14.3;
- 19.6.13 if there has been a failure by the Provider and/or one of its Sub-contractors to comply with legal obligations in the fields of environmental, social or labour Law. Where the failure to comply with legal obligations in the fields of environmental, social or labour Law is a failure by one of the Provider's Sub-contractors, the Authority may request the replacement of such Sub-contractor and the Provider shall comply with such request as an alternative to the Authority terminating this Agreement under this Clause 19.6.13; or
- 19.6.14 if the Provider has been issued with any enforcement or penalty notice under the Data Protection Legislation or member of staff is found guilty or admits guilt in respect of an offence under the Data Protection Legislation, in relation to any matter connected with this Agreement or the Services.
- 19.7 If the Authority, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Provider and/or any Guarantor and/or any Material Sub-Contractor of the Provider when compared to any information provided to and/or assessed by the Authority as part of any procurement process or other due diligence leading to the award of this Agreement to the Provider

or the entering into a Material Sub-Contract by the Provider, the following process shall apply:

- 19.7.1 the Authority may (but shall not be obliged to) give notice to the Provider requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Agreement on such reasonable and proportionate terms as the Authority may require within a reasonable time period as specified in such notice;
 - 19.7.2 a failure or refusal by the Provider to provide the financial or other security and/or assurances requested in accordance with this Clause 19.7 in accordance with any reasonable timescales specified in any such notice issued by the Authority shall be deemed a breach of this Agreement by the Provider and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and
 - 19.7.3 a failure to resolve such breach in accordance with such Dispute Resolution Procedure by the end of the escalation stage of such process (as set out in Clause 25.3) shall entitle, but shall not compel, the Authority to terminate this Agreement in accordance with Clause 19.5.1(a).
- 19.8 In order that the Authority may act reasonably in exercising its discretion in accordance with Clause 19.7, the Provider shall provide the Authority with such reasonable and proportionate up-to-date financial or other information relating to the Provider or any relevant third party entity upon request.
- 19.9 If the Authority novates this Agreement to any body that is not a Contracting Authority, from the effective date of such novation, the rights of the Authority to terminate this Agreement in accordance with Clause 19.6.1 to Clause 19.6.3 shall be deemed mutual termination rights and the Provider may terminate this Agreement forthwith by notice in writing to the entity assuming the position of the Authority if any of the circumstances referred to in such Clauses apply to the entity assuming the position of the Authority.

20. CONSEQUENCES OF EXPIRY OR EARLIER TERMINATION OF THIS AGREEMENT

- 20.1 Upon expiry or earlier termination of this Agreement, the Authority and the Provider agree that all Contracts entered into under this Agreement will continue in full force and effect unless otherwise terminated under the terms and conditions of such Contracts.
- 20.2 The Provider shall cooperate fully with the Authority or, as the case may be, any replacement supplier during any re-procurement and handover period prior to and following the expiry or earlier termination of this Agreement. This cooperation shall extend to providing access to all information relevant to the operation of this Agreement, as reasonably required by the Authority to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements. Any Personal Data processed by the Provider on behalf of the Authority shall be returned to the Authority or destroyed in accordance with the relevant provisions of the Schedule 2 (Information Governance Provisions).
- 20.3 The expiry or earlier termination of this Agreement for whatever reason shall not affect any rights or obligations of either Party which accrued prior to such expiry or earlier termination.
- 20.4 The expiry or earlier termination of this Agreement shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.

21. SUSPENSION OF PROVIDER'S APPOINTMENT

- 21.1 Without prejudice to the Authority's rights to terminate this Agreement, if:

- 21.1.1 a right for the Authority to terminate this Agreement arises (irrespective of whether the circumstances leading to such right are capable of remedy) in accordance with Clause 19; and/or
- 21.1.2 a Participating Authority exercises its rights in respect of any Contract between that Participating Authority and the Provider to:
 - (a) terminate in full or part the provision of any Services due to the Provider's breach of that Contract; or
 - (b) suspend all or any Services provided pursuant to that Contract in accordance with any relevant provision of the Contract,

the Authority may at its sole discretion elect to suspend the Provider's appointment to participate in the Call-off Procedure under this Agreement by giving notice in writing to the Provider and informing all Participating Authorities.

- 21.2 If the Authority provides notice to the Provider in accordance with Clause 21.1, the Provider's appointment shall be suspended for the period set out in the notice or such other period notified to the Provider by the Authority in writing from time to time provided that such suspension shall be lifted where:
 - 21.2.1 the circumstances leading to the Authority's right to terminate this Agreement have been remedied;
 - 21.2.2 the Authority has satisfied itself that the risk and/or impact of the circumstances giving rise to the Authority's right to terminate this Agreement no longer requires such suspension; or
 - 21.2.3 the Authority exercises its rights to terminate this Agreement in accordance with Clause 19;
 - 21.2.4 the Authority has satisfied itself that the risk and/or impact of the circumstances that led to the relevant Participating Authority terminating in full or part the provision of any Services of a Contract due to the Provider's breach of that Contract no longer requires such suspension; or
 - 21.2.5 a Participating Authority notifies the Provider in writing requiring the Provider to restore the provision of the suspended Service(s) referred to in Clause 21.1.2 in accordance with any relevant provision of the relevant Contract.
- 21.3 The Parties acknowledge that suspension shall not affect the Provider's obligation to perform any Contracts entered into prior to the suspension notice.
- 21.4 For the avoidance of doubt, no period of suspension under this Clause 21 shall result in an extension of the Term.

22. INTELLECTUAL PROPERTY

- 22.1 Except as set out expressly in this Agreement no Party will acquire the IPR of any other Party.
- 22.2 The Provider grants the Authority a fully paid-up non-exclusive licence to use Provider IPR for the purposes of the exercise of its functions and obtaining the full benefit of the Services under this Agreement, which will include the dissemination of best practice to commissioners and providers of health and social care services.
- 22.3 The Authority grants the Provider a fully paid-up non-exclusive licence to use Authority IPR under this Agreement for the sole purpose of providing the Services.
- 22.4 The Provider must disclose all documents and information concerning the development of Best Practice IPR to the Authority at review meetings and must grant the Authority

a fully paid-up, non-exclusive perpetual licence to use Best Practice IPR for the purpose of the exercise of its functions.

- 22.5 The Provider shall ensure and procure that the availability, provision and use of the Services and the performance of the Provider's responsibilities and obligations hereunder shall not infringe any IPR of any third party.
- 22.6 The Provider shall during and after the Term indemnify the Authority against all Losses incurred by, awarded against or agreed to be paid by the Authority (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.
- 22.7 If an IPR Claim is made, or the Provider anticipates that an IPR Claim might be made, the Provider may, at its own expense and sole option, either:
- 22.7.1 procure for the Authority the right to continue using the relevant IPR which is subject to the IPR Claim; or
- 22.7.2 replace or modify the relevant deliverable with non-infringing substitutes provided that:
- (a) the performance and functionality of the replaced or modified deliverable is at least equivalent to the performance and functionality of the original deliverable; and
- (b) there is no additional cost to the Authority.
- 22.8 If the Provider elects to procure a licence in accordance with Clause 22.7.1 or to modify or replace a deliverable pursuant to Clause 22.7.2, but this has not avoided or resolved the IPR Claim, then:
- 22.8.1 the Authority may terminate this Agreement by written notice with immediate effect; and
- 22.8.2 without prejudice to the indemnity set out in Clause 22.6, the Provider shall be liable for all reasonable and unavoidable costs of the substitute deliverables and/or services including the additional costs of procuring, implementing and maintaining the substitute deliverables.
- 22.9 Subject to Clauses 22.2, 22.3 and 22.4 neither Party shall have any right to use any of the other Party's names, logos or trademarks on any of its products or services without the other Party's prior written consent.
- 22.10 The Provider must comply with the applicable Branding Guidance (or such other requirements or guidance as to branding as notified to the Provider by the Authority from time to time) in complying with its obligations under this Agreement and in delivering the Services under any Contract in accordance with the Call-off Terms and Conditions.

23. CHANGE MANAGEMENT

- 23.1 The Provider acknowledges to the Authority that the requirements for the Services may change during the Term and the Provider shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification and the Tender Response Document, as may be requested by the Authority from time to time in accordance with this Clause 23.
- 23.2 Any change to the Services or other variation to this Agreement shall only be binding once it has been agreed in writing and signed by an authorised representative of both Parties.

- 23.3 Subject to this Clause 23, the Authority may, at its own instance or where in its sole and absolute discretion it decides to having been requested to do so by the Provider, request a variation to this Agreement at any time. Such a change once implemented is hereinafter called a “**Variation**”.
- 23.4 The Authority may request a Variation by completing and sending the Variation Form as set out in Schedule 8 (Variation Form) to the Provider giving sufficient information for the Provider to assess the extent of the proposed Variation and any additional cost that may be incurred.
- 23.5 The Provider shall respond to the Authority’s request pursuant to Clause 23.4 within the time limits specified by the Authority and, where the Provider considers that additional costs may be incurred as a result of the proposed Variation, the Provider will provide detailed written evidence of such additional costs to the Authority. The Authority may require the Provider to meet and discuss any additional costs that may result from the Variation and/or request further evidence as required. The time limits specified by the Authority shall be reasonable and ultimately at the discretion of the Authority having regard to the nature of the proposed Variation.
- 23.6 In the event that the Provider is unable to agree to or provide the Variation the Authority may:
- 23.6.1 agree to continue to perform its obligations under this Agreement without the Variation; or
- 23.6.2 terminate this Agreement with immediate effect.
- 23.7 The Provider shall neither be relieved of its obligations under this Agreement nor be entitled to an increase in the Prices as the result of a Change in Law.
- 23.8 Any change to Schedule 2 (Information Governance Provisions) shall be made in accordance with the relevant provisions of Schedule 2 (Information Governance Provisions).

24. **COMPLAINTS, ETC**

- 24.1 The Provider shall notify the Authority of any formal written complaint, contract performance notice, breach notice, remedial action plan or exception report made by other Participating Authorities relating to the Provider’s noncompliance with any of its obligations under any Contract within two (2) Operational Days of the Provider becoming aware of such complaint, notice, plan or report.
- 24.2 Without prejudice to any rights and remedies that the Participating Authority may have under the relevant Contract and/or the Authority may have under this Agreement, the Provider shall use its reasonable endeavours to resolve such complaint within ten (10) Operational Days and in so doing, shall deal with the complaint fully, expeditiously and fairly.
- 24.3 Within two (2) Operational Days of a written request by the Authority, the Provider shall provide further reasonable details of the complaint to the Authority, including details of the steps being taken to progress its resolution and, following its resolution, details of how and when the complaint was resolved.

25. **DISPUTE RESOLUTION**

- 25.1 During any dispute, including a dispute as to the validity of this Agreement, it is agreed that the Provider shall continue its performance of the provisions of this Agreement (unless the Authority requests in writing that the Provider does not do so).
- 25.2 In the case of a dispute arising out of or in connection with this Agreement the Provider and the Authority shall make every reasonable effort to communicate and cooperate

with each other with a view to resolving the dispute and follow the procedure set out in Clause 25.3 before commencing court proceedings.

25.3 If any dispute arises out of this Agreement either Party may serve a notice on the other Party to commence formal resolution of the dispute. Level 1 of the management levels of the dispute as set out in Clause 25.4 will commence on the date of service of the dispute notice. Respective representatives, as set out in Clause 25.4, shall have five (5) Operational Days at each level to resolve the dispute before escalating the matter to the next level as appropriate.

25.4 The management levels at which a dispute will be dealt with are as follows:

Level	Authority representative	Provider representative
1	[Contract Manager]	[Contract Manager]
2	[insert role]	[insert role]
3	[insert role]	[insert role]

25.5 If the procedure set out in Clause 25.3 above fails to resolve such dispute, the Parties will attempt to settle it by mediation with the Centre for Effective Dispute Resolution (“CEDR”); using the model procedures of CEDR.

25.6 To initiate mediation a Party shall:

25.6.1 give notice in writing (“**Mediation Notice**”) to the other Party requesting mediation of the dispute; and

25.6.2 send a copy of the Mediation Notice to CEDR asking them to nominate a mediator if the Parties are not able to agree such appointment by negotiation.

25.7 Neither Party may issue a Mediation Notice until the process set out in Clause 25.3 has been exhausted.

25.8 The mediation shall commence within twenty eight (28) days of the Mediation Notice being served. Neither Party will terminate such mediation until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour or one Party has failed to participate in the mediation process. Neither Party will commence legal proceedings against the other until thirty (30) days after such mediation of the dispute in question has failed to resolve the dispute. The Authority and the Provider will cooperate with any person appointed as mediator providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine or in the absence of such determination such costs will be shared equally.

25.9 Nothing in this Agreement shall prevent:

25.9.1 the Authority taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the provision of the Services; or

25.9.2 either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party or that relates to the safety of patients or the security of Confidential Information, pending resolution of the relevant dispute in accordance with the CEDR procedure.

25.10 This Clause 25 shall survive the expiry of or earlier termination of this Agreement for any reason.

26. FORCE MAJEURE

- 26.1 The Parties acknowledge and agree that nothing in this Clause 26 affects the operation of a Contract and that the provisions of the relevant Contract will apply if a Party fails to perform its obligations under that Contract.
- 26.2 Subject to Clause 26.3 neither Party shall be liable to the other for any failure to perform all or any of its obligations under this Agreement nor liable to the other Party for any loss or damage arising out of the failure to perform its obligations to the extent only that such performance is rendered impossible by a Force Majeure Event.
- 26.3 The Provider shall only be entitled to rely on a Force Majeure Event and the relief set out in this Clause 26 and will not be considered to be in default or liable for breach of any obligations under this Agreement if:
- 26.3.1 the Force Majeure Event does not arise directly or indirectly as a result of any wilful or negligent act or default of the Provider; and
 - 26.3.2 the Provider has complied with the procedural requirements set out in this Clause 26.
- 26.4 Where a Party is (or claims to be) affected by a Force Majeure Event it shall use reasonable endeavours to mitigate the consequences of such a Force Majeure Event upon the performance of its obligations under this Agreement and to resume the performance of its obligations affected by the Force Majeure Event as soon as practicable.
- 26.5 Where the Force Majeure Event affects the Provider's ability to perform part of its obligations under this Agreement the Provider shall fulfil all such contractual obligations that are not so affected and shall not be relieved from its liability to do so.
- 26.6 If either Party is prevented or delayed in the performance of its obligations under this Agreement by a Force Majeure Event, that Party shall as soon as reasonably practicable serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.
- 26.7 Subject to service of such notice, the Party affected by such circumstances shall have no liability for its failure to perform or for any delay in performance of its obligations affected by the Force Majeure Event only for so long as such circumstances continue and for such time after they cease as is necessary for that Party, using its best endeavours, to recommence its affected operations in order for it to perform its obligations.
- 26.8 The Party claiming relief shall notify the other in writing as soon as the consequences of the Force Majeure Event have ceased and of when performance of its affected obligations can be resumed.
- 26.9 If the Provider is prevented from performance of its obligations as a result of a Force Majeure Event, the Authority may at any time if the Force Majeure Event subsists for thirty (30) days or more, terminate this Agreement on service of written notice on the Provider.
- 26.10 Following such termination in accordance with Clause 26.9 and subject to Clause 26.11, neither Party shall have any liability to the other.
- 26.11 Any rights and liabilities of either Party which have accrued prior to such termination in accordance with Clause 26.9 shall continue in full force and effect unless otherwise specified in this Agreement.

27. RECORDS RETENTION AND RIGHT OF AUDIT

- 27.1 Subject to any statutory requirement and Clause 27.2, the Provider shall keep secure and maintain for the Term and six (6) years afterwards, or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to this Agreement.
- 27.2 Where any records could be relevant to a claim for personal injury such records shall be kept secure and maintained for a period of twenty one (21) years from the date of expiry or earlier termination of this Agreement.
- 27.3 The Authority shall have the right to audit the Provider's compliance with this Agreement. The Provider shall permit or procure permission for the Authority or its authorised representative during normal business hours having given advance written notice of no less than five (5) Operational Days, access to any premises and facilities, books and records reasonably required to audit the Provider's compliance with its obligations under this Agreement.
- 27.4 Should the Provider sub-contract any of its obligations under this Agreement, the Authority shall have the right to audit and inspect such third party. The Provider shall procure permission for the Authority or its authorised representative during normal business hours no more than once in any twelve (12) months, having given advance written notice of no less than five (5) Operational Days, access to any premises and facilities, books and records used in the performance of the Provider's obligations under this Agreement that are sub-contracted to such third party. The Provider shall cooperate with such audit and inspection and accompany the Authority or its authorised representative if requested.
- 27.5 The Provider shall grant to the Authority or its authorised representative, such access to those records as they may reasonably require in order to check the Provider's compliance with this Agreement for the purposes of:
- 27.5.1 the examination and certification of the Authority's accounts; or
 - 27.5.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economic efficiency and effectiveness with which the Authority has used its resources.
- 27.6 The Comptroller and Auditor General may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Provider and may require the Provider to provide such oral and/or written explanations as they consider necessary. Clause 27 does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Provider under sections 6(3)(d) and 6(5) of the National Audit Act 1983.
- 27.7 The Provider shall provide reasonable cooperation to the Authority, its representatives and any regulatory body in relation to any audit, review, investigation or enquiry carried out in relation to the subject matter of this Agreement.
- 27.8 The Provider shall provide all reasonable information as may be reasonably requested by the Authority to evidence the Provider's compliance with the requirements of this Agreement.

28. CONFLICTS OF INTEREST AND THE PREVENTION OF FRAUD

- 28.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff are placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Authority under the provisions of this Agreement. The Provider will disclose to the Authority full particulars of any such conflict of interest which may arise.

- 28.2 The Authority 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 Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Authority under the provisions of this Agreement. The actions of the Authority pursuant to this Clause 28.2 shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the Authority.
- 28.3 The Provider shall take all reasonable steps to prevent Fraud by Staff and the Provider (including its owners, members and directors). The Provider shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 28.4 If the Provider or its Staff commits Fraud the Authority may terminate this Agreement and recover from the Provider the amount of any Losses suffered by the Authority resulting from the termination.

29. **EQUALITY AND HUMAN RIGHTS**

- 29.1 The Provider shall:
- 29.1.1 ensure that it does not, whether as employer or as a provider of Services, engage in any act or omission that would contravene the Equality Legislation or cause the Authority to contravene the Equality Legislation;
 - 29.1.2 if section 149 of the Equality Act 2010, the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 and/or the Human Rights Act 1998 do not apply to the Provider, the Provider shall comply with the obligations placed on the Authority by that legislation as if those obligations applied directly to the Provider;
 - 29.1.3 without prejudice to the generality of Clause 29.1.1 take reasonable endeavours to ensure its Staff do not unlawfully discriminate within the meaning of the Equality Legislation;
 - 29.1.4 in the management of its affairs and the development of its equality and diversity policies, cooperate with the Authority in light of the Authority's obligations to comply with the Equality Legislation;
 - 29.1.5 take such reasonable and proportionate steps as the Authority considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age, equality of access to health services and equality of health outcomes; and
 - 29.1.6 impose on all its Sub-Contractors obligations substantially similar to those imposed on the Provider by this Clause 29.
- 29.2 The Provider shall promptly meet reasonable requests by the Authority for information evidencing the Provider's compliance with the provisions of this Clause 29.

30. **PUBLICITY AND BRANDING**

- 30.1 The Provider shall not:
- 30.1.1 make any press announcements or publicise this Agreement in any way; or
 - 30.1.2 use the Authority's name or brand in any promotion or marketing or announcement of Contracts,
- without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed).

- 30.2 Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an approval and/or endorsement of any products or services of the other Party (including the Services) and each Party agrees not to conduct itself in such a way as to imply or express any such approval and/or endorsement.
- 30.3 The Authority shall be entitled to publicise this Agreement in accordance with any legal obligation upon the Authority, including any examination of this Agreement by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

31. NOTICE

- 31.1 Any notice required to be given by either Party under this Agreement shall be in writing quoting the date of this Agreement and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in Clause 31.2 or such other person as one Party may inform the other Party in writing from time to time.
- 31.2 Notices served under this Agreement are to be delivered to:
- 31.2.1 for the Authority: [complete name and/or role and address]; and
- 31.2.2 for the Provider: [complete name and/or role and address].
- 31.3 A notice shall be treated as having been received:
- 31.3.1 if delivered by hand within normal business hours when so delivered or, if delivered by hand outside normal business hours, at the next start of normal business hours; or
- 31.3.2 if sent by first class recorded delivery mail on a normal Operational Day, at 9.00 am on the second Operational Day subsequent to the day of posting, or, if the notice was not posted on an Operational Day, at 9.00 am on the third Operational Day subsequent to the day of posting; or
- 31.3.3 if sent by email when sent in legible form but only if, following transmission, the sender does not receive a non-delivery message.

32. ASSIGNMENT, NOVATION AND SUBCONTRACTING

- 32.1 Subject to clause 32.2, the Provider shall not assign, sub-contract, novate, create a trust in, or in any other way dispose of the whole or any part of this Agreement without the prior written consent of the Authority.
- 32.2 The Provider may:
- 32.2.1 assign, sub-contract or novate this Agreement to a member of its Group, provided always that such Group member shall have been assessed by the Authority and passed to the satisfaction of the Authority all grounds for exclusion and selection criteria to be appointed to the Community Diagnostic Hubs Framework; or
- 32.2.2 sub-contract all or part of this Agreement to a third party provided that the Provider submits to the Authority such evidence as the Authority may reasonably require to demonstrate to the Authority's satisfaction that the proposed sub-contractor:
- (a) is not a Material Sub-Contractor in which case the Authority may provide consent at its discretion; or
- (b) is a Material Sub-Contractor in which case the Authority may give its consent provided that Material Sub-Contractor:
- (i) meets the Mandatory and Discretionary Criteria;

- (ii) meets the Financial Standing Requirements; and
 - (iii) demonstrates that it can satisfy the Minimum Requirements under the Specification in respect of the relevant Services to which it will sub-contract.
- 32.3 The Provider shall also ensure that any authorised Sub-contractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such Sub-contractor are fully in accordance with this Agreement.
- 32.4 The Provider agrees that the provisions of any Contract will apply to any sub-contracting of rights or obligations pursuant to that Contract. In relation to this Agreement, the Provider shall ensure that any Sub-Contracts contain a provision:
 - 32.4.1 enabling the Provider to discharge its obligations under this Agreement;
 - 32.4.2 imposing on the Sub-Contractor obligations that are no less onerous than the obligations imposed on the Provider by Schedule 2 (Information Governance Provisions); and
 - 32.4.3 providing a right for the Authority to publish the Provider's compliance with its obligation to pay undisputed invoices within the specified payment period.
- 32.5 The Authority shall upon written request have the right to review any Sub-Contract entered into by the Provider in respect of the provision of the Services and the Provider shall provide a certified copy of any Sub-Contract within five (5) Operational Days of the date of a written request from the Authority.
- 32.6 The Authority may at any time transfer, assign, novate, subcontract or otherwise dispose of its rights and obligations under this Agreement or any part of this Agreement and the Provider warrants that it will carry out all such reasonable further acts required to effect such transfer, assignment, novation, subcontracting or disposal. If the Authority novates this Agreement to any body that is not a Contracting Authority, from the effective date of such novation, the party assuming the position of the Authority shall not further transfer, assign, novate, subcontract or otherwise dispose of its rights and obligations under this Agreement or any part of this Agreement without the prior written consent of the Provider, such consent not to be unreasonably withheld or delayed by the Provider.
- 32.7 Where the Authority considers that the grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015 apply to any Sub-contractor, then:
 - 32.7.1 if the Authority finds there are compulsory grounds for exclusion, the Provider shall ensure, or shall procure, that such Sub-contractor is replaced or not appointed; or
 - 32.7.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Provider to ensure, or to procure, that such Sub-contractor is replaced or not appointed and the Provider shall comply with such a requirement. The Authority shall upon written request have the right to review any Sub-contract entered into by the Provider in respect of the provision of the Services and the Provider shall provide a certified copy of any Sub-contract within five (5) Business Days of the date of a written request from the Authority. For the avoidance of doubt, the Provider shall have the right to redact any confidential pricing information in relation to such copies of Sub-contract.

33. PROHIBITED ACTS

- 33.1 The Provider warrants and represents that:

- 33.1.1 it has not committed any offence under the Bribery Act 2010 or done any of the following ("**Prohibited Acts**"):
- (a) offered, given or agreed to give any officer or employee of the Authority any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with the Authority or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the Authority; or
 - (b) in connection with this Agreement paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Authority; and
- 33.1.2 it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.
- 33.2 If the Provider or its Staff (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Provider in relation to this or any other agreement with the Authority, the Authority shall be entitled:
- 33.2.1 to terminate this Agreement and recover from the Provider the amount of any loss resulting from the termination;
 - 33.2.2 to recover from the Provider the amount or value of any gift, consideration or commission concerned; and
 - 33.2.3 to recover from the Provider any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010.
- 33.3 Any termination under Clause 33.2 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Authority; and notwithstanding Clause 25, any dispute relating to:
- 33.3.1 the interpretation of Clause 33; or
 - 33.3.2 the amount or value of any gift, consideration or commission,
- shall be determined by the Authority, acting reasonably, and the decision shall be final and conclusive.

34. **GENERAL**

- 34.1 Each of the Parties is independent of the other and nothing contained in this Agreement shall be construed to imply that there is any relationship between the Parties of partnership or of principal/agent or of employer/employee nor are the Parties hereby engaging in a joint venture and accordingly neither of the Parties shall have any right or authority to act on behalf of the other nor to bind the other by agreement or otherwise, unless expressly permitted by this Agreement.
- 34.2 Failure or delay by either Party to exercise an option or right conferred by this Agreement shall not of itself constitute a waiver of such option or right.
- 34.3 The delay or failure by either Party to insist upon the strict performance of any provision of this Agreement or to exercise any right or remedy consequent upon such breach shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.

- 34.4 Any provision of this Agreement which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Agreement and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.
- 34.5 Each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this Agreement and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in this Agreement or unless such representation, undertaking or warranty was made fraudulently.
- 34.6 Each Party shall bear its own expenses in relation to the preparation and execution of this Agreement including all costs, legal fees and other expenses so incurred.
- 34.7 The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by general law, or by any other contract or document. In this Clause 34.7, right includes any power, privilege, remedy, or proprietary or security interest.
- 34.8 No persons other than the Parties to this Agreement and any Participating Authorities shall have the right to enforce the terms of this Agreement which confer a benefit on such person or be entitled to object to or be required to consent to any amendment to the provisions of this Agreement.
- 34.9 This Agreement, any variation in writing signed by an authorised representative of each Party, and any document referred to (explicitly or by implication) in this Agreement or any variation to this Agreement, contains the entire understanding between the Provider and the Authority relating to the operation of this Agreement to the exclusion of all previous terms, conditions, agreements, confirmations and understandings and there are no promises, terms, conditions or obligations whether oral or written, express or implied other than those contained or referred to in this Agreement. Nothing in this Agreement seeks to exclude either Party's liability for Fraud.
- 34.10 This Agreement, and any dispute or claim arising out of or in connection with this Agreement or their subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.
- 34.11 Subject to Clause 25, the Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or their subject matter.
- 34.12 All written and oral communications and all written material referred to under this Agreement shall be in English.
- 34.13 This Agreement may be executed in any number of counterparts, each of which will be regarded as an original, but all of which together will constitute one agreement binding on the Parties, notwithstanding that the Parties are not signatories to the same counterpart.

SIGNATURE PAGE

SIGNED by

for and on behalf of **NATIONAL HEALTH SERVICE
COMMISSIONING BOARD**

.....
.....
(Signature)

.....
(Date)

SIGNED by

for and on behalf of **[insert provider name]**

.....
.....
(Signature)

.....
(Date)

DRAFT

SCHEDULE 1

Definitions

1. Definitions

1.1 In this Agreement the following words shall have the following meanings unless the context requires otherwise, other than in relation to the Call-off Terms and Conditions. The definitions and Interpretations that apply to the Call-off Terms and Conditions are as set out in the Call-off Terms and Conditions.

“Agreement”	this framework agreement and all schedules and appendices attached to this framework agreement;
“Authority”	the Authority named on the first page of this Agreement;
“Authority IPR”	any IPR owned by or licensed to the Authority which is relevant and necessary to the performance of the Services by the Provider;
“Authority’s Obligations”	the Authority’s further obligations, if any, referred to in the Specification and the Tender Response Document;
“Award Criteria”	<p>the award criteria to be applied for the award of Contracts for Services pursuant to the Award Procedure which may be any of or a combination of any of:</p> <ul style="list-style-type: none">(a) for proposed Contracts for Nationally Priced Services:<ul style="list-style-type: none">(i) quality of the Services as determined by the Participating Authority;(ii) accessibility of the Services to a Service User/group of Service Users;(iii) experience of the clinical team providing the Services;(iv) capacity/availability of Services;(v) local factors which are proportionate and relevant to the Services; and/or(vi) discounts on any relevant National Price,(b) for proposed Contracts for Locally Priced Services:<ul style="list-style-type: none">(i) price (which can include a maximum price and/or a fixed price set by the Participating Authority);(ii) quality of the Services as determined by the Participating Authority;(iii) accessibility of the Services to a Service User/group of Service Users;

	(iv) experience of the clinical team providing the Services;
	(v) capacity/availability of Services; and/or
	(vi) local factors which are proportionate and relevant to the Services.
“Award Procedure”	the award procedure described in paragraph 2 of Schedule 6;
“Branding Guidance”	NHS brand policy and guidelines, as revised, updated or re-issued from time to time by the Authority and/or the Department of Health and Social Care, and which are available at www.england.nhs.uk/nhsidentity/ ;
“Business Continuity Event”	means any event or issue that could impact on the operations of the Provider and its ability to fulfil its obligations under this Agreement including an influenza pandemic and any Force Majeure Event but excluding, for the avoidance of doubt, <ul style="list-style-type: none"> (a) the withdrawal of the United Kingdom from the European Union and any related circumstances, events, changes or requirements; and (b) the Covid-19 pandemic and any related circumstances, events, changes or requirements;
“Business Continuity Plan”	the Provider’s business continuity plan which includes its plans for continuity of the Services during a Business Continuity Event;
“Best Practice IPR”	any IPR developed by the Provider including Improvements to such IPR in connection with or as a result of the Services;
“Caldicott Guardian”	the senior health professional responsible for safeguarding the confidentiality of patient information;
“Caldicott Principles”	the principles applying to the handling of patient-identifiable information set out in the Caldicott Information Governance Review;
“Call-off Procedure”	the procedures enabling a Participating Authority to call-off Services and enter into Contracts under this Agreement, as set out in Schedule 6;
“Call-off Terms and Conditions”	the call-off terms and conditions for Contracts as set out in Schedule 7 of this Agreement forming part of the Contracts placed under this Agreement;
“Change in Law”	any change in Law which impacts on the supply of the Services and performance of the Call-off Terms and Conditions which comes into force after the Commencement Date;
“Clinical Commissioning Group”	a clinical commissioning group as defined in Section 11 of the NHS Act 2006;
“Commencement Date”	[30 September 2021];

“Commercial Schedule”	the document set out at Schedule 5;
“Community Diagnostic Hubs Framework”	the community diagnostic hubs framework arrangements established by the Authority for the provision of the Services by Framework Providers (including the Provider) pursuant to the FTS Notice;
“Confidential Information”	<p>information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of this Agreement including any procurement process which is:</p> <ul style="list-style-type: none"> (c) Personal Data including without limitation Personal Data which relates to any patient or other service user or his or her treatment or clinical or care history; (d) designated as confidential by either party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored); and/or (e) Policies and such other documents which the Provider may obtain or have access to through the Authority’s intranet;
“Contract”	any contract entered into under this Agreement with the Provider by any Contracting Authority based on the Call-off Terms and Conditions;
“Contract Manager”	for the Authority and for the Provider the individuals specified in Clause 11.2 or such other person notified by a Party to the other Party from time to time in accordance with Clause 11.1;
“Contracting Authority”	any contracting authority as defined in regulation 2 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than the Authority;
“CQC”	the Care Quality Commission established under section 1 of the Health and Social Care Act 2008;
“Data Breach”	has the meaning given to it in the Caldicott Information Governance Review;
“Data Controller”	has the meaning given to the term “Controller” in the Data Protection Legislation and modified by paragraph 1.2 of this Schedule 1;
“Data Guidance”	any applicable guidance, guidelines, direction or determination, framework, code of practice, standard or requirement regarding information governance, confidentiality, privacy or compliance with Data Protection Legislation (whether specifically mentioned in this Contract or not) to the extent published and publicly available or their existence or contents have been notified to the Provider by the Authority and/or NHS Digital, the Caldicott Guardian, the Department of Health and Social Care, NHS England, the

Health Research Authority, Public Health England and the Information Commissioner;

“Data Processor”	has the meaning given to the term “Processor” in the Data Protection Legislation and modified by paragraph 1.2 of this Schedule 1;
“Data Protection Legislation”	(i) the DPA 2018; (ii) the UK GDPR; and (iii) all applicable Law concerning privacy, confidentiality or the processing of personal data including but not limited to the Human Rights Act 1998, the Health and Social Care (Safety and Quality) Act 2015, the common law duty of confidentiality and the Privacy and Electronic Communications (EC Directive) Regulations 2003;
“Data Protection Officer”	has the meaning given to it in the Data Protection Legislation;
“Data Subject”	has the meaning given to it in the Data Protection Legislation;
“Dispute Resolution Procedure”	the process for resolving disputes as set out in Clause 25;
“DOTAS”	the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
“DPA 2018”	Data Protection Act 2018;
“EIR”	shall have the meaning given to the term in paragraph 1.2 of Schedule 2;
“eProcurement Guidance”	the NHS eProcurement Strategy available via: http://www.gov.uk/government/collections/nhs-procurement together with any further Guidance issued by the Department of Health and Social Care in connection with it;
“Equality Legislation”	any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017, the National Health Service Act 2006 (in particular but not limited to section 13G), the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998;

“Financial Standing Requirements”	the financial standing requirements that the Provider was required to meet as part of the procurement process leading to the award of this Agreement;
“Framework Providers”	the providers (including the Provider) appointed under this Agreement or conditions on the same or similar terms to this Agreement as part of the Community Diagnostic Hubs Framework;
“FTS Notice”	the contract notice published on the Find a Tender Service as referenced in this Agreement;
“FOIA”	shall have the meaning given to the term in paragraph 1.2 of Schedule 2;
“Force Majeure Event”	<p>any event beyond the reasonable control of the Party in question to include, without limitation:</p> <ul style="list-style-type: none"> (a) war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict materially affecting either Party’s ability to perform its obligations under this Agreement; (b) acts of terrorism; (c) flood, storm or other natural disasters; (d) fire; (e) unavailability of public utilities and/or access to transport networks to the extent no diligent supplier could reasonably have planned for such unavailability as part of its business continuity planning; (f) government requisition or impoundment to the extent such requisition or impoundment does not result from any failure by the Provider to comply with any relevant regulations, laws or procedures (including such laws or regulations relating to the payment of any duties or taxes) and subject to the Provider having used all reasonable legal means to resist such requisition or impoundment; (g) compliance with any local law or governmental order, rule, regulation or direction that could not have been reasonably foreseen; (h) industrial action which affects the ability of the Provider to provide the Services, but which is not confined to the workforce of the Provider or the workforce of any subcontractor of the Provider; and (i) a failure in the Provider’s and/or the Authority’s supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties;

but excluding, for the avoidance of doubt,

- (j) the withdrawal of the United Kingdom from the European Union and any related circumstances, events, changes or requirements; and
- (k) the Covid-19 pandemic and any related circumstances, events, changes or requirements.

“Fraud” any offence under any law in respect of fraud in relation to this Agreement or defrauding or attempting to defraud or conspiring to defraud the government, parliament or any Contracting Authority;

“General Anti-Abuse Rule” means

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

“Good Clinical Practice” has the meaning given to it in the Call-off Terms and Conditions;

“Good Health and/or Social Care Practice” has the meaning given to it in the Call-off Terms and Conditions;

“Good Practice” Good Clinical Practice and/or Good Health and/or Social Care Practice, as appropriate;

“Good Industry Practice” the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider engaged in the provision of services similar to the Services under the same or similar circumstances as those applicable to this Agreement, including in accordance with any codes of practice published by relevant trade associations;

“Governing Body” in respect of any Party, the board of directors, governing body, executive team or other body having overall responsibility for the actions of that Party;

“Group” means in relation to a Party, that Party, any subsidiary or holding company from time to time of that Party, and any subsidiary from time to time of a holding company of that Party and holding company and subsidiary company shall have the meaning given in Section 1159 of the Companies Act 2006;

“Guarantee” a deed of guarantee in the form set out in Schedule 9 (Guarantee) and granted pursuant to Clause 10;

“Guarantor” any person acceptable to the relevant Participating Authority to give a Guarantee;

“Guidance” any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the

	Provider by the Authority and/or have been published and/or notified to the Provider by the Department of Health and Social Care, Monitor, NHS Commissioning Board, the Medicines and Healthcare Products Regulatory Agency the Care Quality Commission and/or any other regulator or competent body;
“Halifax Abuse Principle”	the principle explained in the CJEU Case C-255/02 Halifax and others;
“Health Research Authority”	the executive non-departmental public body sponsored by the Department of Health and Social Care which protects and promotes the interests of patients and the public in health and social care research;
“HM Government Cyber Essentials Scheme”	the HM Government Cyber Essentials Scheme as further defined in the documents relating to this scheme published at: https://www.gov.uk/government/publications/cyber-essentials-scheme-overview ;
“IG Guidance for Serious Incidents”	NHS Digital’s Checklist Guidance for Information Governance Serious Incidents Requiring Investigation June 2013, available at: https://www.igt.hscic.gov.uk/KnowledgeBaseNew/HSCIC%20IG%20SIRI%20%20Checklist%20Guidance%20V2%200%201st%20June%202013.pdf ;
“Indemnity Arrangements”	either: (a) a policy of insurance; (b) an arrangement made for the purposes of indemnifying a person or organisation; or (c) a combination of (a) and (b);
“Indirect Losses”	loss of profits (other than profits directly and solely attributable to provision of the Services), loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, loss of reputation or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or on any other basis;
“Information Commissioner”	the independent authority established to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals ico.org.uk and any other relevant data protection or supervisory authority recognised pursuant to Data Protection Legislation;
“Information Governance Breach”	an information governance serious incident requiring investigation, as defined in IG Guidance for Serious Incidents;
“Information Governance Lead”	the individual responsible for information governance and for providing the Provider’s Governing Body with regular reports on information governance matters, including details of all incidents of data loss and breach of confidence;
“Insolvency Event”	in respect of the Provider or Guarantor (as applicable):

- (a) the Provider being, or being deemed for the purposes of any Law to be, unable to pay its debts or insolvent;
- (b) the Provider admitting its inability to pay its debts as they fall due;
- (c) the value of the Provider's assets being less than its liabilities taking into account contingent and prospective liabilities;
- (d) the Provider suspending payments on any of its debts or announces an intention to do so;
- (e) by reason of actual or anticipated financial difficulties, the Provider commencing negotiations with creditors generally with a view to rescheduling any of its indebtedness;
- (f) a moratorium is declared in respect of any of the Provider's indebtedness;
- (g) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Provider;
- (h) a composition, assignment or arrangement with any creditor of any member of the Provider;
- (i) the appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer (in each case, whether out of court or otherwise) in respect of the Provider or any of its assets;
- (j) a resolution of the Provider or its directors is passed to petition or apply for the Provider's winding-up or administration;
- (k) the Provider's directors giving written notice of their intention to appoint a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, or administrator (whether out of court or otherwise); or
- (l) if the Provider suffers any event analogous to the events set out in (i) to (xi) of this definition in any jurisdiction in which it is incorporated or resident;

“IPR”

inventions, copyright, patents, database right, domain names, trade marks, module names, rights in computer software, database rights, rights in get-up, goodwill and the right to sue for passing off, designs and confidential know-how and any similar rights anywhere in the world whether registered or not, including applications and the right to apply for any such rights;

“IPR Claim”

any claim of infringement or alleged or threatened infringement (including the defence of such infringement or alleged infringement) by a third party (including the defence of such

infringement or alleged or threatened infringement) of any IPR, used to provide the Services or as otherwise provided and/or licensed by the Provider (or to which the Provider has provided access) to the Authority in the fulfilment of its obligations under this Agreement;

“Law”

means any applicable legal requirements, including without limitation:

- (a) any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument;
- (b) any applicable European Union obligation directive, regulation, decision, law or right (including any such obligations, directives, regulations decisions, laws or rights that are incorporated into the law of England and Wales or given effect in England and Wales by any applicable statute, proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument);
- (c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;
- (d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;
- (e) requirements set by any regulatory body;
- (f) any applicable code of practice; and
- (g) any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above),

in each case as applicable in England and Wales;

“Locally Priced Services”

has the meaning given in paragraph 4.1 of Schedule 5;

“Losses”

all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and /or professional services), proceedings, demands, fines and charges whether arising under statute, contract or at common law but, to avoid doubt, excluding Indirect Losses;

“Mandatory and Discretionary Criteria”

the mandatory and discretionary criteria that the Provider was required to meet as part of the procurement process leading to the award of this Agreement;

“Market Forces Factor”

has the meaning given in paragraph 4.1 of Schedule 5;

“Material Sub-Contract”

any Sub-contract with a Material Sub-Contractor for the purpose of the performance of any obligation on the part of the Provider under any Contract;

“Material Sub-Contractors”

any Sub-contractor which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services, as set out in Schedule 10 of this Agreement;

“Mediation Notice”	has the meaning given under Clause 25.6.1;
“Minimum Requirements under the Specification”	the technical questions that the Provider was required to satisfy as part of the procurement process leading to the award of this Agreement;
“Modalities”	means the different groupings of Sub-Modalities to be provided by the Provider as part of the Services as indicated in the Tender Response Document;
“Monitor”	the corporate body known as Monitor provided by section 61 of the Health and Social Care Act 2012;
“National Data Guardian”	the body which advises and challenges the health and care system to help ensure that citizens’ confidential information is safeguarded securely and used properly: https://www.gov.uk/government/organisations/national-data-guardian , and its predecessor body the Independent Information Governance Oversight Panel;
“National Data Guardian’s Data Security Standards”	the standards recommended by the National Data Guardian and approved by the Department of Health and Social Care, as set out in Annex D of Your Data: Better Security, Better Choice, Better Care, available at https://www.gov.uk/government/consultations/new-data-securitystandards-for-health-and-social-care ;
“Nationally Priced Services”	has the meaning given in paragraph 4.1 of Schedule 5;
“National Tariff”	has the meaning given in paragraph 4.1 of Schedule 5;
“NHS”	the National Health Service;
“NHS Constitution”	the constitution for the NHS in England which establishes the principles and values of the NHS in England and sets out the rights, pledges and responsibilities for patients, the public and staff (and including the Handbook To The NHS Constitution, available at: https://www.gov.uk/government/publications/supplements-to-the-nhs-constitution-for-england);
“NHS Digital”	the Health and Social Care Information Centre https://digital.nhs.uk/ ;
“NHS Foundation Trust”	a body that is defined in section 30 of the NHS Act 2006;
“NHS Improvement”	the combined organisation comprising Monitor and NHSTDA;
“NHSTDA”	the National Health Service Trust Development Authority established under the NHS Trust Development Authority (Establishment and Constitution) Order 2012;
“NHS Trust”	a body that is established under section 25 of the NHS Act 2006;

"Occasion of Tax Non-Compliance"	<p>means:</p> <ul style="list-style-type: none"> (c) any tax return of the Provider submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> (i) a Relevant Tax Authority successfully challenging the Provider under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; (ii) the failure of an avoidance scheme which the Provider was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or (d) any tax return of the Provider submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;
"Operational Day"	a day other than a Saturday, Sunday or bank holiday in England;
"Participating Authority"	means a Contracting Authority entitled to award Contracts under this Agreement as set out in Clause 5;
"Party"	the Authority or the Provider as appropriate and "Parties" means both the Authority and the Provider;
"Personal Data"	has the meaning given to it in the Data Protection Legislation and modified by paragraph 1.2 of this Schedule 1;
"Personal Data Breach"	has the meaning given to it in the Data Protection Legislation;
"Policies"	the policies, rules and procedures of the Authority as notified to the Provider from time to time;
"Prices"	the prices payable under a Contract;
"Privacy Notice"	the information that must be provided to a Data Subject under Article 13 and Article 14 of the UK GDPR and/or the DPA 2018;
"Prohibited Acts"	has the meaning given under Clause 33.1.1;
"Provider"	the provider named on the first page of this Agreement;
"Provider IPR"	any IPR owned by or licensed to the Provider (other than by the Authority) that will be used by the Provider in the delivery of the Services;

“Relevant Tax Authority”	HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the Provider is established;
“Remedial Proposal”	has the meaning given under Clause 19.4;
“Response Document”	has the meaning set out in paragraph 2.1.3 of Schedule 6;
"Section 251 Regulations"	the Health Service (Control of Patient Information) Regulations 2002, made pursuant to section 251 of the 2006 Act and any other regulations made under that section;
"Senior Information Risk Owner"	the Provider’s nominated person, being an executive or senior manager on the Governing Body of the Provider, whose role it is to take ownership of the organisation’s information risk policy, act as champion for information risk on the Governing Body of the Provider and provide written advice to the accounting officer on the content of the organisation’s statement of internal control in regard to information risk;
“Service User”	has the meaning set out in the Call-off Terms and Conditions;
“Services”	the services that the Provider is required to provide under Contracts placed under this Agreement;
“Specification”	the document set out in Schedule 3;
“Staff”	all persons employed or engaged by the Provider to perform its obligations under this Agreement including any Sub-Contractors and person employed or engaged by such Sub-Contractors;
"Statement of Requirements"	a statement issued by a Participating Authority detailing its requirements based on the Specification and issued in accordance with the Call-off Procedure;
“System”	has the meaning given in paragraph 1A.1 of Schedule 6;
“Sub-Contract”	any sub-contract for the purpose of the performance of any obligation on the part of the Provider under any Contract, including a Material Sub-Contract;
“Sub-Contractor”	any sub-contractor under any Sub-Contract, including a Material Sub-Contractor;
“Sub-Modalities”	means the different types of procedures within each of the Modalities to be provided by the Provider as part of the Services as indicated in the Tender Response Document;
"Tender Response Document"	the document set out in Schedule 4 submitted by the Provider to the Authority in response to the FTS Notice issued by the Authority;
“Term”	three (3) years from the Commencement Date which may be extended in accordance with Clause 19.2 provided that the

duration of this Agreement shall be no longer than five (5) years in total;

“Third Party Body”

has the meaning given under Clause 11.5;

“UK GDPR”

the General Data Protection Regulation (Regulation (EU) 2016/679) as incorporated into UK legislation by way of the European Union (Withdrawal Agreement) Act 2020 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019;

"Variation"

has the meaning set out in Clause 23.3;

"Variation Form"

the form set out in Schedule 8; and

“VAT”

value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax.

- 1.2 Where a term in paragraph 1.1 is defined by reference to its definition in the Data Protection Act 2018 that definition shall be modified so that the reference to "living" in the definition of "personal data" is omitted with the effect that personal data can relate to individuals either living or deceased.

SCHEDULE 2

Information Governance Provisions

1. Confidentiality

- 1.1 In respect of any Confidential Information it may receive directly or indirectly from the other Party ("**Discloser**") and subject always to the remainder of paragraph 1 of Schedule 2, each Party ("**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser's prior written consent provided that:
- 1.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date;
 - 1.1.2 the provisions of paragraph 1 of Schedule 2 shall not apply to any Confidential Information:
 - 1.1.2.1 which is in or enters the public domain other than by breach of this Agreement or other act or omissions of the Recipient;
 - 1.1.2.2 which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
 - 1.1.2.3 which is authorised for disclosure by the prior written consent of the Discloser;
 - 1.1.2.4 which the Recipient can demonstrate was in its possession without any obligation of confidentiality prior to receipt of the Confidential Information from the Discloser; or
 - 1.1.2.5 which the Recipient is required to disclose purely to the extent to comply with the requirements of any relevant stock exchange.
- 1.2 Nothing in paragraph 1 of Schedule 2 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Freedom of Information Act 2000 ("**FOIA**"), Codes of Practice on Access to Government Information, on the Discharge of Public Authorities' Functions or on the Management of Records or the Environmental Information Regulations 2004 ("**EIR**").
- 1.3 The Authority may disclose the Provider's Confidential Information:
- 1.3.1 on a confidential basis, to any Contracting Authority (the Parties agree that all Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority);
 - 1.3.2 on a confidential basis, to any consultant, contractor or other person engaged by the Authority and/or the Contracting Authority receiving such information;
 - 1.3.3 to any relevant party for the purpose of the examination and certification of the Authority's accounts;

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- 1.3.4 to any relevant party for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
 - 1.3.5 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirements; or
 - 1.3.6 on a confidential basis, to a proposed successor body in connection with any proposed or actual, assignment, novation or other disposal of rights, obligations, liabilities or property in connection with this Agreement,

and for the purposes of this Agreement, references to disclosure "on a confidential basis" shall mean the Authority making clear the confidential nature of such information and that it must not be further disclosed except in accordance with Law or this paragraph 1.3 of Schedule 2.

- 1.4 The Provider may only disclose the Authority's Confidential Information, and any other information provided to the Provider by the Authority in relation to the operation of this Agreement, to the Provider's Staff or professional advisors who are directly involved in the performance of or advising on the Provider's obligations under this Agreement. The Provider shall ensure that such Staff or professional advisors are aware of and shall comply with the obligations in paragraph 1 of Schedule 2 as to confidentiality and that all information, including Confidential Information, is held securely, protected against unauthorised use or loss and, at the Authority's written discretion, destroyed securely or returned to the Authority when it is no longer required. The Provider shall not, and shall ensure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of performing the Provider's obligations in this Agreement.
- 1.5 Nothing in this Clause 1 of this Schedule 3 shall prevent the Recipient from disclosing the Confidential Information to its Group companies, provided that the Recipient procures that such Group companies comply with this Clause 1 of this Schedule 3 as if each reference to the Recipient in this Clause 1 of this Schedule 3 is a reference to any such Group company receiving the Confidential Information
- 1.6 Paragraph 1 of Schedule 2 shall remain in force:
 - 1.6.1 without limit in time in respect of Confidential Information which comprises Personal Data or which relates to national security; and
 - 1.6.2 for all other Confidential Information for a period of three (3) years after the expiry or earlier termination of this Agreement unless otherwise agreed in writing by the Parties.
- 1.7 This Paragraph 1 will not limit the Public Interest Disclosure Act 1998 in any way whatsoever.

2. **Information Governance**

- 2.1 The Parties must comply with Data Protection Legislation, Data Guidance, the FOIA and the EIR, and must assist each other as necessary to enable each other to comply with these obligations.
- 2.2 The Provider must:
 - 2.2.1 nominate an Information Governance Lead;
 - 2.2.2 nominate a Caldicott Guardian and Senior Information Risk Owner, each of whom must be a member of the Provider's Governing Body;
 - 2.2.3 where required by Data Protection Legislation, nominate a Data Protection Officer;

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- 2.2.4 ensure that the Authority is kept informed at all times of the identities and contact details of the Information Governance Lead, Data Protection Officer, Caldicott Guardian and the Senior Information Risk Owner; and
 - 2.2.5 ensure that the Authority and NHS Digital are kept informed at all times of the identities and contact details of the Information Governance Lead, Data Protection Officer, Caldicott Guardian and the Senior Information Risk Owner.
 - 2.3 The Provider must adopt and implement the National Data Guardian's Data Security Standards and must comply with further Guidance issued by the Department of Health and Social Care, the Authority, any National Data Guardian for Health and Care and/or NHS Digital pursuant to or in connection with those standards. The Provider must be able to demonstrate its compliance with those standards in accordance with the requirements and timescales set out in such guidance, including its adherence to data security standards and requirements for enabling patient choice.
 - 2.4 The Provider must, at least once annually, audit its practices against quality statements regarding data sharing set out in NICE Clinical Guideline 138.
 - 2.5 The Provider must report and publish any Data Breach and any Information Governance Breach in accordance with IG Guidance for Serious Incidents. If the Provider is required under Data Protection Legislation to notify the Information Commissioner or a Data Subject of a Personal Data Breach then as soon as reasonably practical and in any event on or before the first such notification is made the Provider must inform the Authority of the Personal Data Breach. This paragraph does not require the Provider to provide the Authority with information which identifies any individual affected by the Personal Data Breach where doing so would breach Data Protection Legislation.

Data Protection

- 2.6 The Provider must have in place a communications strategy and implementation plan to ensure that Service Users are provided with, or have made readily available to them, Privacy Notices, and to disseminate nationally-produced patient information materials. Any failure by the Provider to inform Service Users as required by Data Protection Legislation or Data Guidance about the uses of Personal Data that may take place under this Agreement cannot be relied on by the Provider as evidence that such use is unlawful and therefore not contractually required.

The Provider as a Data Controller

- 2.7 Whether or not a Party or Sub-Contractor is a Data Controller or Data Processor will be determined in accordance with Data Protection Legislation and the Information Commissioner's guidance on Data Controllers and Data Processors and any further Data Guidance. The Parties acknowledge that a Party or Sub-Contractor may act as both a Data Controller and a Data Processor. The Parties consider that:
 - 2.7.1 in relation to Personal Data processed by the Provider for the purpose of delivering the Services the Provider will be sole Data Controller; and
 - 2.7.2 in relation to Personal Data the processing of which is required by the Authority for the purposes of quality assurance, performance management and contract management, the Authority and the Provider will be joint Data Controllers.
- 2.8 The Provider must ensure that all Personal Data processed by or behalf of the Provider in the course of delivering the Services is processed in accordance with the relevant Parties' obligations under Data Protection Legislation and Data Guidance and in accordance with the provisions of any relevant Contract.

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- 2.9 In relation to Personal Data processed by the Provider in the course of delivering the Services, the Provider must publish, maintain and operate:
- 2.9.1 policies relating to confidentiality, data protection and information disclosures that comply with the Law, the Caldicott Principles and Good Practice;
 - 2.9.2 policies that describe the personal responsibilities of Staff for handling Personal Data;
 - 2.9.3 a policy that supports the Provider's obligations under the NHS Care Records Guarantee;
 - 2.9.4 agreed protocols to govern the sharing of Personal Data with partner organisations; and
 - 2.9.5 where appropriate, a system and a policy in relation to the recording of any telephone calls or other telehealth consultations in relation to the Services, including the retention and disposal of those recordings,
- and apply those policies and protocols conscientiously.
- 2.10 Where the Authority requires information for the purposes of quality management of care processes, the Provider must consider whether the Authority's request can be met by providing anonymised or aggregated data which does not contain Personal Data. Where Personal Data must be shared in order to meet the requirements of the Authority, the Provider must:
- 2.10.1 provide such information in pseudonymised form where possible; and
 - 2.10.2 in any event ensure that there is a legal basis for the sharing of Personal Data.
- 2.11 Notwithstanding paragraph 2.10 of this Schedule 2, the Provider must (unless it can lawfully justify non-disclosure) disclose defined or specified confidential patient information to or at the request of the Authority where support has been provided under the Section 251 Regulations, respecting any individual Service User's objections and complying with other conditions of the relevant approval.

The Provider as a Data Processor

- 2.12 Where the Provider, in the course of delivering the Services, acts as a Data Processor on behalf of a Participating Authority, the provisions of Schedule 6F (Provider Data Processing Agreement) of the Call-off Terms and Conditions will apply.

Responsibilities when engaging Sub-Contractors

- 2.13 Subject always to Clause 32, if the Provider is to engage any Sub-Contractor to deliver any part of the Services (other than as a Data Processor) and the Sub-Contractor is to access personal or confidential information or interact with Service Users, the Provider must impose on its Sub-Contractor obligations that are no less onerous than the obligations imposed on the Provider by this Schedule 2.
- 2.14 Subject always to Clause 32, if the Provider is to require any Sub-Contractor to act as a Data Processor on its behalf, the Provider must:
- 2.14.1 require that Sub-Contractor to provide sufficient guarantees in respect of its technical and organisational security measures governing the data processing to be carried out, and take reasonable steps to ensure compliance with those measures;

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- 2.14.2 carry out and record appropriate due diligence before the Sub-Contractor processes any Personal Data in order to demonstrate compliance with Data Protection Legislation; and
- 2.14.3 as far as practicable include in the terms of the sub-contract terms equivalent to those set out in Schedule 6F (Provider Data Processor Agreement) of the Call-off Terms and Conditions and in any event ensure that the Sub-Contractor is engaged under the terms of a binding written agreement requiring the Sub-Contractor to:
- 2.14.3.1 process Personal Data only in accordance with the Provider's instructions as set out in the written agreement, including instructions regarding transfers of Personal Data outside the EU or to an international organisation unless such transfer is required by Law, in which case the Data Processor shall inform the Provider of that requirement before processing takes place, unless this is prohibited by law on the grounds of public interest;
 - 2.14.3.2 ensure that persons authorised to process the Personal Data on behalf of the Sub-Contractor have committed themselves to confidentiality or are under appropriate statutory obligations of confidentiality;
 - 2.14.3.3 comply at all times with obligations equivalent to those imposed on the Provider by Article 32 of the UK GDPR and equivalent provisions in the DPA 2018;
 - 2.14.3.4 impose obligations as set out in this paragraph 2.14.3 on any Sub-processor appointed by the Sub-Contractor;
 - 2.14.3.5 taking into account the nature of the processing, assist the Provider by taking appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Provider's obligation to respond to requests for exercising rights granted to individuals by Data Protection Legislation;
 - 2.14.3.6 assist the Provider in ensuring compliance with the obligations set out at Article 32 to 36 of the UK GDPR and equivalent provisions implemented into Law, taking into account the nature of processing and the information available to the Sub-Contractor;
 - 2.14.3.7 at the choice of the Provider, delete or return all Personal Data to the Provider after the end of the provision of services relating to processing, and delete existing copies unless the Law requires storage of the Personal Data;
 - 2.14.3.8 create and maintain a record of all categories of data processing activities carried out under the Sub-Contract, containing:
 - 2.14.3.8.1 the name and contact details of the Data Protection Officer (where required by Data Protection Legislation to have one);
 - 2.14.3.8.2 the categories of processing carried out on behalf of the Provider;
 - 2.14.3.8.3 where applicable, transfers of Personal Data to a third country or an international

organisation, including the identification of that third country or international organisation and, where relevant, the documentation of suitable safeguards; and

2.14.3.8.4 a general description of the technical and organisation security measures taken to ensure the security and integrity of the Personal Data processed under this Agreement;

2.14.3.9 guarantee that it has technical and organisational measures in place that are sufficient to ensure that the processing complies with Data Protection Legislation and ensures that the rights of Data Subject are protected;

2.14.3.10 allow rights of audit and inspection in respect of relevant data handling systems to the Provider or to the Authority or to any person authorised by the Provider or by the Authority to act on its behalf; and

2.14.3.11 impose on its own Sub-Contractors (in the event the Sub-Contractor further sub-contracts any of its obligations under the Sub-Contract) obligations that are substantially equivalent to the obligations imposed on the Sub-Contractor by this paragraph 2.14.

2.15 The agreement required by paragraph 2.14 must also set out:

2.15.1 the subject matter of the processing;

2.15.2 the duration of the processing;

2.15.3 the nature and purposes of the processing;

2.15.4 the type of personal data processed;

2.15.5 the categories of data subjects; and

2.15.6 the plan for return and destruction of the data once processing is complete unless the Law requires that the data is preserved.

3. Freedom of Information and Transparency

3.1 The Provider acknowledges that the Authority and the Participating Authorities are subject to the requirements of the FOIA and EIR. The Provider must assist and co-operate with the Authority and the Participating Authorities to enable them to comply with their disclosure obligations under the FOIA and EIR. The Provider agrees:

3.1.1 that this Agreement and any other recorded information held by the Provider on the Authority's behalf for the purposes of this Agreement are subject to the obligations and commitments of the Authority under FOIA and EIR;

3.1.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under FOIA is a decision solely for the Authority;

3.1.3 that where the Provider receives a request for information relating to the Services provided under this Agreement and the Provider itself is subject to FOIA or EIR, it will liaise with the Authority as to the contents of any response before a response to a request is issued and will promptly (and in any event

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- within two (2) Operational Days) provide a copy of the request and any response to the Authority;
- 3.1.4 that where the Provider receives a request for information and the Provider is not itself subject to FOIA or as applicable EIR, it will not respond to that request (unless directed to do so by the Authority) and will promptly (and in any event within 2 Operational Days) transfer the request to the Authority;
 - 3.1.5 that the Authority, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of FOIA, and regulation 16 of the EIR, may disclose information concerning the Provider and this Agreement either without consulting with the Provider, or following consultation with the Provider and having taken its views into account; and
 - 3.1.6 to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA or EIR) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of FOIA, and providing copies of all information requested by the Authority within five (5) Operational Days of that request and without charge.
- 3.2 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, or for which an exception applies under EIR, the content of this Agreement is not Confidential Information.
 - 3.3 Notwithstanding any other term of this Agreement, the Provider consents to the publication of this Agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of FOIA or for which an exception applies under EIR.
 - 3.4 In preparing a copy of this Agreement for publication under paragraph 3.3 of this Schedule 2, the Authority may consult with the Provider to inform decision-making regarding any redactions but the final decision in relation to the redaction of information will be at the Authority's absolute discretion.
 - 3.5 The Provider must assist and cooperate with the Authority to enable the Authority to publish this Agreement.

4. **Cyber Essentials**

- 4.1 The Provider has and will maintain certification under the HM Government Cyber Essentials Scheme (basic level) until such time as the Provider obtains certification under paragraph 4.2 of this Schedule 2.
- 4.2 The Provider shall, as soon as is reasonably practicable after the Commencement Date, obtain certification under the HM Government Cyber Essentials Scheme to the level of Cyber Essentials Plus and maintain such certification for the Term.

SCHEDULE 3

Specification

[Note to Bidders: The relevant Specification for the Modalities and Sub-Modalities (Document 3) will be inserted at award stage. This Schedule may be combined with Schedule 4 Tender Response Document at the award stage.]

SCHEDULE 4

Tender Response Document

[Note to Bidders: The Provider's response to any part of the ITT is intended to be inserted here at the award stage. This Schedule may be combined with Schedule 3 Specification at the award stage.]

SCHEDULE 5
Commercial Schedule

[Note to Bidders: Details of the pricing as set out in the ITT and any percentage discounts bid by the Provider in its response to the ITT will be inserted here at the award stage.]

1. PRICES

- 1.1 The Provider acknowledges that pricing under a Contract will depend on whether the Contract relates to provision of Nationally Priced Services or Locally Priced Services.

2. NATIONALLY PRICED SERVICES

- 2.1 The Provider agrees that the approach in respect of pricing under a Contract for Nationally Priced Services is on a cost per case basis which is calculated by the multiplication of actual activity delivered by the relevant price for that activity. The Provider must ensure that any Contract for Nationally Priced Services reflects the pricing approach set out in this paragraph 2.

- 2.2 Where the Provider has submitted a price per activity as part of an Award Procedure in respect of a Contract, and that price per activity has been accepted by the relevant Participating Authority, then the relevant price per activity will be the price per activity accepted by the Participating Authority. Where the Provider submits a price per activity as part of an Award Procedure in respect of a Contract, the price per activity submitted will not be higher than the relevant price per activity calculated in accordance with paragraph 2.3 of this Schedule 5.

- 2.3 Where paragraph 2.2 of this Schedule 5 does not apply, and subject to paragraph 2.4 of this Schedule 5, the relevant price per activity will be:

2.3.1 where the National Tariff sets out a National Tariff price and/or a best practice tariff and/or other non-mandatory published rates for a particular currency (a "**National Price**") and the Provider has provided a percentage discount to that National Price in Schedule 4 of this Agreement (the "**Provider's Discounted National Price**"), that Provider's Discounted National Price multiplied by the relevant Market Forces Factor (except that where the Provider has indicated in its Tender Response Document that the Provider has opted to provide the Service without application of the relevant Market Forces Factor in relation to that National Price, then the relevant Market Forces Factor will not be applied); or

2.3.2 where there is a National Price and there is no Provider's Discounted National Price, the National Price multiplied by the relevant Market Forces Factor (except that where the Provider has indicated in its Tender Response Document that the Provider has opted to provide the Service without application of the relevant Market Forces Factor in relation to that National Price, then the relevant Market Forces Factor will not be applied).

- 2.4 Where:

2.4.1 paragraph 2.2 of this Schedule 5 does not apply;

2.4.2 there is a National Price; and

2.4.3 the Provider has provided a volume discount in Schedule 4 of this Agreement (the "**Provider's Volume Discount**"),

then, in addition to containing provisions relating to any relevant Provider's Discounted National Price and/or Market Factor Forces, the Contract will contain provisions that make clear that the Provider's Volume Discount will apply if the relevant volume or spend is achieved.

- 2.5 The Provider acknowledges that:
- 2.5.1 Market Forces Factor rates are published in the National Tariff for each NHS Trust and NHS Foundation Trust;
 - 2.5.2 where the Provider is not an NHS Trust or NHS Foundation Trust, the Market Forces Factor will be based on the NHS Trust or NHS Foundation Trust which operates the closest hospital to the relevant site at which the Services are provided assessed on a basis of straight line distance. To avoid doubt, reference to hospital is reference to a hospital run by the relevant NHS Trust or NHS Foundation Trust that routinely provides NHS services to NHS funded Service Users;
 - 2.5.3 subject to paragraph 2.5.4 of this Schedule 5, at any particular time, the relevant Market Forces Factor for the purposes of determining Prices for Contracts for a site will be the value set out in the National Tariff that has effect at that particular time for the relevant NHS Trust and NHS Foundation Trust (which, if the Provider is not an NHS Trust or NHS Foundation Trust is the NHS Trust or NHS Foundation Trust determined in accordance with paragraph 2.5.2 of this Schedule 5) for that site. Subject to paragraph 2.5.4 of this Schedule 5, if activity is carried out at multiple sites under one Contract and there are different NHS Trusts or Foundation Trusts for those sites, then for the purposes of paragraph 2.5.2 of this Schedule 5 the relevant NHS Trust or NHS Foundation Trust for the purpose of working out the applicable Market Forces Factor will be the NHS Trust or NHS Foundation Trust for the site that carries out the majority of activity under that Contract; and
 - 2.5.4 the Market Forces Factor will not be used for the purposes of determining Prices for Contracts if the majority of the activity under that Contract is carried out from a mobile site (or sites) rather than a fixed site (or sites).
- 2.6 The Provider acknowledges that the National Tariff may be amended from time to time and that prices, currencies, rules and principles set out in the National Tariff may change. References in this Schedule 5 to the National Tariff are references to the edition of the National Tariff that has effect at the appropriate time. The Provider agrees that:
- 2.6.1 where the Provider has provided a percentage discount to a National Price as set out in Schedule 4 of this Agreement, that percentage discount will be applied to the National Price in the latest version of the National Tariff and the Provider's Discounted National Price will be interpreted accordingly; and
 - 2.6.2 where a Provider's Volume Discount exists, it will continue to apply notwithstanding the changes to any National Prices as a result of a change to the National Tariff.
- 2.7 The Provider agrees that where paragraph 2.2 of this Schedule 5 applies then for the purposes of a Contract which is in the form of the:
- 2.7.1 NHS Standard Contract, the accepted price per activity, where different to the relevant National Price, means there is a "Local Variation" as that term is used in Service Condition 36; and
 - 2.7.2 Sub-contract for the provision of clinical services for use with the NHS Standard Contract, the accepted price per activity will be set out in Schedule 3 of the Contract.

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- 2.8 The Provider agrees that where paragraph 2.3.1 of this Schedule 5 applies then for the purposes of a Contract which is in the form of the:
- 2.8.1 NHS Standard Contract, the relevant price as determined in accordance with this Schedule 5 will be considered a “Local Variation” as that term is used in Service Condition 36; and
 - 2.8.2 Sub-contract for the provision of clinical services for use with the NHS Standard Contract, the relevant price as determined in accordance with this Schedule 5 will be set out in Schedule 3 of the Contract.
- 2.9 The Provider agrees that where paragraph 2.3.2 of this Schedule 5 applies, then for the purposes of a Contract which is in the form of the:
- 2.9.1 NHS Standard Contract, the relevant National Price plus Market Forces Factor as referred to in this Schedule 5 will be considered the “National Price” as that term is used in Service Condition 36; and
 - 2.9.2 Sub-contract for the provision of clinical services for use with the NHS Standard Contract, the relevant National Price plus Market Forces Factor as referred to in this Schedule 5 will be set out in Schedule 3 of the Contract.
- 2.10 The Provider agrees that where paragraph 2.4 of this Schedule 5 applies then for the purposes of a Contract which is in the form of the:
- 2.10.1 NHS Standard Contract, the effect of the existence of the Provider’s Volume Discount means there is a “Local Variation” as that term is used in Service Condition 36; and
 - 2.10.2 Sub-contract for the provision of clinical services for use with the NHS Standard Contract, the Provider’s Volume Discount will be set out in Schedule 3 of the Contract.
- 2.11 The Provider agrees that, in respect of a Contract for Nationally Priced Services, no other type of Local Variation or Local Modification or other departure from the approach set out in this paragraph 2 will be agreed with a Participating Authority.
- 2.12 The Provider acknowledges that:
- 2.12.1 unbundling of National Prices (as set out in the National Tariff) is permitted in respect of a Contract provided that such unbundling keeps the total amount payable for the relevant currency within the relevant National Price; and
 - 2.12.2 arrangements for the share of unbundled prices in respect of a Contract is a matter for the Provider and the relevant Participating Authority to agree.
- 2.13 The Provider acknowledges that it is a requirement of the NHS Standard Contract that a “Local Variation” (as that term is used in the NHS Standard Contract) is submitted to NHS Improvement in accordance with the National Tariff and published in accordance with section 116(3) of the Health and Social Care Act 2012.

3. LOCALLY PRICED SERVICES

- 3.1 The Provider agrees that the approach to payment under a Contract for Locally Priced Services is on a cost per case basis which is calculated by the multiplication of actual activity delivered by the relevant price per activity. The Provider must ensure that any Contract for Nationally Priced Services reflects the approach to payment set out in this paragraph 3.
- 3.2 Subject to paragraphs 3.3 and 3.4 of this Schedule 5, the Provider agrees that, in respect of a Contract for Locally Priced Services:

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- 3.2.1 the relevant price per activity will be the price agreed between the Provider and the relevant Participating Authority which may or may not incorporate the Provider's Volume Discount (if any);
 - 3.2.2 a Market Forces Factor will not be payable in addition to the price agreed between the Provider and the relevant Participating Authority; and
 - 3.2.3 the price agreed between the Provider and the relevant Participating Authority will be determined in accordance with the provisions of the National Tariff that apply to local pricing.
 - 3.3 Where Contracts for Locally Priced Services include elements covered by a relevant National Price, the National Price must be adhered to in relation to those elements unless the relevant National Price is subject to a Provider's Discounted National Price in which case the relevant Provider's Discounted National Price will apply instead.
 - 3.4 Where the National Tariff is updated to include National Prices for Services or elements of Services that did not previously have a National Price and are being provided under one or more Contracts for Locally Priced Services, the Provider agrees that the relevant Services or elements of Services will be priced in accordance with the relevant National Prices. Where this occurs, the National Price will apply to the relevant Services or elements of Services from the date that the National Price applies

4. INTERPRETATION

- 4.1 In this Schedule 5 the following words shall have the following meanings unless the context requires otherwise:

"Locally Priced Services"	Services that comprise activity that has not (either in whole or in part) been allocated a National Tariff price and/or a best practice tariff and other non-mandatory published rates
"Market Forces Factor"	the market forces factor referred to in the National Tariff;
"National Price"	has the meaning given in paragraph 2.3.1 of this Schedule 5;
"Nationally Priced Services"	Services that comprise activity that has been allocated a National Tariff price and/or a best practice tariff and other non-mandatory published rates;
"National Tariff"	the national tariff, as published by Monitor under section 116 of the Health and Social Care Act 2012 (including any rules included under section 116(4)(b) of the Health and Social Care Act 2012), as applicable at the time at which the relevant Service is provided
"Provider's Discounted National Price"	has the meaning given in paragraph 2.3.1 of this Schedule 5; and
"Provider's Volume Discount"	has the meaning given in paragraph 2.4.3 of this Schedule 5.

SCHEDULE 6

Call-off Procedure

1. Call-off Procedure

- 1.1 The parties acknowledge and agree that the procurement of this Agreement and the Community Diagnostic Hubs Framework was undertaken pursuant to Section 7 of Part 2 of the Public Contracts Regulations 2015 (Social and Other Specific Services). For the avoidance of doubt, neither this Agreement or the Community Diagnostic Hubs Framework are subject to Regulation 33 (Procurement Framework Agreements) or 34 (Dynamic Purchasing Systems: General Features) of the Public Contracts Regulations 2015. If one or more Participating Authorities decides to call-off Services and enter into a Contract under this Agreement, it will award the Contract in accordance with the procedures in this Schedule 6.
- 1.2 The Provider acknowledges and agrees that a Contract will comprise as a minimum the Call-off Terms and Conditions which shall be the latest published version of:
- 1.2.1 where the Participating Authority putting in place a Contract under the Community Diagnostic Hubs Framework is a Clinical Commissioning Group or the NHS Commissioning Board (or any successor bodies of any of those entities), the NHS Standard Contract (Full Length); and
- 1.2.2 where the Participating Authority putting in place a Contract under the Community Diagnostic Hubs Framework is an NHS Trust or an NHS Foundation Trust (or any successor bodies of any of those entities), the Template sub-contract for the provision of clinical services for use with the NHS Standard Contract (Full Length).
- 1.3 However, Participating Authorities will be permitted to amend these terms as appropriate to the specific scheme or project being procured under the Community Diagnostic Hubs Framework.
- 1.4 To avoid any doubt:
- 1.4.1 it is permissible for more than one Participating Authority to enter into a single Contract called off under this Agreement and references to a Participating Authority in this Schedule 6 may be read as references to more than one Participating Authority; and
- 1.4.2 references in this Schedule 6 to Framework Providers will, where applicable, apply to the Provider.
- 1.5 Subject to paragraph **Error! Reference source not found.** of this Schedule 6, Participating Authorities shall award any Contracts entered into under this Agreement in accordance with this schedule.
- 1.6 The Provider shall be fully responsible for all its costs of responding to invitations by Participating Authorities to participate in Award Procedures. The Provider acknowledges and agrees that in no event shall any Participating Authority have any liability for such costs, in whole or in part, at any time and even where a Participating Authority decides not to appoint any Provider for any reason.

1A. Direct Awards and the System

- 1A.1 The Authority shall implement and allow Participating Authorities to access an online system that allows Participating Authorities to apply automatic filters to the information provided by the Provider pursuant to the tender procedure for this Agreement in order to identify the Framework Provider/s that are capable of supplying the Services required by the relevant Participating Authority (the "**System**").

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- 1A.2 The filter functions of the System shall apply the following objective criteria to enable Participating Authorities to filter Framework Providers capable of meeting their needs by identifying:
- 1A.2.1 Framework Providers capable of delivering all of the Sub-Modalities required by the relevant Participating Authority in relation to a Contract;
 - 1A.2.2 within the required geographical area in relation to access to the relevant Services by relevant Service Users; and
 - 1A.2.2 Framework Providers with existing facilities or premises available in order to deliver the Services required by the Participating Authority in the required timeframes.
- 1A.3 Where the System identifies only one Framework Provider capable of meeting the Participating Authority's needs based upon the above objective criteria, the Participating Authority may follow the Award Procedure with only that single Framework Provider.
- 1A.4 Where the System identifies more than one Framework Provider the Participating Authority may follow the Award Procedure with only one identified Provider but only where the Participating Authority is capable of identifying (on information available through the Framework or publicly available), that such relevant Provider is the only Provider from the list identified which is objectively capable of meeting its needs for technical reasons or for reasons connected with the protection of exclusive rights.
- 1A.5 Where the System identifies more than one Framework Provider but 1A.4 does not apply, the Participating Authority shall undertake the Award Procedure set out below with all identified Framework Providers.
- 1A.6 Where a Participating Authority initiates an Award Procedure with more than one Framework Provider but receives no tenders or suitable tenders it may negotiate directly and further with one or more Providers provided that the initial Statement of Requirements is not substantially altered from that initially produced.

2. **Award Procedure**

- 2.1 In awarding a Contract under this Agreement, a Participating Authority shall:
- 2.1.1 develop a Statement of Requirements setting out its requirements for the Services;
 - 2.1.2 amend, add to or refine the minimum Call-off Terms and Conditions to reflect its requirements (except where this could result in a substantial modification (as defined in Regulation 72 of the Public Contracts Regulations 2015) to the scope of the Community Diagnostic Hubs Framework having regard to the Contract Notice and Specification);
 - 2.1.3 invite responses to its Statement of Requirements and in particular:
 - (a) invite the Framework Provider/s identified in accordance with section 1A above and the System to submit a response ("the **Response Document**") for each proposed Contract to be awarded, such invitation to be by giving written notice by email or through an e-tendering portal to the relevant representative of each Framework Provider;
 - (b) set a time limit for the receipt by it of the Response Documents which takes into account factors such as the complexity of the subject matter of the proposed Contract and the time needed to submit the Response Document;
 - (c) keep each Response Document confidential until the time

-
- limit set out for the return of Response Documents has expired; and
- (d) notify the Framework Provider/s identified if it intends to evaluate whether the relevant Framework Providers' continue to meet the Financial Standing Requirements or such other financial standard requirements as the Participating Authority may impose for the proposed Contract.
- 2.1.4 apply the Award Criteria and, if applicable, any further financial standing requirements to compliant Response Documents submitted through the Procedure as the basis of its decision to award a Contract for its requirements;
- 2.1.5 award its Contract to the successful Framework Provider or Framework Providers in accordance with paragraph 4 of this Schedule 6, such Contract to:
- (a) include the requirements as set out in the relevant Statement of Requirements;
- (b) incorporate the successful Framework Provider's Response Document;
- (c) state the Prices payable in accordance with the Response Document submitted by the successful Framework Provider; and
- (d) incorporate the Call-off Terms and Conditions (as may be amended or refined by the Commissioner in accordance with paragraph 2.1.2 of this Schedule 6) applicable to the Services; and
- 2.1.6 (at the Participating Authority's sole discretion) provide unsuccessful Framework Providers with feedback (whether written or oral) as to the reasons why they were unsuccessful.
- 2.2 If a Framework Provider decides to respond to the Participating Authority's invitation to tender issued in accordance with paragraph 2.1.3 of this Schedule 6, then the Framework Provider shall in writing, by the time and date specified by the Participating Authority and in accordance with the method specified by the Participating Authority in that invitation to tender, provide the Participating Authority with its Response Document made in respect of the relevant Statement of Requirements, such Response Document to include, as relevant:
- 2.2.1 an email response subject line to comprise unique reference number and Provider name, so as to clearly identify the Provider; and
- 2.2.2 any information requested in the invitation to tender issued by the Participating Authority.
- 2.3 The Framework Provider agrees that:
- 2.3.1 a Response Document submitted by it in relation to an Award Procedure held pursuant to this paragraph 2 shall remain open for acceptance by the Participating Authority for ninety (90) Operational Days (or such other period specified in the invitation to tender issued by the Participating Authority in accordance with the Call-off Procedure); and
- 2.3.2 a Response Document submitted by it is made and will be made in good faith and that it has not fixed or adjusted and will not fix or adjust the price offered by or in accordance with any agreement or arrangement with any

other person. The Framework Provider certifies that it has not and undertakes that it will not:

- (a) communicate to any person other than the person inviting these tenders the amount or approximate value within of the Response Document, except where the disclosure, in confidence, of the approximate amount within the Response Document was necessary to obtain quotations required for the preparation of the Response Document; and
- (b) enter into any arrangement or agreement with any other person that he or the other person(s) shall refrain from submitting a Response Document or as to the value set out within any Response Document to be submitted.

3. **No Award**

3.1 Notwithstanding the fact that the Participating Authority has conducted an Award Procedure, the Participating Authority shall be entitled at all times to decline to make an award for its requirements. Nothing in this Agreement shall oblige a Participating Authority to award any Contract.

4. **Call-off Award Procedure and Contract formation**

4.1 If a Participating Authority wishes to award a Contract to a Framework Provider, the Participating Authority will send the completed Call-off Terms and Conditions to the Framework Provider electronically or otherwise with an indication of how the Framework Provider should sign the documents. On receipt of the completed Call-off Terms and Conditions the Provider shall promptly sign the documents (such signing to be carried out by a person authorised to contractually bind the Framework Provider) and return them (in the manner specified by the Participating Authority) to the Participating Authority.

4.2 On receipt of the signed documents from the Framework Provider, the Commissioner shall:

4.2.1 sign and date the documents; and then

4.2.2 send (including by electronic means) a copy of the signed and dated documents to the Framework Provider within two (2) Operational Days and a Contract shall be formed.

SCHEDULE 7

Call-Off Terms and Conditions

1. CALL-OFF TERMS AND CONDITIONS

- 1.1 The Provider acknowledges and agrees that the Call-off Terms and Conditions shall be the latest published¹ version of:
- 1.1.1 where the Participating Authority putting in place a Contract under the Community Diagnostic Hubs Framework is a Clinical Commissioning Group or the NHS Commissioning Board (or any successor bodies of any of those entities), the NHS Standard Contract (Full Length); and
 - 1.1.2 where the Participating Authority putting in place a Contract under the Community Diagnostic Hubs Framework is an NHS Trust or an NHS Foundation Trust (or any successor bodies of any of those entities), the Template sub-contract for the provision of clinical services for use with the NHS Standard Contract (Full Length).
- 1.2 The Provider must not:
- 1.2.1 request to a Participating Authority that a locally-designed or Provider-generated contract or service level agreement for healthcare services is put in place instead of the Call-off Terms and Conditions referred to in paragraph 1.1 of this Schedule 7; or
 - 1.2.2 request to a Participating Authority to vary any provision of the NHS Standard Contract (Full Length) except as permitted by General Condition 13 (Variations) of the NHS Standard Contract (Full Length); or
 - 1.2.3 seek to override any aspect of the Call-off Terms and Conditions referred to in paragraph 1.1 of this Schedule 7.
- 1.3 The Provider acknowledges that a Participating Authority may, when the Participating Authority is populating the Particulars of the Call-off Terms and Conditions, include requirements that the Provider undertakes activity reporting as set out in the Activity Reporting Guidance document set out an Annex A of this Schedule 7. Where the Participating Authority intends to include such activity reporting, the Provider agrees that it:
- 1.3.1 will not refuse to accept the inclusion of such activity reporting in the Call-off Terms and Conditions;
 - 1.3.2 will assist the Participating Authority in including such activity reporting in the Call-off Terms and Conditions such that the Call-off Terms and conditions reflect the intentions with regards to activity reporting as set out in the Activity Reporting Guidance document set out an Annex A of this Schedule 7; and
 - 1.3.3 will comply with the activity reporting requirements where they are included in a Contract.

¹ The latest published versions of these documents can be accessed via <https://www.england.nhs.uk/nhs-standard-contract/>

Schedule 7
Call-off Terms and Conditions
Annex 1
Activity Reporting Guidance

[Note to Bidders: The Activity Reporting Guidance Note set out in Annex 2 of the ITT will be inserted here at the award stage.]

SCHEDULE 8
Variation Form

Variation Form No:

.....

BETWEEN:

[insert name of Authority] ("the Authority")

and

[insert name of Provider] ("the Provider")

1. This Agreement is varied as follows and shall take effect on the date signed by both Parties:

[Insert details of the Variation]

2. Words and expressions in this Variation shall have the meanings given to them in the Agreement.

3. The Agreement, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the Authority

Signature

.....

Date

.....

Name (in Capitals)

.....

Address

.....

.....

Signed by an authorised signatory to sign for and on behalf of the Provider

Signature

.....

Date

.....

Name (in Capitals)

.....

Address

.....

.....

SCHEDULE 9

Guarantee

[INSERT THE NAME OF THE GUARANTOR]

- AND -

NATIONAL HEALTH SERVICE COMMISSIONING BOARD

DEED OF GUARANTEE

DEED OF GUARANTEE

THIS DEED OF GUARANTEE is made the day of 20[]

BETWEEN:

- (1) [Insert the name of the Guarantor] [a company incorporated in England and Wales] with number [insert company no.] whose registered office is at [insert details of the Guarantor's registered office here] [OR] [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] (“**Guarantor**”); in favour of
- (2) **NATIONAL HEALTH SERVICE COMMISSIONING BOARD** of Quarry House, Quarry Hill, Leeds LS2 7UE which uses the operational name NHS England (“**NHS England**”)

WHEREAS:

- (A) The Guarantor has agreed to guarantee all of the Provider's obligations under each of the Guaranteed Agreements.
- (B) It is the intention of the Parties that this document be executed and take effect as a deed.

Now in consideration of each of the Beneficiaries entering into the Guaranteed Agreements, the Guarantor hereby agrees with the Beneficiaries as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Deed of Guarantee:

1.1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreements;

1.1.2 the words and phrases below shall have the following meanings:

“Agreement” means the community diagnostic hubs framework agreement between NHS England and the Provider dated [date];

“Beneficiary” means NHS England and each of the Participating Authorities that is party to any of the Contracts with the Provider;

“Contracts” has the meaning given in the Agreement;

"Guaranteed Agreements" means the Agreement and any Contracts entered into between a Participating Authority and the Provider;

"Guaranteed Obligations" means all obligations and liabilities of the Provider to the Beneficiaries under the Guaranteed Agreements together with all obligations owed by the Provider to the Beneficiaries that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreements;

“Participating Authority” has the meaning given in the Agreement;

"Provider" means [insert details of the Provider that is party to the Agreement as set out in the Agreement];

"Services" has the meaning given to it in the Guaranteed Agreements;

- 1.1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreements) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;
- 1.1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
- 1.1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 1.1.6 the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
- 1.1.7 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 1.1.8 unless the context otherwise requires, any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 1.1.9 references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and
- 1.1.10 references to liability are to include any liability whether actual, contingent, present or future.

2. **GUARANTEE AND INDEMNITY**

- 2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to each Beneficiary to procure that the Provider duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Provider to each Beneficiary.
- 2.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the relevant Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Provider to that Beneficiary under or in connection with the relevant Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.
- 2.3 If at any time the Provider shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the relevant Beneficiary that, upon first demand by that Beneficiary it shall, at the cost and expense of the Guarantor:
 - 2.3.1 fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to that Beneficiary in respect of the Guaranteed Obligations and liable as if the relevant Guaranteed Agreement had been entered into directly by the Guarantor and that Beneficiary; and

2.3.2 as a separate and independent obligation and liability, indemnify and keep that Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements), of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Provider to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Provider under the relevant Guaranteed Agreement.

2.4 As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiaries indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which any Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Provider's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

3. **OBLIGATION TO ENTER INTO A NEW CONTRACT**

3.1 If any of the Guaranteed Agreements is terminated for any reason, whether by the relevant Beneficiary or the Provider, or if any of the Guaranteed Agreements is disclaimed by a liquidator of the Provider or the obligations of the Provider are declared to be void or voidable for any reason, then the Guarantor will, at the request of the relevant Beneficiary enter into a contract with that Beneficiary in terms mutatis mutandis the same as the relevant Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the relevant Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the relevant Guaranteed Agreement with that Beneficiary.

4. **DEMANDS AND NOTICES**

4.1 Any demand or notice served by any Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

4.1.1 [Address of the Guarantor in England and Wales]

4.1.2 [Facsimile Number]

4.1.3 For the Attention of [insert details]

or such other address in England and Wales or facsimile number as the Guarantor has from time to time notified to all of the Beneficiaries in writing in accordance with the terms of this Deed of Guarantee as being an address or facsimile number for the receipt of such demands or notices.

4.2 Any notice or demand served on the Guarantor or any Beneficiary under this Deed of Guarantee shall be deemed to have been served:

4.2.1 if delivered by hand, at the time of delivery; or

4.2.2 if posted, at 10.00 a.m. on the second Operational Day after it was put into the post; or

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- 4.2.3 if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Operational Day, and in any other case at 10.00 a.m. on the next Operational Day.
- 4.3 In proving service of a notice or demand on the Guarantor or any Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.
- 4.4 Any notice purported to be served on any Beneficiary under this Deed of Guarantee shall only be valid when received in writing by that Beneficiary.

5. **BENEFICIARY'S PROTECTIONS**

- 5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Provider and any Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of any Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by any Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by any Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.
- 5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
- 5.2.1 it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Provider of the Guaranteed Obligations or by any omission or delay on the part of any Beneficiary in exercising its rights under this Deed of Guarantee;
- 5.2.2 it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Provider, any Beneficiary, the Guarantor or any other person;
- 5.2.3 if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Provider for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
- 5.2.4 the rights of the Beneficiaries against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiaries.
- 5.3 The Beneficiaries shall be entitled to exercise their rights and to make demands on the Guarantor under this Deed of Guarantee as often as they wish and the making of a demand (whether effective, partial or defective) in respect of the breach or non-performance by the Provider of any Guaranteed Obligation shall not preclude the Beneficiaries from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
- 5.4 No Beneficiary shall be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Provider or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Provider or any third party, or to take any action whatsoever against the Provider or the

Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by any Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.

- 5.5 Each Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as that Beneficiary deems expedient.
- 5.6 Any waiver by any Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
- 5.7 Any release, discharge or settlement between the Guarantor and any Beneficiary shall be conditional upon no security, disposition or payment to that Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled that Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The relevant Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to that Beneficiary from the Guarantor for such period as that Beneficiary may determine.

6. GUARANTOR INTENT

- 6.1 Without prejudice to the generality of Clause 5, the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any Guaranteed Agreement and any associated fees, costs and/or expenses.

7. RIGHTS OF SUBROGATION

- 7.1 The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Provider and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:
- 7.1.1 of subrogation and indemnity;
- 7.1.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Provider's obligations; and
- 7.1.3 to prove in the liquidation or insolvency of the Provider,

only in accordance with the relevant Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for that Beneficiary and pay the same to that Beneficiary on first demand. The Guarantor hereby acknowledges that it has not taken any security from the Provider and agrees not to do so until the relevant Beneficiary receives all monies payable hereunder and will hold any security taken in breach of this Clause 7 on trust for that Beneficiary.

8. DEFERRAL OF RIGHTS

- 8.1 Until all amounts which may be or become payable by the Provider under or in connection with any Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of all of the Beneficiaries, it will not:
- 8.1.1 exercise any rights it may have to be indemnified by the Provider;

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- 8.1.2 claim any contribution from any other guarantor of the Provider's obligations under any Guaranteed Agreement;
 - 8.1.3 take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiaries under any Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, any Guaranteed Agreement;
 - 8.1.4 demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Provider; or
 - 8.1.5 claim any set-off or counterclaim against the Provider.
- 8.2 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the relevant Beneficiary and applied in or towards discharge of its obligations to that Beneficiary under this Deed of Guarantee.

9. REPRESENTATIONS AND WARRANTIES

- 9.1 The Guarantor hereby represents and warrants to the Beneficiaries that:
- 9.1.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
 - 9.1.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
 - 9.1.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3 have been duly authorised by all necessary corporate action and do not contravene or conflict with:
 - 9.1.4 the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
 - 9.1.5 any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
 - 9.1.6 the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;
 - 9.1.7 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
 - 9.1.8 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

10. PAYMENTS AND SET-OFF

- 10.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except

for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that each Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.

10.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

10.3 The Guarantor will reimburse each Beneficiary for all legal and other costs (including VAT) incurred by that Beneficiary in connection with the enforcement of this Deed of Guarantee.

11. **GUARANTOR'S ACKNOWLEDGEMENT**

11.1 The Guarantor warrants, acknowledges and confirms to each Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of that Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

12. **ASSIGNMENT**

12.1 The Beneficiaries shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.

12.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

13. **SEVERANCE**

13.1 If any provision of this Deed of Guarantee 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 hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

14. **THIRD PARTY RIGHTS**

14.1 A person who is not a Party to this Deed of Guarantee or a Beneficiary shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. For the avoidance of doubt, any one or more Beneficiaries shall be entitled to enforce their rights under this Deed of Guarantee as though they were a Party to it. This Clause 14 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

15. **GOVERNING LAW**

15.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.

15.2 The Guarantor irrevocably agrees for the benefit of each Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.

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- 15.3 Nothing contained in this Clause 15 shall limit the rights of any Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 15.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause 15 on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by

[Insert name of the Guarantor] acting by [Insert/print names]

Director

Director/Secretary

EXECUTED as a DEED by affixing the common seal of the
NATIONAL HEALTH SERVICE COMMISSIONING BOARD²

[affix seal]

in the presence of:

.....
(print name of authorised signatory)

.....
(signature of authorised signatory)

.....
(print name of authorised signatory)

.....
(signature of authorised signatory)

² Appropriate form of execution to be inserted as per NHS England's requirements.

SCHEDULE 10
Material Sub-Contractors

[Note to Bidders: This schedule will be populated prior to award as appropriate.]