



Our Future Health

Cloud Infrastructure, Trusted Research Environment and Billing Procurement – ITT Terms and Conditions

Version: 4 March 2022

Dated: 2022

1. Our Future Health
2. [Name of Supplier]

Agreement relating to Lot 2 [and 3 - DELETE IF LOT 3 IS AWARDED TO A LOT 1 BIDDER] for the provision of Trusted Research Environment (TRE) [and Researcher Billing - DELETE IF LOT 3 IS AWARDED TO A LOT 1 BIDDER] services

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THIS AGREEMENT is made on

[DATE] 2022

BETWEEN

- (1) Our Future Health Ltd (registered number 12212468) whose registered office is at 2 New Bailey, 6 Stanley Street, Salford, Greater Manchester, United Kingdom, M3 5GS (the “Customer”); and
- (2) [], [a company incorporated in England with registered number []] [whose registered office is at []] (the “Supplier”)

(each a “Party” and together the “Parties”).

BACKGROUND / INTRODUCTION

- a. On [date] the Customer submitted a contract notice to the UK Government’s Find a Tender Service (FTS) under which this Agreement for the provision of Trusted Research Environment (lot 2) [and Researcher Billing (lot 3) - DELETE IF LOT 3 IS AWARDED TO A LOT 1 BIDDER] services has been procured. Under the above referred to contract notice a number of lots have been procured and the Supplier has been appointed to lot 2 [and 3 - DELETE IF LOT 3 IS AWARDED TO A LOT 1 BIDDER].
- b. The Customer wishes to receive the Services from the Supplier, and the Supplier wishes to provide the Services to the Customer, on and subject to the terms and conditions of this Agreement.
- c. The Supplier is a leading provider of trusted research environment software [and researcher billing services - DELETE IF LOT 3 IS AWARDED TO A LOT 1 BIDDER] and has experience in the supply, implementation and ongoing management thereof.
- d. On the basis of the Supplier’s response to the contract notice and a subsequent tender process, the Customer selected the Supplier as its preferred provider of a Trusted Research Environment [and Researcher Billing services - DELETE IF LOT 3 IS AWARDED TO A LOT 1 BIDDER].

SECTION A: PRELIMINARIES

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words and expressions have the following meanings:

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| “Achieve” | <ol style="list-style-type: none"> (a) in respect of a Test, to successfully pass a Test without any variance or non-conformity of the deliverables from the applicable requirements, as set out in Schedule 5 (Testing Procedure); and (b) in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone in accordance with the provisions of Schedule 5 (Testing Procedures), |
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and “Achieved” and “Achievement” shall be construed accordingly

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| “Affiliate” | in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time |
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“Agreement”	this written agreement, including the Schedules and Annexes as varied, novated, supplemented, amended, or replaced from time to time in accordance with its terms
“Applicable Laws”	all laws, regulations, regulatory requirements and codes of practice of any relevant jurisdiction, as amended and in force from time to time
“Anti-Slavery Laws”	any and all laws anywhere in the world which relate to anti-slavery or servitude, anti-forced or compulsory labour and/or anti-human trafficking, including the Modern Slavery Act 2015
“Assets”	all assets and rights used by the Supplier to provide the Services in accordance with this Agreement but excluding Customer Assets
“ATP Milestone”	the Milestone linked to Authority to Proceed for the relevant Services set out in the Implementation Plan
“Authority to Proceed” or “ATP”	the authorisation to the Supplier to commence the provision of the relevant Services to the Customer, provided by the Customer in the form of a Milestone Achievement Certificate in respect of the ATP Milestone
“Background IPRs”	Supplier Background IPRs and Third Party IPRs
“CEDR”	the Centre for Effective Dispute Resolution
“Change”	any change to this Agreement
“Change in Law”	any change in Law which impacts on the performance of the Services which comes into force after the Commencement Date
“Change Control Procedure”	the procedure set out in clause 11 (Change)
“Change Request”	has the meaning given in clause 11.2.1 (Change)
“Change Request Information”	has the meaning given in clause 11.3 (Change)
“Charges”	the charges for the provision of the Services and access to and use of the Platform set out in or otherwise calculated in accordance with Schedule 6 (Charges and Invoicing), including (unless otherwise specified) any Milestone Payments and Service Charges
“Cloud Infrastructure Provider”	the provider(s) of cloud infrastructure services to the Customer from time to time, including as at the date of this Agreement [INSERT SUPPLIER NAME] and as shall be notified by the Customer to the Supplier from time to time;
“Collaborating Supplier”	has the meaning given in the Collaboration Agreement
“Collaboration Agreement”	the agreement set out in Schedule 9 that must be executed before the Commencement Date, which requires the Supplier and any

Collaborating Supplier to work proactively and in good faith with each other, and to cooperate and share information to enable the efficient operation and delivery of the Services to the Customer

“Confidential Information”

- (a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to:
 - (i) the Disclosing Party Group; or
 - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party Group;
- (b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient’s attention or into the Recipient’s possession in connection with this Agreement;
- (c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and
- (d) Information derived from any of the above,

but not including any Information which:

- (i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
- (ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient’s knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
- (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality;
- (iv) was independently developed without access to the Confidential Information; or
- (v) relates to the Supplier’s performance under this Agreement

“Commencement Date”

the date on which this Agreement commences, which is **[INSERT]**

“Contract Performance Point” or “CPP” Milestone

a contract performance point as set out in the Implementation Plan, being the Milestone at which the Supplier has demonstrated that the Supplier Solution, Platform and Services are working satisfactorily in their operating environment in accordance with Schedule 5 (Testing Procedures)

“Contract Year”	(a) a period of twelve (12) months starting on the Commencement Date; or (b) thereafter a period of twelve (12) months starting on each anniversary of the Commencement Date, provided that the final Contract Year shall end on the expiry or termination of the Term
“Control”	the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “Controls” and “Controlled” shall be interpreted accordingly
“Critical Performance Failure”	(a) the Supplier accruing [in aggregate twenty-five (25) or more Service Points] (in terms of the number of points allocated) in any period of six (6) months; or (b) the Supplier accruing Service Credits which meet or exceed the Service Credit Cap
“CRTPA”	the Contracts (Rights of Third Parties) Act 1999
“Customer Assets”	Customer Materials, Customer infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to the Customer and which is or may be used in connection with the provision or receipt of the Services
“Customer Background IPRs”	(a) IPRs owned by the Customer before the Commencement Date, including IPRs contained in any of the Customer's Know-How, documentation, processes and procedures; and/or (b) IPRs created by the Customer independently of this Agreement but excluding IPRs owned by the Customer subsisting in Customer Software
“Customer Cause”	any material breach by the Customer of any of the Customer Responsibilities, except to the extent that such breach is: (a) the result of any act or omission by the Customer to which the Supplier has given its prior consent; or (b) caused by the Supplier, any Subcontractor or any Supplier Personnel
“Customer Data”	(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these), which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Supplier by or on behalf of the Customer; and/or (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; and/or (b) data which is Processed and/or generated by Users, including the code, analysis and tools entered or uploaded

by Users and their results data, and relevant derived variables which they are required to return to the Customer; and / or

- (c) any Personal Data for which the Customer or one or more individual User(s) is the Controller

“Customer Materials”	<p>Customer Data together with any materials, documentation, information, programs and codes supplied by the Customer to the Supplier, the IPRs in which:</p> <ul style="list-style-type: none"> (a) are owned or used by or on behalf of the Customer; and (b) are or may be used in connection with the provision or receipt of the Services, <p>but excluding any Project Specific IPRs, Specially Written Software, Supplier Software, Third Party Software and Documentation relating to Supplier Software or Third Party Software</p>
“Customer Premises”	premises owned, controlled or occupied by the Customer and/or any which are made available for use by the Supplier or its Subcontractors for provision of the Services (or any of them)
“Customer Representative”	the representative appointed by the Customer pursuant to clause 12.7 (Representatives)
“Customer Requirements”	the requirements of the Customer set out in Schedules 1 (Specification and Supplier Solution), 2 (Performance Levels) and 7 (Exit Management)
“Customer Responsibilities”	the responsibilities of the Customer set out in Schedule 3 (Customer Responsibilities)
“Customer Software”	software which is owned by or licensed to the Customer (other than under or pursuant to this Agreement) and which is or will be used by the Supplier for the purposes of providing the Services
“Customer System”	the Customer’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Customer or the Supplier in connection with this Agreement which is owned by the Customer or licensed to it by a third party and which interfaces with the Platform and / or the Supplier System or which is necessary for the Customer to receive the Services
“Data Protection Laws”	all laws and rules, policies, guidance or recommendations issued by any governmental, statutory or regulatory body and any industry code of conduct or guideline, in each case relating to data protection, the processing of personal data and privacy and in force from time to time; and references to “Controller”, “Data Subjects”, “Personal Data”, “Process”, “Processed”, “Processing” and “Processor” have the meanings set out in, and will be interpreted in accordance with, such laws, rules, policies, guidance, recommendations, codes of conduct and guidelines
“Data Security Incident”	<ul style="list-style-type: none"> (a) a breach of security leading to the actual or “near miss” accidental or unlawful destruction, loss, alteration,

	<p>unauthorised disclosure of, or access to, Customer Data transmitted, stored or otherwise processed; or</p> <p>(b) a discovery or reasonable suspicion that there is a vulnerability in any technological measure used to protect any Customer Data that has previously been subject to a breach within the scope of limb (a) above, which may result in exploitation or exposure of that Customer Data; or</p> <p>(c) any defect or vulnerability with the potential to impact the ongoing resilience, security and/or integrity of systems Processing Customer Data</p>
“Day Rates”	the day rates set out in the Annex to Schedule 6 (Charges and Invoicing)
“Deductions”	any Service Credits or any other deduction which is paid or payable to the Customer under this Agreement
“Default”	<p>any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement, in the case of:</p> <p>(a) the Customer, of its employees, servants, agents; or</p> <p>(b) the Supplier, of its Subcontractors or any Supplier Personnel,</p> <p>in connection with or in relation to the subject matter of this Agreement and in respect of which such Party is liable to the other</p>
“Delay”	a delay in the Achievement of a Milestone by its Milestone Date; or a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan
“Delay Deduction Period”	the period of ninety (90) days commencing on the relevant Milestone Date
“Delay Payment”	the amounts payable by the Supplier to the Customer in respect of a Delay in Achieving a Key Milestone as specified in Schedule 6 (Charges and Invoicing)
“Deliverable”	an item or feature (including all components of the Platform) delivered or to be delivered by the Supplier at or before a Milestone Date or at any other stage during the performance of this Agreement
“Detailed Implementation Plan”	the plan developed and revised from time to time in accordance with Paragraphs 3 and 4 of Schedule 4 (Implementation Plan)
“Disclosing Party”	has the meaning given in clause 19.1 (Confidentiality)
“Disclosing Party Group”	<p>(a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and</p> <p>(b) where the Disclosing Party is the Customer, the Customer and any with which the Customer or the Supplier interacts in connection with this Agreement</p>

“Dispute”	any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Services or any matter where this Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure
“Dispute Notice”	has the meaning given in clause 36.1.1 (Disputes)
“Dispute Resolution Procedure”	the dispute resolution procedure set out in clause 36 (Disputes)
“Documentation”	<p>descriptions of the Services and the Platform, relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:</p> <ul style="list-style-type: none"> (a) is required to be provided by the Supplier to the Customer under this Agreement; (b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Customer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide Services; (c) is required by the Supplier in order to provide the Services; and/or (d) has been or shall be generated for the purpose of providing the Services
“Due Diligence Information”	any information supplied to the Supplier by or on behalf of the Customer prior to the Commencement Date
“Employee Liabilities”	<p>all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:</p> <ul style="list-style-type: none"> (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments; (b) unfair, wrongful or constructive dismissal compensation; (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay; (d) compensation for less favourable treatment of part-time workers or fixed term employees;

- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract or statute or otherwise;
- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

“Employment Regulations”	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced
“End User Agreement”	an agreement between the Supplier and / or the Cloud Infrastructure Provider and a User on the End User Terms
“End User Charges”	the fees payable by Users under an applicable End User Agreement for use of the services provided by the Cloud Infrastructure Provider, [calculated in accordance with Schedule 6 (Charges and Invoicing)] DELETE IF LOT 3 IS AWARDED TO A LOT 1 BIDDER
“End User Terms”	the terms for access to the Platform and use of the services provided by the Cloud Infrastructure Provider by the Users as referred to in clause 5.10 (Users)
“Estimated Year 1 Charges”	the estimated Charges payable by the Customer and Users during the first Contract Year, as set out in Schedule 6 (Charges and Invoicing)
“Estimated Initial Service Charges”	the estimated Service Charges payable by the Customer during the period of twelve (12) months from the first Operational Service Commencement Date, as set out in Schedule 6 (Charges and Invoicing)
“Exit Charges”	the charges made in accordance with Schedule 6 (Charges and Invoicing) in respect of provision of the Termination Services
“Exit Management”	services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Customer and/or a Replacement Supplier, as set out or referred to in Schedule 7 (Exit Management)
“Exit Plan”	the plan produced and updated by the Supplier during the Term in accordance with clause 28.2 (Exit Management) and Schedule 7 (Exit Management)
“Extension Period”	a period of twelve (12) months from the end of the Initial Term or any previous Extension Period, as applicable
“Force Majeure Event”	any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from

	acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, fire, flood, storm or earthquake, or disaster, but excluding: <ul style="list-style-type: none"> (a) any industrial dispute relating to the Supplier or the Supplier Personnel; (b) any other failure in the Supplier's or a Subcontractor's supply chain
"Good Industry Practice"	at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like the Customer, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws
"Help Desk"	has the meaning given in Schedule 2 (Performance Levels)
"Implementation Plan"	the Outline Implementation Plan or (if and when approved by the Customer pursuant to Paragraph 3 of Schedule 4 (Implementation Plan)) the Detailed Implementation Plan as updated in accordance with Paragraph 4 of Schedule 4 (Implementation Plan) from time to time
"Implementation Services"	the implementation services described as such in the Specification
"Implementation Services Commencement Date"	the date on which the Supplier is to commence provision of the first of the Services, being [INSERT DATE]
"Incident"	any unplanned interruption which significantly impairs the ability of the Supplier to supply the Platform and/or perform the Services (in whole or in part) in accordance with this Agreement
"Indemnified Costs"	all costs (on a full indemnity basis) including legal and other professional costs and costs of enforcement
"Information"	all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form)
"Initial Term"	the period of three (3) years from and including the Commencement Date
"Insolvency Event"	<ul style="list-style-type: none"> (a) the other Party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; (b) the other Party commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any

of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;

- (c) a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;
- (d) a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of the other Party's assets and such attachment or process is not discharged within fourteen (14) days;
- (e) the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (f) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other Party other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over the other Party; or
- (h) any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above

“Intellectual Property Rights” and “IPR”

- (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trademarks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;
- (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- (c) all other rights having equivalent or similar effect in any country or jurisdiction

“IPRs Claim”

any claim against the Customer of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that the Customer of any Relevant IPRs, or the use of Customer Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this

	Agreement or for a purpose not reasonably to be inferred from the Specification or the provisions of this Agreement
“IT Environment”	the Customer System and the Supplier System
“Key Milestone”	the Milestones identified in the Implementation Plan as key milestones and in respect of which Delay Payments may be payable in accordance with Paragraph 1 of Part B of Schedule 6 (Charges and Invoicing) if the Supplier fails to Achieve the Milestone Date in respect of such Milestone
“Key Performance Indicator” or “KPI”	the key performance indicators set out in Schedule 2 (Performance Levels)
“Key Personnel”	those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Part B of Schedule 1 (Specification and Supplier Solution) against each Key Role as at the Commencement Date or as amended from time to time in accordance with clause 12.3 (Supplier Personnel)
“Key Roles”	a role described as a Key Role in Part B of Schedule 1 (Specification and Supplier Solution)
“Key Subcontract”	each Subcontract with a Key Subcontractor
“Key Subcontractor”	<p>the [Researcher Billing Provider; and any other - DELETE IF LOT 3 IS AWARDED TO A LOT 1 BIDDER] Subcontractor:</p> <ul style="list-style-type: none"> (a) which, in the opinion of the Customer, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or (b) with a Subcontract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 25% of the aggregate Charges forecast to be payable in connection with this Agreement
“Know-How”	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the other Party’s possession before this Agreement
“KPI Failure”	a failure to meet the Target Performance Level in respect of a Key Performance Indicator
“KPI Service Threshold”	shall be as set out against the relevant KPI in Schedule 2 (Performance Levels)
“Liability”	liability arising out of or in connection with this Agreement, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, including any liability arising from a breach of, or a failure to perform or defect or delay in performance of and/or any of a party’s obligations under this Agreement, in each case howsoever caused including if caused by negligence

“Losses”	losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise
“Malicious Software”	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence
“Material Transfer Agreement”	an agreement between the Customer and a User for access to and / provision of the part of the Customer Data
“Material KPI Failure”	(a) a failure by the Supplier to meet a KPI Service Threshold; or (b) as otherwise set out against the relevant KPI in Schedule 2 (Performance Levels)
“Milestone”	an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date
“Milestone Achievement Certificate”	the certificate to be granted by the Customer when the Supplier has Achieved a Milestone, which shall be in substantially the same form as that set out in Schedule 5 (Testing Procedures)
“Milestone Date”	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved
“Milestone Payment”	a payment identified in Schedule 6 (Charges and Invoicing) to be made following the issue of a Milestone Achievement Certificate
“New Release”	an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item, including standard upgrades, new versions and new releases of the Software and/or a Deliverable and any other product enhancements
“Non-trivial Customer Base”	a significant customer base with respect to the date of first release and the relevant market but excluding Affiliates and other entities related to the licensor
“Notifiable Default”	shall have the meaning given in clause 23.1 (Rectification Plan Process)
“Operating Environment”	the Customer System and Sites
“Operational Service Commencement Date”	in relation to an Operational Service, the later of: (a) the date identified in the Implementation Plan upon which the Operational Service is to commence; and

	(b) where the Implementation Plan states that the Supplier must have Achieved the relevant ATP Milestone before it can commence the provision of that Operational Service, the date upon which the Supplier Achieves the relevant ATP Milestone
“Operational Services”	the operational services described as such in the Specification
“Other Supplier”	any supplier to the Customer (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware
“Outline Implementation Plan”	the outline plan set out at Annex 1 of Schedule 4 (Implementation Plan)
“Performance Failure”	a KPI failure
“Permitted Maintenance”	has the meaning given in clause 8.2 (Maintenance)
“Platform”	the Trusted Research Environment platform [and the platform used to provide the Researcher Billing Services] [DELETE IF LOT 3 IS AWARDED TO A LOT 1 BIDDER] incorporating the Software that is to be provided, configured, implemented, integrated and supported by the Supplier under this Agreement, as set out in the Customer Requirements and the Supplier Solution
“Project Specific IPRs”	<p>IPRs:</p> <ul style="list-style-type: none"> (a) in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Agreement and updates and amendments of these items including (but not limited to) database schema; and/or (b) arising as a result of the performance of the Supplier's obligations under this Agreement; <p>but shall not include the Supplier Background IPRs or the Specially Written Software</p>
“Public Contracts Regulations”	the Public Contracts Regulations 2015 (as amended from time to time)
“Proposal”	the tender submitted by the Supplier in response to the contract notice issued by the Customer under which this Agreement has been procured
“Recipient”	has the meaning given in clause 19.1 (Confidentiality)
“Recoverable Liabilities”	all losses (including all direct, indirect and consequential losses, liabilities), Indemnified Costs, damages and expenses that the indemnified person does or will incur or suffer, all claims or proceedings made, brought or threatened against the indemnified person by any person and all losses (including all direct, indirect and consequential losses), liabilities, Indemnified Costs, damages and expenses the indemnified person does or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceeding

“Rectification Plan Failure”

- (a) the Supplier failing to submit or resubmit a draft Rectification Plan to the Customer within the timescales specified in clauses 23.4 (Submission of the draft Rectification Plan) or 23.7 (Agreement of the Rectification Plan);
- (b) the Customer, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to clause 23.7 (Agreement of the Rectification Plan);
- (c) the Supplier failing to rectify a material Default within the later of:
 - (i) thirty (30) Working Days of a notification made pursuant to clause 23.2 (Notification); and
 - (ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the material Default.
- (d) a Material KPI Failure re-occurring in respect of the same KPI for the same (or substantially the same) root cause in any of the three (3) Service Periods subsequent to the Service Period in which the initial Material KPI Failure occurred;
- (e) the Supplier not Achieving a Key Milestone by the expiry of the applicable Delay Deduction Period; and/or
- (f) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of six (6) months for the same (or substantially the same) root cause as that of the original Notifiable Default;

“Rectification Plan Process”

the process set out in clauses 23.4 (Submission of the Rectification Plan) to 23.8 (Agreement of the Rectification Plan)

“Regulatory Authorities”

all governmental, statutory or regulatory bodies and any other competent authorities or entities in any jurisdiction having responsibility for the regulation or governance of the Customer, the Supplier, this Agreement, the Services or the activities which are comprised in all or some of the Services or the use or application of the output from any part of the Services; and “Regulatory Authority” means any of them

“Relevant IPRs”

IPRs used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Customer or a third party in the fulfilment of the Supplier’s obligations under this Agreement including IPRs in the Software, the Project Specific IPRs and the Background IPRs but excluding any IPRs in the Customer Software and Customer Background IPRs

“Replacement Services”

any services which are the same as or substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the expiry or termination of this Agreement, whether those services are provided by the Customer internally and/or by any third party

“Replacement Supplier”	any third party service provider of Replacement Services appointed by the Customer from time to time, including any subcontractor thereof (or where the Customer is providing replacement Services for its own account, the Customer)
“Representative”	the Customer Representative and / or the Supplier Representative, as applicable
“Restricted Transfer”	a transfer of Customer Data which is undergoing Processing or which is intended to be Processed after transfer, to a country or territory to which such transfer is prohibited or subject to any requirement to take additional steps to adequately protect the Customer Data for the transfer to be lawful under the Data Protection Laws
[“Researcher Billing Provider” - DELETE IF LOT 3 IS AWARDED TO A LOT 1 BIDDER]	[INSERT]
[“Researcher Billing Services” - DELETE IF LOT 3 IS AWARDED TO A LOT 1 BIDDER]	the services identified as such in Schedule 1 (Specification and Supplier Solution)
“Service Charges”	the periodic payments made in accordance with Schedule 6 (Charges and Invoicing) in respect of the supply of the Services
“Service Continuity Plan”	the Supplier’s plan for its emergency response, back-up procedures and business continuity in the event of the occurrence of an Incident
“Service Credit Cap”	<ul style="list-style-type: none"> (a) in the period of twelve (12) months from the first Operational Service Commencement Date to occur after the Commencement Date, 20% of the Estimated Initial Service Charges; and (b) during the remainder of the Term, 20% of the Service Charges paid and/or due to be paid to the Supplier under this Agreement in the period of twelve (12) months immediately preceding the Service Period in respect of which Service Credits are accrued
“Service Credits”	credits payable by the Supplier due to the occurrence of one (1) or more KPI Failures, calculated in accordance with Part C of Schedule 6.1 (Charges and Invoicing) and for the avoidance of doubt these are calculated by reference to the monthly Service Charges
“Service Period”	<p>a calendar month, save that:</p> <ul style="list-style-type: none"> (a) the first service period shall begin on the first Operational Service Commencement Date and shall expire at the end of the calendar month in which the first Operational Service Commencement Date falls; and (b) the final service period shall commence on the first day of the calendar month in which the Term expires or terminates and shall end on the expiry or termination of the Term

“Service Points”	in relation to a KPI Failure, the points that are set out against the relevant KPI in the table in Annex 1 of Schedule 2 (Performance Levels)
“Services”	any and all of the services to be provided by the Supplier under this Agreement, including provision of the Platform, the Implementation Services, the Operational Services, the Researcher Billing Services and any other services set out in Schedule 1 (Specification and Supplier Solution);
“Specification”	the specification and services description set out in Schedule 1 (Specification and Supplier Solution)
“Sites”	<p>any premises (including Customer premises, the Supplier’s premises or third party premises):</p> <ul style="list-style-type: none"> (a) from, to or at which: <ul style="list-style-type: none"> (i) the Services are (or are to be) provided; or (ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or (b) where: <ul style="list-style-type: none"> (i) any part of the Supplier System is situated; or (ii) any physical interface with the Customer System takes place
“Software”	Specially Written Software, Supplier Software and Third Party Software
“Software as a Service”	Software which is provided to the market as a service rather than as a tangible good and usually made available over the internet
“Specially Written Software”	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Subcontractor or other third party on behalf of the Supplier) specifically for the purposes of this Agreement, including any modifications or enhancements to Customer Software, Supplier Software or Third Party Software created specifically for the purposes of this Agreement
“Standards”	the standards, policies and/or procedures identified in Schedule 1 (Specification and Supplier Solution)
“Subcontract”	any contract or agreement (or proposed contract or agreement) between the Supplier (or a Subcontractor) and any third party whereby that third party agrees to provide to the Supplier (or the Subcontractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof
“Subcontractor”	<p>any third party with whom:</p> <ul style="list-style-type: none"> (a) the Supplier enters into a Subcontract; or (b) a third party under (a) above enters into a Subcontract,

	or the servants or agents of that third party
“Sub-Processor”	any third party appointed by the Supplier to Process Customer Data
“Successor Body”	has the meaning given in clause 29.1 (Assignment and Novation)
“Supervisory Authority”	any governmental or regulatory authority responsible for enforcing any Data Protection Laws and any replacement or successor body or person for any such authority from time to time
“Supplier Background IPR”	the Intellectual Property Rights in the Supplier’s standard pre-existing processes and procedures, general concepts, ideas, Know-how, methodologies, processes, techniques, or algorithms and other general “tools of the trade” (as generally recognised in the Supplier’s industry), of the Supplier
“Supplier Equipment”	the hardware, computer and telecoms devices and equipment used by the Supplier or its Subcontractors (but not hired, leased or loaned from the Customer) for the provision of the Services
“Supplier Non-Performance”	has the meaning given in clause 25 (Customer Cause)
“Supplier Personnel”	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier’s obligations under this Agreement
“Supplier Software”	software which is proprietary to the Supplier (or an Affiliate of the Supplier) and which is or will be used by the Supplier for the purposes of providing the Services, including the software specified as such in Part B of Schedule 1 (Specification and Supplier Solution)
“Supplier Solution”	the Supplier’s solution for the Services set out in Part B of Schedule 1 (Specification and Supplier Solution)
“Supplier System”	the information and communications technology system used by the Supplier in implementing and performing the Services including the Platform, the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Customer System)
“Supplier Termination Event”	<ul style="list-style-type: none"> (a) the Supplier’s level of performance constituting a Critical Performance Failure; (b) the Supplier committing a material Default which is irremediable; (c) a Rectification Plan Failure; (d) where a right of termination is expressly reserved in this Agreement, including pursuant to clause 17 (IPRs Indemnity); (e) the Supplier committing a Default under any of the following clauses: <ul style="list-style-type: none"> (i) clause 19 (Confidentiality); and/or (ii) clause 20 (Data Protection); and/or (iii) Schedule 8 (Data Processing Clauses);

- (f) an Insolvency Event occurring in respect of the Supplier; or
- (g) the Customer has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations from the procurement procedure leading to the award of this Agreement

“Target Performance Level”	the minimum level of performance for a Performance Indicator which is required by the Customer, as set out against the relevant Performance Indicator in Schedule 2 (Performance Levels)
“Term”	the period starting on the Commencement Date and ending on the expiry of the Initial Term or (where the Customer exercises its rights pursuant to clause 4.1.2 or 4.1.3) any Extension Period or on earlier termination of this Agreement
“Termination”	the termination or expiry of this Agreement, howsoever occurring
“Termination Assistance Notice”	has the meaning given in Schedule 7 (Exit Management)
“Termination Date”	the date set out in a Termination Notice on which this Agreement (or a part of it as the case may be) is to terminate
“Termination Notice”	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement on a specified date and setting out the grounds for termination
“Termination Services”	the services and activities to be performed by the Supplier pursuant to the Exit Plan, including any services as reasonably specified by the Customer pursuant to the Termination Assistance Notice or otherwise
“Tests” and “Testing”	any tests required to be carried out under this Agreement, as further described in Schedule 5 (Testing Procedures) and “Tested” shall be construed accordingly
“Third Party Commercial Off The Shelf Software” or “Third Party COTS Software”	Third Party Software that: <ul style="list-style-type: none"> (a) the relevant third party makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and (b) has a Non-trivial Customer Base, including where indicated as such in Part B of Schedule 1 (Specification and Supplier Solution)
“Third Party IPRs”	IPRs owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software
“Third Party Software”	software which is proprietary to any third party (other than an Affiliate of the Supplier) which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services, including the software specified as such in Part B of Schedule 1 (Specification and Supplier Solution)

“Trusted Research Environment” or “TRE”	an environment that allows Users working on an approved study to conduct analysis on de-identified or pseudonymised datasets in a secure manner, where export of results data is permitted but export of individual level data is not permitted.
“Updates”	in relation to any Software and/or any Deliverable means any patch, fix, release or version of such item which has been produced primarily to overcome defects or errors in, or to improve the operation of, that item
“Users”	researchers approved and authenticated by the Customer as entitled to access the any part of the Customer Data through the Platform and who have entered into a Material Transfer Agreement with the Customer
“VAT”	value added tax
“Working Day”	any day other than a Saturday, Sunday or public holiday in England and Wales.

1.2 In this Agreement, any reference to:

- 1.2.1 the Schedules and Annexes under this Agreement form part of this Agreement and will have the same force and effect as if set out in the body of this Agreement and any reference to this Agreement will include the Schedules and Annexes;
- 1.2.2 a statutory provision includes a reference to any modification or re-enactment of it from time to time;
- 1.2.3 clauses or Schedules is to clauses or Schedules of this Agreement and any reference to the Agreement includes its Schedules;
- 1.2.4 (unless the context requires otherwise) the singular includes the plural and vice versa and the masculine includes the feminine and vice versa;
- 1.2.5 the words “**include**”, “**including**”, “**in particular**” and “**such as**” shall not limit the generality of the words preceding or succeeding them; and
- 1.2.6 wherever under this Agreement the Customer’s consent is required before the Supplier is permitted to do a particular act or thing, unless otherwise expressly provided, the Customer is entitled to give or withhold consent or make consent subject to conditions at its sole discretion.

1.3 The headings used in this Agreement shall not affect its interpretation.

1.4 In the event of conflict between the main body of this Agreement, the Schedules, and Annexes, the following order of priority shall apply:

- 1.4.1 the main body of this Agreement;
- 1.4.2 the Schedules (excluding Part B of Schedule 1 (Specification and Supplier Solution));

- 1.4.3 Part B of Schedule 1 (Specification and Supplier Solution; and
- 1.4.4 the Annexes.

2. **DUE DILIGENCE**

2.1 The Supplier acknowledges that:

- 2.1.1 it has made its own enquiries to satisfy itself as far as is reasonably practicable as to the accuracy and adequacy of the Due Diligence Information;
- 2.1.2 it has raised all relevant due diligence questions with the Customer prior to the Effective Date; and
- 2.1.3 it has entered into this Agreement in reliance on its own due diligence alone.

2.2 The Supplier shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor, shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:

- 2.2.1 any unsuitable aspects of the Operating Environment, save in respect of any aspect that the Supplier had no reasonable opportunity to verify the suitability of prior to the Effective Date;
- 2.2.2 any misinterpretation of the Customer; and/or
- 2.2.3 any failure by the Supplier to satisfy itself as far as is reasonably practicable as to the accuracy and/or adequacy of the Due Diligence Information.

3. **WARRANTIES**

3.1 The Customer represents and warrants that:

- 3.1.1 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement; and
- 3.1.2 its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

3.2 The Supplier represents, warrants and undertakes that:

- 3.2.1 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;
- 3.2.2 its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable

bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);

- 3.2.3 all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including its response to the Customer's selection questionnaire and invitation to tender, its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement; and
- 3.2.4 it has and will continue to have for the duration of the Term all necessary rights in and to the Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Subcontractor) to the Customer which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Customer and the use of the same by the Customer as provided for by this Agreement shall not infringe any Intellectual Property Rights.
- 3.3 Without prejudice to clauses 5.5 to 5.7 (Supplier acknowledgements and covenants) and any other rights and remedies of the Customer howsoever arising, the Supplier represents, warrants and undertakes to the Customer that:
 - 3.3.1 it has exercised professional skill and judgement, in accordance with Good Industry Practice, in selecting the Platform as suitable for meeting the Customer Requirements; and
 - 3.3.2 the Platform shall:
 - 3.3.2.1 provide the functionality set out in, and perform in all material respects in accordance with, the relevant specifications contained in:
 - (a) the Specification;
 - (b) the Supplier Solution; and
 - (c) the Documentation;
 - 3.3.2.2 interface with the Customer System as set out in the Specification and the Supplier Solution;
 - 3.3.2.3 be free from material design and programming errors; and
 - 3.3.2.4 not infringe any Intellectual Property Rights.
- 3.4 The Supplier acknowledges that the Customer has entered into this Agreement in reliance upon the demonstration of the Platform provided by the Supplier as part of the procurement process undertaken by the Customer ("Platform Demonstration") which led to the award of this Agreement to the Supplier and the Supplier represents, warrants and undertakes to the Customer that the Platform shall operate in a manner consistent, at least, with the Platform Demonstration. The

foregoing shall be without prejudice to clauses 3.3 and 5.4 to 5.6 (Supplier acknowledgements and covenants) and any other rights and remedies of the Customer howsoever arising.

SECTION B: THE SERVICES

4. TERM

4.1 This Agreement shall come into force on the Commencement Date and, unless terminated at an earlier date by operation of Law or in accordance with clause 27 (Termination Rights), terminate:

- 4.1.1 at the end of the Initial Term; or
- 4.1.2 if the Customer elects to extend the Initial Term by giving the Supplier at least three (3) months' notice in writing before the end of the Initial Term, at the end of the Extension Period; or
- 4.1.3 if the Customer elects to extend any Extension Period by giving the Supplier at least three (3) months' notice in writing before the end of the then current Extension Period, at the end of the final such Extension Period

provided that the Term may not exceed a period of six (6) years from and including the Commencement Date.

5. SERVICES

Standard of Services

5.1 The Supplier shall provide:

- 5.1.1 the Platform in accordance with the time scales set out in the Implementation Plan;
- 5.1.2 the Implementation Services from (and including) the Implementation Services Commencement Date; and
- 5.1.3 the Operational Services from (and including) the relevant Operational Service Commencement Date.

5.2 The Supplier shall ensure that the Platform and the Services:

- 5.2.1 comply in all respects with the Specification; and
- 5.2.2 are supplied in accordance with the Supplier Solution and the provisions of this Agreement.

5.3 The Supplier shall perform its obligations under this Agreement in accordance with:

- 5.3.1 the Supplier's Proposal;
- 5.3.2 all applicable Law;
- 5.3.3 Good Industry Practice; and
- 5.3.4 the Standards.

- 5.4 If there is any conflict between the terms of this Agreement and the Supplier's Proposal then whichever imposes the higher performance standard on the Supplier will take precedence. If the higher performance standard is not clear or obvious upon consideration of the terms of this Agreement and the Supplier's Proposal then the terms of this Agreement will take precedence.

Supplier acknowledgements and covenants

- 5.5 The Supplier acknowledges that:
- 5.5.1 the Customer has entered into this Agreement in reliance upon the Supplier's expertise in selecting and supplying the Platform, the Deliverables and the Services to meet the Customer Requirements;
 - 5.5.2 the Platform and Services are provided for the benefit of the Customer and Users; and
 - 5.5.3 this Agreement does not confer upon the Supplier any exclusivity of supply of the Platform or Services nor constitute any type of minimum purchase commitment by the Customer. The Supplier agrees that the Customer may, at any time, procure some or all of the Platform or Services, or systems or services similar to the Platform and Services, from any third party or develop or perform them itself.
- 5.6 The Supplier shall:
- 5.6.1 at all times allocate sufficient resources with the appropriate technical expertise to supply the Platform and Deliverables, and to provide the Services, in accordance with this Agreement;
 - 5.6.2 save to the extent that obtaining and maintaining the same are Customer Responsibilities, obtain, and maintain throughout the duration of this Agreement, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require, and which are necessary for the provision of the Services;
 - 5.6.3 minimise any disruption to the Platform, the Services, the IT Environment and/or the Customer's operations when carrying out its obligations under this Agreement; and
 - 5.6.4 without prejudice to its obligations under the Collaboration Agreement, cooperate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Platform and the Services to any Other Suppliers to enable such Other Suppliers to create and maintain technical or organisational interfaces with therewith and, on the expiry or termination of this Agreement for any reason, to enable the timely transition of the Platform and Services (or any of them) to the Customer and/or to any Replacement Supplier;
 - 5.6.5 ensure that:
 - 5.6.5.1 it provides such advisory, error correction, bug fix and other support services (including the provision of New Releases and Updates) in respect of the Software as are necessary to ensure that the Platform continues to comply with the warranty set out in clause 3.3.2 (Warranties) and to meet and comply with the Customer Requirements and provides such other support services as are referred to in Schedule 1 (Specification and Supplier Solution) and Schedule 2 (Performance Levels);

- 5.6.5.2 it applies all New Releases and Updates that it makes available to its customers generally to the Platform in a timely manner and at no additional charge;
- 5.6.5.3 the release of any new Software or upgrade to any Software (including any New Release or Update) complies with the interface requirements in the Specification and (except in relation to new Software or upgrades which are released to address Malicious Software or to comply with the security requirements of the Specification) shall notify the Customer promptly in advance of any such release and in any event not less than three (3) months before any such release; and
- 5.6.5.4 all Software including Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and comply with the warranty set out in clause 3.3.2 (Warranties);

5.7 Without prejudice to any other rights and remedies of the Customer howsoever arising, the Supplier shall remedy any breach of its obligations in clause 5.6 as soon as reasonably practicable after having become aware of the breach or being notified of the breach by the Customer.

Users

- 5.8 The Supplier shall manage the process of access to the Platform and the Customer Data accessed through it by Users and shall ensure that only Users are permitted to use the Platform to access and process Customer Data to the extent permitted by the Customer, as set out in Schedule 1 (Specification and Supplier Solution).
- 5.9 The Supplier shall ensure that, subject to clause 5.10, Users are permitted to access and use the Platform and the applicable Customer Data on a fair, equivalent and non-discriminatory basis in accordance with the time scales set out in Schedule 1 (Specification and Supplier Solution) and that the Platform and the applicable Customer Data is made available to all Users who:
 - 5.9.1 enter into an End User Agreement on the End User Terms;
 - 5.9.2 comply with the End User Terms; and
 - 5.9.3 pay the End User Charges due under the End User Agreement.
- 5.10 The Supplier shall collaborate with the Cloud Infrastructure Provider and agree, for approval by the Customer, End User Terms that are reasonable and proportionate. Prior to first use of the End User Terms and prior to implementing any material changes to the then current End User Terms, the Supplier shall jointly with the Cloud Infrastructure Provider submit a copy of draft End User Terms (or revised End User Terms) to the Customer for written approval and shall permit the Customer a reasonable period of time to comment on the same. The Supplier shall jointly with the Cloud Infrastructure Provider consider any Customer comments and shall incorporate any changes requested by the Customer in the final End User Terms and shall not use the original or any amended End User Terms until the Customer has provided its written approval.
- 5.11 Where the Supplier is a party to the End User Agreement it agrees to enforce the End User Terms in a fair and non-discriminatory manner and to terminate an End User Agreement on request from the Customer if the Customer determines that the applicable User is in breach of its Material Transfer Agreement.

5.12 The Supplier shall ensure that the End User Charges due from each User are collected promptly and cooperate with the Cloud Infrastructure Provider in respect of the End User Agreements and the collection of the End User Charges in accordance with the Collaboration Agreement. Upon collection the Supplier shall promptly remit the End User Charges to the Cloud Infrastructure Provider in full. The Supplier shall cooperate with the Cloud Infrastructure Provider to suspend access to the Platform and the applicable Customer Data by any User that fails to comply with the End User Terms or pay the End User Charges due under the End User Agreement when due.] DELETE IF LOT 3 IS AWARDED TO A LOT 1 BIDDER

5.13 The Supplier agrees that the Customer shall have no liability for [any breach by a User of its End User Agreement or for] any [other] misuse of the Platform by or on behalf of a User. DELETE YELLOW HIGHLIGHTED SECTIONS IF LOT 3 IS AWARDED TO A LOT 1 BIDDER

6. IMPLEMENTATION

Implementation Plan and Delays

6.1 The Parties shall comply with the provisions of Schedule 4 (Implementation Plan) in relation to the agreement and maintenance of the Detailed Implementation Plan.

6.2 The Parties shall comply with the Implementation Plan and the Supplier shall ensure that each Milestone is Achieved on or before its Milestone Date.

6.3 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay:

6.3.1 it shall in any event:

6.3.1.1 notify the Customer in accordance with clause 23.1 (Rectification Plan Process); and

6.3.1.2 use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay;

6.3.2 it shall, where applicable, comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay;

6.3.3 if the Delay or anticipated Delay relates to a Key Milestone, where applicable the provisions of clause 24 (Delay Payments) shall apply;

6.3.4 to the extent that the Delay would not have occurred but for a Supplier Cause, the provisions of clause 25 (Customer Cause) shall apply; and

6.3.5 to the extent that the Delay is directly caused by a Force Majeure Event, the provisions of clause 26 (Force Majeure) shall apply.

Testing and Achievement of Milestones

6.4 The Parties shall comply with the provisions of Schedule 5 (Testing Procedures) in relation to the testing and other procedures to determine whether a Milestone or Test has been Achieved.

7. PERFORMANCE INDICATORS

7.1 The Supplier shall:

- 7.1.1 provide the Operational Services in such a manner so as to meet or exceed the Target Performance Level for each Key Performance Indicator from the Milestone Date for the CPP Milestone; and
- 7.1.2 comply with the provisions of Schedule 2 (Performance Levels) in relation to the monitoring and reporting on its performance against the Key Performance Indicators.

Performance Failures

- 7.2 If in any Service Period:
 - 7.2.1 a KPI Failure occurs, Service Credits shall be deducted from the Service Charges in accordance with Schedule 6 (Charges and Invoicing); and / or
 - 7.2.2 a Material KPI Failure occurs, the Supplier shall comply with the Rectification Plan Process.
- 7.3 Service Credits shall be the Customer's exclusive financial remedy for a KPI Failure except where:
 - 7.3.1 the KPI Failure:
 - 7.3.1.1 breaches the relevant KPI Service Threshold;
 - 7.3.1.2 has arisen due to the wilful default by the Supplier or any Supplier Personnel; or
 - 7.3.1.3 results in the Customer being required to make a compensation payment to one or more third parties;
 - 7.3.2 the Supplier has negligently or fraudulently misreported its performance against any Performance Indicator; and/or
 - 7.3.3 the Customer is otherwise entitled to or does terminate the relevant Services or this Agreement pursuant to clause 27.1 (Termination by the Customer).

Critical Performance Failure

- 7.4 If a Critical Performance Failure occurs, the Customer may exercise its rights to terminate this Agreement pursuant to clause 27.1 (Termination by the Customer).

Review

- 7.5 The Parties shall during the first [three (3) months] following the Operational Service Commencement Date review the operation of the Key Performance Indicators and related severity levels and Service Points to ascertain whether they are appropriate for effectively monitoring and incentivising the Supplier's performance of the Services and reflective of the Customer's business requirements and priorities. The Parties shall act reasonably and in good faith in respect of such review. Any Changes to the Key Performance Indicators and related severity levels and Service Points shall be agreed through the Change Control Procedure.

8. EQUIPMENT AND MAINTENANCE

Supplier Equipment

- 8.1 All the Supplier's property, including Supplier Equipment, shall remain at all times at the sole risk and responsibility of the Supplier.

Maintenance

- 8.2 The Supplier shall maintain a rolling schedule of planned maintenance to the Platform in accordance with the schedule set out in Part B of Schedule 1 (Specification and Supplier Solution) ("Maintenance Schedule"). Any updates or changes to the same shall be agreed with the Customer Representative prior to the same being implemented. The Supplier shall only undertake such planned maintenance (which shall be known as "Permitted Maintenance") in accordance with the Maintenance Schedule.

SECTION C: FINANCIAL AND CONTRACT GOVERNANCE

9. FINANCIAL

Charges, Invoicing and Payment

- 9.1 In consideration of the Supplier carrying out its obligations under this Agreement the Customer shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 6 (Charges and Invoicing).
- 9.2 [The Supplier shall ensure that the End User Charges due from each User are collected in accordance with processes that are agreed with the Customer and the Cloud Infrastructure Provider and in accordance with the relevant provisions of Schedule 6 (Charges and Invoicing), and remit the same to the Cloud Infrastructure Provider.] DELETE IF LOT 3 IS AWARDED TO A LOT 1 BIDDER
- 9.3 [For the avoidance of doubt, payment of the End User Charges shall be due from the Users to the Supplier and the Supplier shall be solely responsible for collecting the same from Users. The Customer shall have no liability for payment of any End User Charges.] DELETE IF LOT 3 IS AWARDED TO A LOT 1 BIDDER
- 9.4 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under this Agreement.

VAT

- 9.5 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Customer following delivery of a valid VAT invoice.

10. RECORDS AND AUDIT

- 10.1.1 The Supplier shall maintain complete and accurate reports, documents and records in relation to the Platform and the provision of the Services and make available to the Customer upon request a summary of the same, including:
- 10.1.1.1 this Agreement, its Schedules and all amendments to such documents;
 - 10.1.1.2 all other documents which this Agreement expressly requires to be prepared;
 - 10.1.1.3 all formal notices, reports or submissions made by the Supplier to the Customer in connection with the provision of the Services;

- 10.1.1.4 documents supporting the calculation of the Charges [and End User Charges] DELETE IF LOT 3 IS AWARDED TO A LOT 1 BIDDER and other documents prepared by the Supplier in support of claims for the Charges [and End User Charges] DELETE IF LOT 3 IS AWARDED TO A LOT 1 BIDDER; and
- 10.1.1.5 all other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Agreement..
- 10.1.2 The Customer may conduct an audit to verify compliance by the Supplier with its obligations under this Agreement and/or in order to comply with a requirement of a Regulatory Authority. Except where:
 - 10.1.2.1 an audit is imposed on the Customer by a Regulatory Authority; or
 - 10.1.2.2 the Customer has reasonable grounds for believing that the Supplier has not complied with its obligations under this Agreement,

the Customer may not conduct an audit of the Supplier more than once in any Contract Year.
- 10.1.3 The Supplier shall (and shall procure that its Subcontractors shall) on demand provide the Customer (and/or its agents or representatives) with all reasonable cooperation and assistance in relation to each audit, including:
 - 10.1.3.1 all information requested by the Customer within the permitted scope of the audit;
 - 10.1.3.2 reasonable access to any Sites controlled by the Supplier (and any Subcontractor) and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
 - 10.1.3.3 access to Supplier's Personnel.
- 10.1.4 The Customer shall during each audit comply with the standard security, sites, systems and facilities operating procedures of the Supplier and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- 10.1.5 The Customer shall provide at least 15 Working Days' notice of its intention to conduct an audit, unless the audit is a matter of urgency in which case it shall provide as much notice as is reasonably practicable.

11. CHANGE

Change Control Procedure

- 11.1 Unless otherwise stated in this Agreement, any Change shall be made only in accordance with this clause 11.
- 11.2 The Parties shall deal with Change as follows:
 - 11.2.1 either Party may at any time request a Change by giving notice in writing to the other Party identifying the proposed Change ("Change Request");

- 11.2.2 the Customer Representative shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in clause 11.4;
- 11.2.3 the Supplier shall have the right to reject a Change Request solely in the manner set out in clause 11.5; and
- 11.2.4 in any preparation of a Change Request or Change Request Information, unless otherwise agreed in writing, each Party will be liable for their own costs.
- 11.3 The Supplier shall (in good faith) submit to the Customer in writing, within ten (10) Working Days (or such longer period as may be agreed) of receipt of a written Change Request from the Customer Representative (or at the same time as any written Change Request that the Supplier may submit):
 - 11.3.1 a full written quotation including a detailed breakdown and such supporting evidence of its costs and resources as the Customer shall reasonably require for such Change;
 - 11.3.2 particulars of any changes which would be required to the Customer Requirements and the Supplier Solution in order to implement the proposed Change;
 - 11.3.3 particulars of the other changes (if any) which would be required to this Agreement in order to implement the proposed Change; and
 - 11.3.4 the full cost and risk implications for the Customer that would result from the Change, including any proposed amendment to the Charges, provided that any such amendment to the Charges must be reasonable and proportionate in the circumstances and comply with the principles set out in Schedule 6 (Charges and Invoicing),

(together, "Change Request Information").
- 11.4 Upon receipt of the Change Request Information:
 - 11.4.1 The Customer may elect, subject to clause 11.6, to approve the proposed Contract Change, in which case this Agreement will be amended accordingly and the Parties shall forthwith complete and sign a change control notice in such form as the Customer Representative shall reasonably require recording the Change that shall include the Change Request Information; or
 - 11.4.2 The Customer Representative may, in his reasonable discretion, reject the Change, in which case he shall notify the Supplier of the rejection; or
 - 11.4.3 where the Customer Representative reasonably considers that the Supplier has not complied with clause 11.3, he or she may require the Supplier resubmit the Change Request Information, in which event the Supplier shall make such modifications as are necessary to comply with clause 11.3 and resubmit the same to the Customer Representative within five (5) Working Days of the Customer Representative's request and the provisions of this clause 11.4 shall apply thereto.
- 11.5 If following receipt of a Change Request from the Customer the Supplier reasonably believes that:
 - 11.5.1 the proposed Change would:
 - 11.5.1.1 materially and adversely affect the risks to the health and safety of any person; and/or

11.5.1.2 require the Services to be performed in a way that infringes any Law; and/or

11.5.2 the proposed Change is technically impossible to implement and neither the Supplier Solution nor the Specification state that the Supplier has the technical capacity and flexibility required to implement the proposed Change,

then the Supplier shall be entitled to reject the proposed Change, provided that it notifies the Customer within five (5) Working Days of receipt of the applicable Change Request of its reasons for doing so and substantiates the same to the reasonable satisfaction of the Customer Representative.

11.6 Until such time as any Change is formally accepted in accordance with clause 11.4.1 and the applicable change control notice has been signed by a representative of each Party having the necessary authority, the same shall not be binding on the Parties and the Supplier will, unless otherwise agreed in writing, continue to perform and be paid as if no Change had been required.

Change in Law

11.7 The Supplier shall neither be relieved of its obligations to supply the Platform and the Services in accordance with the terms and conditions of this Agreement nor be entitled to an increase in the Charges as the result of Change in Law.

SECTION D: SUPPLIER PERSONNEL AND SUPPLY CHAIN

12. SUPPLIER PERSONNEL

12.1 The Supplier shall:

12.1.1 ensure that all Supplier Personnel:

12.1.1.1 are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;

12.1.1.2 are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 2 (Specification and Supplier Solution); and

12.1.1.3 comply with all reasonable security and other requirements of the Customer concerning conduct at the Customer Premises;

12.1.2 be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Agreement shall be a Default by the Supplier;

12.1.3 use all reasonable endeavours to minimise the number of changes in Supplier Personnel;

12.1.4 replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever; and

12.1.5 bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel.

- 12.2 The Supplier's key personnel listed in Part B of Schedule 1 (Specification and Supplier Solution) shall carry out the Services (including the key roles so specified) unless otherwise agreed with the Customer Representative (whose agreement shall not be unreasonably withheld or delayed), which shall be the "Key Personnel" and "Key Roles" respectively for the purposes of this Agreement.
- 12.3 The Supplier shall not remove or replace any Key Personnel unless:
- 12.3.1 requested to do so by the Customer;
 - 12.3.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
 - 12.3.3 the person's employment or contractual arrangement with the Supplier or a Subcontractor is terminated; or
 - 12.3.4 the Supplier obtains the Customer's prior written consent (such consent not to be unreasonably withheld or delayed).
- 12.4 The Supplier shall ensure that any replacement for a Key Role:
- 12.4.1 has a level of qualifications and experience appropriate to the relevant Key Role; and
 - 12.4.2 is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
- 12.5 The Customer Representative shall be entitled on written notice to request that the Supplier terminate immediately any person's involvement with the provision of the Services when in the reasonable opinion of the Customer Representative it considers it undesirable for them to continue.

Representatives

- 12.6 Each Party shall have a representative for the duration of this Agreement who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement.
- 12.7 Each Party shall notify the other of the identity of its initial Representative within five (5) Working Days of the Commencement Date.
- 12.8 Either Party may, by written notice to the other Party, revoke or amend the authority of their Representative or appoint a new Representative.

Staff Transfer

- 12.9 The Parties agree that neither the commencement nor the expiry or termination of this Agreement will constitute a relevant transfer for the purposes of the Employment Regulations. The Supplier shall, as far as is reasonably possible, manage and deploy the Supplier Personnel in such a manner as to avoid application of the Employment Regulations.
- 12.10 If any of the Supplier Personnel claims, or it is determined in relation to any such person, that his/her contract of employment has been transferred from the Supplier or any Subcontractor to the Replacement Supplier pursuant to the Employment Regulations, then:
- 12.10.1 the Customer shall procure that the Replacement Supplier shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and

- 12.10.2 the Supplier may offer (or may procure that a Subcontractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Supplier or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Applicable Laws.
- 12.11 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Subcontractor, the Customer shall procure that the Replacement Supplier shall immediately release or procure the release of the person from his/her employment or alleged employment.
- 12.12 If after the fifteen (15) Working Day period specified in clause 12.10.2 has elapsed:
- 12.12.1 no such offer of employment has been made;
- 12.12.2 such offer has been made but not accepted; or
- 12.12.3 the situation has not otherwise been resolved
- the Customer shall advise the Replacement Supplier that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 12.13 Subject to the Replacement Supplier acting in accordance with the provisions of clauses 12.10 to 12.12, and in accordance with all applicable proper employment procedures set out in Applicable Law, the Supplier shall indemnify the Replacement Supplier against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of clause 12.12 provided that the Replacement Supplier takes all reasonable steps to minimise any such Employee Liabilities.

13. SUPPLY CHAIN RIGHTS AND PROTECTIONS

Appointment of Key Subcontractors

- 13.1 Where the Supplier wishes to enter into a Key Subcontract or replace a Key Subcontractor, it must obtain the prior written consent of the Customer, such consent not to be unreasonably withheld or delayed.
- 13.2 The Customer consents to the appointment of the Key Subcontractors listed in Part B of Schedule 1 (Specification and Supplier Solution).

Key Subcontractors

- 13.3 Except where the Customer has given its prior written consent, the Supplier shall ensure that each Key Subcontract shall include:
- 13.3.1 provisions which will enable the Supplier to discharge its obligations under this Agreement;
- 13.3.2 provisions to ensure that the Supplier is able to assign, novate or otherwise transfer to the Customer or any Replacement Supplier all of its rights and obligations under such Key Subcontract without restriction (including any need to obtain and consent or approval) or payment by the Customer; and
- 13.3.3 obligations no less onerous on the Key Subcontractor than those imposed on the Supplier under this Agreement in respect of data protection requirements set out in clauses 18 (Customer Data and Security Requirements and Service Continuity Plans),

20 (Data Protection) and 32 (Prevention Of Fraud And Bribery And Modern Slavery) and Schedule 8 (Data Processing Clauses).

[Researcher Billing [DELETE IF LOT 3 IS AWARDED TO A LOT 1 BIDDER]

13.4 The Parties agree that any Subcontract relating to the provision of Researcher Billing Services is a Key Subcontract and that, except where the Customer has given its prior written consent and without prejudice to the provisions of clause 13.3, such Key Subcontract shall be on the terms set out in Schedule 10 (Researcher Billing Terms). The Supplier shall not terminate or materially amend the terms of such Key Subcontract without the Customer's prior written consent.]

Retention of Legal Obligations

13.5 Notwithstanding the Supplier's right to subcontract pursuant to this clause 13, the Supplier shall remain responsible for all acts and omissions of its Subcontractors and the acts and omissions of those employed or engaged by the Subcontractors as if they were its own.

Data processing supply chain

13.6 The provisions of this clause 13 are subject to clause 20 (Data Protection) in respect of any subcontracts relating to Personal Data Processing.

SECTION E: INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

14. INTELLECTUAL PROPERTY RIGHTS

14.1 Except as expressly set out in this Agreement:

14.1.1 the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:

14.1.1.1 the Specially Written Software;

14.1.1.2 the Project Specific IPRs;

14.1.1.3 the Supplier Software;

14.1.1.4 the Third Party Software;

14.1.1.5 the Third Party IPRs; and

14.1.1.6 the Supplier Background IPRs;

14.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors, including:

14.1.2.1 the Customer Software;

14.1.2.2 the Customer Data; and

14.1.2.3 the Customer Background IPRs; and

14.1.3 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Users.

14.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in clause 14.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

14.3 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, provided that each Party shall be entitled to use the same without the need for such consent to the extent reasonably necessary in order to perform its obligations under, and exercise its rights as contemplated by, this Agreement.

15. **RIGHTS GRANTED BY THE SUPPLIER**

Software as a Service

15.1 The Parties agree that all Software is to be provided by way of Software as a Service and the Customer acknowledges that, as a consequence:

15.1.1 it will not be provided with a physical copy of the Software; and

15.1.2 use of the Software is restricted to use by way of Software as a Service,

and the provisions of this clause 15 shall be construed accordingly.

15.2 The Supplier agrees to provide the Customer and all Users with all software keys, access codes and / or other login requirements as necessary to access and use the Software as permitted under this Agreement.

15.3 All rights required to be granted under this clause 15 shall be granted with effect from, or procured to take effect from, the Implementation Services Commencement Date, or date of creation of the applicable software or Intellectual Property Right, if later.

Software, Project Specific IPRs and Background IPRs

15.4 The Supplier hereby grants to the Customer, or shall procure the grant to the Customer of, a royalty-free non-exclusive right for the Term to access and use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)) the Software, the Project Specific IPRs and the Background IPRs for any purpose relating to use or receipt of the Services (or substantially equivalent services) or the Platform (or a substantially equivalent system) or for any purpose relating to the exercise of the Customer's business or function.

15.5 The Customer may permit a third party to exercise the rights granted under clause 15.4 (Software, Project Specific IPRs and Background IPRs) on terms no broader than those granted to the Customer, for purposes relating to the exercise of the Customer's business or function and provided that such third party shall be under a contractual obligation to the Customer to comply with confidentiality obligations that are broadly equivalent to those of the Customer pursuant to clause 19 (Confidentiality).

Third Party COTS Software

15.6 If the Supplier cannot obtain for the Customer a licence in respect of any Third Party COTS Software in accordance with the licence terms set out in clauses 15.4 and 15.5 (Software, Project Specific IPRs and Background IPRs), the Supplier shall prior to incorporating the same into the Platform:

- 15.6.1 notify the Customer; and
- 15.6.2 procure the grant direct by the owner or an authorised licensor thereof to the Customer of a right to access and use the Third Party COTS Software for the Term on terms no less favourable than those on which such software is usually made commercially available by the Supplier or the relevant third party, provided that, except where the Customer has given its prior written consent, the Supplier shall ensure that such terms permit access to and use of the Third Party COTS Software for any purpose relating to use or receipt of the Services or the Platform.

Users

- 15.7 The Supplier shall grant to Users, or shall procure the grant to Users of, a right to access and use the Software, Project Specific IPRs and Background IPRs as reasonably necessary for research purposes in accordance with the process set out in clauses 5.8 to 5.10 (Users). Such grant shall be on terms that are no less favourable (including as to indemnification against IPRs Claims) than the terms on which such software is usually made commercially available by the Supplier or the relevant third party.

16. LICENCES GRANTED BY THE CUSTOMER

- 16.1 The Customer hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use Customer Software, Customer Background IPRs and Customer Data solely to the extent necessary for performing the Services in accordance with this Agreement, including (but not limited to) the right to grant sub-licences to Subcontractors provided that:
 - 16.1.1 any relevant Subcontractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in clause 19 (Confidentiality); and
 - 16.1.2 the Supplier shall not, without the Customer's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Customer.
- 16.2 In the event of the termination or expiry of this Agreement, the licence granted pursuant to clause 16.1 and any sub-licence granted by the Supplier in accordance with clause 16.1 shall terminate automatically on the date of such termination or expiry and the Supplier shall:
 - 16.2.1 immediately cease all use of Customer Software, Customer Background IPRs and Customer Data (as the case may be);
 - 16.2.2 at the discretion of the Customer, return or destroy documents and other tangible materials that contain any of Customer Software, Customer Background IPRs and Customer Data, or, at the direction of the Customer Representative, send the same to the Replacement Supplier, provided that if the Customer has not made an election within six (6) months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of Customer Software, Customer Background IPRs and Customer Data (as the case may be); and
 - 16.2.3 ensure, so far as reasonably practicable, that any Customer Software, Customer Background IPRs and Customer Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Customer Software, Customer Background IPRs and/or Customer Data.

17. **IPRs INDEMNITY**

- 17.1 Subject to clause 22.2.2 (Financial and other limits), the Supplier shall at all times, during and after the Term, on written demand indemnify the Customer, and keep the Customer indemnified, against all Losses incurred by, awarded against or agreed to be paid by the Customer arising from an IPRs Claim.
- 17.2 If the Customer receives notice of any IPRs claim, the Customer shall give notice in writing to the Supplier as soon as reasonably practicable and provide to the Supplier such reasonable information, cooperation and assistance in respect of the IPRs Claim as the Supplier may reasonably request, provided that the Supplier reimburses to the Customer its reasonable costs incurred in connection with the same.
- 17.3 If the Supplier is unable to procure for the Customer the right to continue using the relevant item which is subject to the IPRs Claim (or to replace or modify the relevant item with non-infringing substitutes or equivalent functionality acceptable to the Customer, acting reasonably) within twenty (20) Working Days of the Customer's notice under clause 17.2, then:
- 17.3.1 the Customer may terminate this Agreement (if subsisting) with immediate effect by written notice to the Supplier; and
- 17.3.2 without prejudice to the indemnity set out in clause 17.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

18. **CUSTOMER DATA AND SECURITY REQUIREMENTS AND SERVICE CONTINUITY PLANS**

- 18.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to Customer Data.
- 18.2 The Supplier shall not store, copy, disclose, or use Customer Data except as necessary for the performance by the Supplier of its obligations under this Agreement and pursuant to any End User Agreement or as otherwise expressly authorised in writing by the Customer.
- 18.3 To the extent that Customer Data is held and/or processed (which includes any Processing) by the Supplier, the Supplier shall supply that Customer Data to the Customer as requested by the Customer in the format specified in Schedule 1 (Specification and Supplier Solution).
- 18.4 The Supplier shall preserve the integrity of Customer Data and prevent the corruption or loss of Customer Data at all times that the relevant Customer Data is under its control or the control of any Subcontractor, but shall not be responsible for any corruption or loss of Customer Data by Users.
- 18.5 If Customer Data is corrupted, lost or sufficiently degraded so as to be unusable, the Customer may to the extent that the same is as a result of the Supplier's Default:
- 18.5.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of Customer Data as soon as practicable but not later than five (5) Working Days from the date of receipt of the Customer's notice; and/or
- 18.5.2 itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so.
- 18.6 If at any time the Supplier suspects or has reason to believe that Customer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the

Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.

- 18.7 The Supplier shall comply with the information security requirements set out in Parts A and B of Schedule 1 (Specification and Supplier Solution) and Schedule 11 (Information Security Requirements).

Malicious Software

- 18.8 The Supplier shall, as an enduring obligation throughout the Term, use the latest versions of antivirus definitions and software available from an industry accepted antivirus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software in the IT Environment (or as otherwise agreed by the Parties).
- 18.9 Notwithstanding clause 18.8, if Malicious Software is found, the Parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.
- 18.10 Any cost arising out of the actions of the Parties taken in compliance with the provisions of clause 18.9 shall be borne by the Parties as follows:
- 18.10.1 by the Supplier where the Malicious Software originates from the Software supplied by the Supplier (except where the Customer has waived the obligation set out in clause 18.8), Users or Customer Data (whilst Customer Data was under the control of the Supplier) unless, in the latter case, the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Customer when provided to the Supplier; and
- 18.10.2 otherwise by the Customer.

Other Requirements

- 18.11 The Supplier will maintain formal ISO27001 certification through a recognised regional body, or demonstrate compliance with an equivalent standard or guidance where controls meet the intent of those in the ISO27001 Annex A control list.
- 18.12 The Supplier shall attain Cyber Essentials Plus certification within 6 months of the Commencement Date, and provide the Customer with a valid Cyber Essentials certificate (or equivalent). The scope of the certifications shall include the Services delivered as part of this Contract.
- 18.13 [The Supplier must in respect of the Researcher Billing Services be PCI-DSS compliant and FCA registered.] DELETE IF LOT 3 IS AWARDED TO A LOT 1 BIDDER]

Risk Management and Risk Reporting

- 18.14 The Supplier shall maintain an information security program ("Information Security Program") to include regular vulnerability management and penetration testing, including testing for vulnerabilities that could be caused by Users. The Information Security Program shall include a) monthly vulnerability testing; and b) annual penetration testing and the scope shall include all Assets that may impact on information security objectives of the Customer Data, Platform or other systems used to provide the Services ("Information Security Assets").

- 18.15 The Supplier shall also provide documented evidence of a) their risk assessment and risk treatment policy; b) records of risk assessment and risk treatment plans; c) documented evidence of management reviews; d) copies of the vulnerability assessment reports; and e) copies of pen testing risk reports, in each case in respect of the Information Security Assets and on an annual basis.
- 18.16 Vulnerability management programs in respect of the Information Security Assets shall adopt recognised best of breed testing tools. Annual penetration testing shall be conducted by certified assessment providers under an accredited scheme*

*Suitable accredited schemes include CHECK, CREST, Tiger Scheme, START, ASSURE.



- 18.17 Regardless of agreed risk reporting sharing arrangements it is a requirement of the data sharing scheme that any risks considered critical or high in respect of the Information Security Assets on the Common Vulnerability Scoring Scheme (CVSS) shall be reported to the Customer immediately and supported by records detailing a) how the risk was identified; b) the root cause of the risk; and c) the proposed risk treatment; d) the time frame to implement the risk treatment; and e) the risk owner.

Right of Audit

- 18.18 The Supplier agrees that the audits provisions set out in clause 10 may include the Customer conducting internal audits to verify the status of the Information Security Program. Such audit schedules shall a) be agreed in writing; or b) conducted annually; or c) conducted when the Supplier is identified by the Customer as a high risk based on persistent nonconformities or lack of performance in compliance with agreed risk treatment plans.

Service Continuity Plan

- 18.19 The Supplier shall ensure that at all times it has in place a Service Continuity Plan and that the Service Continuity Plan is adequate to minimise the effect of any Incident. In the event of an Incident, the Supplier will immediately implement the Service Continuity Plan. The Supplier will continue to perform those of its obligations which are not affected by the Incident in accordance with the provisions of this Agreement.

19. CONFIDENTIALITY

- 19.1 For the purposes of this clause 19, the term “Disclosing Party” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “Recipient” shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 19.2 Except to the extent set out in this clause 19 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:
- 19.2.1 treat the Disclosing Party’s Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);

- 19.2.2 not disclose the Disclosing Party's Confidential Information except as set out expressly in this Agreement or to any other person without obtaining the owner's prior written consent;
 - 19.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and
 - 19.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 19.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- 19.3.1 the Recipient is required to disclose the Confidential Information by Law; or
 - 19.3.2 the need for such disclosure arises out of or in connection with:
 - 19.3.2.1 any legal challenge or potential legal challenge against the Customer arising out of or in connection with this Agreement; or
 - 19.3.2.2 the conduct of a Regulatory Authority review in respect of this Agreement.
- 19.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 19.5 The Supplier may disclose the Confidential Information of the Customer on a confidential basis only to:
- 19.5.1 Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Agreement;
 - 19.5.2 its auditors; and
 - 19.5.3 its professional advisers for the purposes of obtaining advice in relation to this Agreement.
- Where the Supplier discloses Confidential Information of the Customer pursuant to this clause 19.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.
- 19.6 The Customer may disclose the Confidential Information of the Supplier:
- 19.6.1 on a confidential basis to any Regulatory Authority for any proper purpose of the Customer or of the relevant Regulatory Authority;
 - 19.6.2 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in clause 19.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;

19.6.3 on a confidential basis for the purpose of the exercise of its rights under this Agreement; and

19.6.4 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this clause 19.

19.7 Nothing in this clause 19 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

19.8 Any disclosure by the Supplier in accordance with this clause 19 must be undertaken in compliance with clause 20 (Data Protection).

20. **DATA PROTECTION**

20.1 The Parties agree that the Customer:

20.1.1 will act as a Controller of Customer Data whenever the Customer stores Customer Data to the Platform itself; and

20.1.2 may also act as a Processor of Customer Data on behalf of one or more individual User(s) who are provided with access, under contract, to the Platform.

20.2 The Parties agree that the Supplier:

20.2.1 will act as a Processor of Customer Data of which the Customer is the Controller; and

20.2.2 may also act as a Sub-Processor of Customer Data of which one or more individual User(s) is the Controller,

as set out in Annex 1 and the provisions of Schedule 8 will apply when the Supplier acts as a Processor or Sub-Processor.

Indemnity

20.3 Subject to clause 22.2.2 (Financial and other limits), the Supplier will indemnify the Customer against the Recoverable Liabilities, in each case arising out of or in connection with any breach by the Supplier or any Sub-Processor of any of its obligations under this clause 20 (Data Protection) and Schedule 8 (Data Processing Clauses) (including any failure or delay in performing, or negligent performance or non-performance of, any of those obligations) save where any Recoverable Liabilities arise as a direct result of any instructions given to the Supplier by the Customer in accordance with this Agreement.

20.4 The Customer shall provide to the Supplier such reasonable information, cooperation and assistance in respect of any claim to which the indemnity in clause 20.2 applies as the Supplier may reasonably request, provided that the Supplier reimburses to the Customer its reasonable costs incurred in connection with the same.

Customer Assurance

20.5 The Customer will use all reasonable endeavours to comply with its obligations under Data Protection Laws when sharing Customer Data with the Supplier pursuant to this Agreement.

21. PUBLICITY AND BRANDING

21.1 The Supplier shall not:

21.1.1 make any press announcements or publicise this Agreement or its contents in any way; or

21.1.2 use the Customer's name, brand or logo in any promotion or marketing or announcement of orders

without the prior written consent of the Customer, which shall not be unreasonably withheld or delayed.

21.2 Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

SECTION F: LIABILITY, INDEMNITIES AND INSURANCE

22. LIMITATIONS ON LIABILITY

Unlimited liability

22.1 Neither Party limits its liability for:

22.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors (as applicable);

22.1.2 fraud or fraudulent misrepresentation by it or its employees;

22.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

22.1.4 any liability to the extent it cannot be limited or excluded by Law.

Financial and other limits

22.2 Subject to clause 22.1 (Unlimited liability) and clause 22.6 (Consequential losses):

22.2.1 the Supplier's aggregate liability in respect of Service Credits incurred in any rolling period of twelve (12) months shall be subject to the Service Credit Cap;

22.2.2 the Supplier's liability:

22.2.2.1 in respect of any breach of clause 20 (Data Protection) or Schedule 8 (Data Processing Clauses) that is caused by Defaults of the Supplier (including pursuant to the indemnity set out in clause 20.8); or

- 22.2.2.2 pursuant to the indemnity set out in clause 17.1 (IPRs Indemnity)
- shall in no event exceed £10,000,000.00 (ten million pounds) for each and every claim; and
- 22.2.3 the Supplier's aggregate liability in respect of all other Losses incurred by the Customer under or in connection with this Agreement as a result of Defaults by the Supplier shall in no event exceed:
- 22.2.3.1 in relation to Defaults occurring in the first Contract Year, an amount equal to the Estimated Year 1 Charges;
- 22.2.3.2 in relation to Defaults occurring during any subsequent Contract Year, an amount equal to the total Charges paid and/or due to be paid in connection with this Agreement in the Contract Year immediately preceding the occurrence of the Default; and
- 22.2.3.3 in relation to Defaults occurring after the end of the Term, an amount equal to the total Charges paid and/or due to be paid in connection with this Agreement in the twelve (12) month period immediately prior to the last day of the Term.
- 22.3 Subject to clauses 22.1 (Unlimited liability) and clause 22.6 (Consequential losses) and without prejudice to the Customer's obligation to pay the Charges **[(excluding the End User Charges)]** **DELETE IF LOT 3 IS AWARDED TO A LOT 1 BIDDER** as and when they fall due for payment, the Customer's aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of Defaults of the Customer shall in no event exceed:
- 22.3.1 in relation to Defaults occurring in the first Contract Year, an amount equal to the Estimated Year 1 Charges;
- 22.3.2 in relation to Defaults occurring during any subsequent Contract Year, an amount equal to the total Charges paid and/or due to be paid in connection with this Agreement in the Contract Year immediately preceding the occurrence of the Default; and
- 22.3.3 in relation to Defaults occurring after the end of the Term, an amount equal to the total Charges paid and/or due to be paid in connection with this Agreement in the twelve (12) month period immediately prior to the last day of the Term.
- 22.4 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under clause 22.2.3 and the Customer's liability under clause 22.3.
- 22.5 For the avoidance of doubt:
- 22.5.1 any liability of a Party which falls within clause 22.1 will not be taken into account in assessing whether the financial limits in clauses 22.2 or 22.3 (as applicable) have been reached;
- 22.5.2 the financial limits in clauses 22.2.1, 22.2.2 and 22.2.3 (and its sub-clauses) are separate and not cumulative, and any liability of the Supplier which falls within one of those clauses shall not be taken into account in assessing whether the financial limits in the other such clauses have been reached; and

- 22.5.3 the financial limits in clauses 22.3.1, 22.3.2 and 22.3.3 are separate and not cumulative, and any liability of the Customer which falls within one of those clauses shall not be taken into account in assessing whether the financial limits in the other such clauses have been reached.

Consequential Losses

- 22.6 Subject to clauses 22.1 (Unlimited liability), neither Party shall be liable to the other Party for:
- 22.6.1 any indirect, special or consequential Loss; or
- 22.6.2 any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).

Mitigation

- 22.7 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Agreement.

22A. INSURANCE

- 22A.1 The Supplier will maintain the insurances required by Customer including those in this clause 22A.

- 22A.2 The Supplier will ensure that:

22A.2.1 during this Agreement, the Supplier and its Subcontractors hold third party public and products liability insurance of the same amounts that the Supplier would be legally liable to pay as damages, including the claimant's costs and expenses, for accidental death or bodily injury and loss of or damage to property, to a minimum of £1,000,000;

22A.2.2 the third-party public and products liability insurance contains an 'indemnity to principals' clause for Customer's benefit;

22A.2.3 the Supplier and its Subcontractors, agents and professional consultants involved in the Services hold professional indemnity insurance to a minimum indemnity of £1,000,000 for each individual claim during the Agreement, and for 6 years after termination or expiry; and

22A.2.4 the Supplier and its Subcontractors, agents and professional consultants involved in the Services hold employers' liability insurance (except where exempt under Applicable Law) to a minimum indemnity of £5,000,000 for each individual claim during the Agreement, and for 6 years after termination or expiry.

- 22A.3 If requested by Customer, the Supplier will obtain additional insurance policies, or extend existing policies bought under this Agreement.

- 22A.4 If requested by Customer, the Supplier will provide the following to show compliance with this clause 22A:

22A.4.1 a broker's verification of insurance;

22A.4.2 receipts for the insurance premium; and

22A.4.3 evidence of payment of the latest premiums due.

- 22A.5 Insurance will not relieve the Supplier of any liabilities under the Agreement and the Supplier will:
- 22A.5.1 take all risk control measures using Good Industry Practice, including the investigation and reports of claims to insurers;
 - 22A.5.2 promptly notify the insurers in writing of any relevant material fact under any Insurances; and
 - 22A.5.3 hold all insurance policies and require any broker arranging the insurance to hold any insurance slips and other evidence of insurance.
- 22A.6 The Supplier will not do or omit to do anything, which would destroy or impair the legal validity of the insurances.
- 22A.7 The Supplier will notify Customer as soon as possible if any insurance policies have been, or are due to be, cancelled, suspended, terminated or not renewed.
- 22A.8 The Supplier will be liable for the payment of any:
- 22A.8.1 premiums, which it will pay promptly; and
 - 22A.8.2 excess or deductibles and will not be entitled to recover these from Customer.

SECTION G: REMEDIES AND RELIEF

23. RECTIFICATION PLAN PROCESS

- 23.1 In the event that:
- 23.1.1 there is, or is reasonably likely to be, a Delay; and/or
 - 23.1.2 in any Service Period there has been a Material KPI Failure; and/or
 - 23.1.3 the Supplier commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default),

(each a “**Notifiable Default**”), the Supplier shall notify the Customer of the Notifiable Default as soon as practicable but in any event within five (5) Working Days of becoming aware of the Notifiable Default, detailing the actual or anticipated effect of the Notifiable Default and, unless the Notifiable Default also constitutes a Rectification Plan Failure or other Supplier Termination Event, the Customer may not terminate this Agreement in whole or in part on the grounds of the Notifiable Default without first following the Rectification Plan Process.

Notification

- 23.2 If:
- 23.2.1 the Supplier notifies the Customer pursuant to clause 23.1 that a Notifiable Default has occurred; or

23.2.2 the Customer notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

then, unless the Notifiable Default also constitutes a Supplier Termination Event and the Customer serves a Termination Notice or the provisions of clause 25 (Customer Cause) apply, the Supplier shall comply with the Rectification Plan Process.

23.3 The “Rectification Plan Process” shall be as set out in clauses 23.4 (Submission of the draft Rectification Plan) to 23.8 (Agreement of the Rectification Plan).

Submission of the draft Rectification Plan

23.4 The Supplier shall submit a draft Rectification Plan to the Customer for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to clause 23.2 (Notification).

23.5 The draft Rectification Plan shall set out:

23.5.1 full details of the Notifiable Default that has occurred, including a root cause analysis;

23.5.2 the actual or anticipated effect of the Notifiable Default; and

23.5.3 the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).

23.6 The Supplier shall promptly provide to the Customer any further documentation that the Customer reasonably requires to assess the Supplier’s root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan the Dispute shall be determined in accordance with clause 36 (Disputes).

Agreement of the Rectification Plan

23.7 The Customer shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Customer rejects the draft Rectification Plan, the Customer shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Customer for review within five (5) Working Days (or such other period as agreed between the Parties) of the Customer’s notice rejecting the first draft.

23.8 If the Customer consents to the Rectification Plan:

23.8.1 the Supplier shall immediately start work on the actions set out in the Rectification Plan; and

23.8.2 the Customer may no longer terminate this Agreement in whole or in part on the grounds of the relevant Notifiable Event.

24. DELAY PAYMENTS

24.1 If a Key Milestone has not been Achieved by its relevant Milestone Date and the Supplier is not entitled to relief under clauses 25 (Customer Cause) or 26 (Force Majeure), the provisions of

Paragraph 1 of Part B of Schedule 6 (Charges and Invoicing) shall apply in relation to the payment of Delay Payments.

24.2 Delay Payments shall be the Authority's exclusive financial remedy for the Supplier's failure to Achieve a Key Milestone by its Milestone Date except where:

24.2.1 the Authority is entitled to or does terminate this Agreement pursuant to clause 27.1.1 (Termination by the Authority); or

24.2.2 the Delay exceeds the Delay Deduction Period.

25. **CUSTOMER CAUSE**

25.1 Notwithstanding any other provision of this Agreement, if the Supplier has failed to:

25.1.1 achieve a Milestone by its Milestone Date;

25.1.2 provide the Operational Services in accordance with the Target Performance Levels; and/or

25.1.3 comply with its obligations under this Agreement,

(each a "Supplier Non-Performance") and can demonstrate that the Supplier Non-Performance would not have occurred but for a Customer Cause, then (subject to the Supplier fulfilling its obligations in clause 25):

25.1.4 the Supplier shall not be treated as being in breach of this Agreement to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by Customer Cause;

25.1.5 the applicable Milestone Date (if any) shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by Customer Cause;

25.1.6 the Supplier shall not be liable to accrue Service Credits in relation to the applicable KPI Failure (if any); and

25.1.7 the Customer shall not be entitled to exercise any other rights that may arise as a result of that Supplier Non-Performance.

25.2 In order to claim any of the rights and/or relief referred to in clause 25.1, the Supplier shall as soon as reasonably practicable (and in any event within ten (10) Working Days) after becoming aware (or from when it should have been aware) that a Customer Cause has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Customer notice setting out details and supporting evidence of:

25.2.1 the Supplier Non-Performance;

25.2.2 the Customer Cause (including the specific Customer Responsibility alleged to have been breached by the Customer and why that breach is material) and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Agreement and details of the causal link between such effect and the Customer Cause;

25.2.3 any steps which the Customer can take to eliminate or mitigate the consequences and impact of such Customer Cause; and

25.2.4 the relief claimed by the Supplier.

25.3 The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of a Customer Cause, including the duration and consequences of any Delay or anticipated Delay, and shall only be entitled to relief under clause 25.1 to the extent that such endeavours have not eliminated or mitigated the consequences and impact of such Customer Cause.

26. **FORCE MAJEURE**

26.1 Subject to the remaining provisions of this clause 26 (and, in relation to the Supplier, subject to its compliance with its Service Continuity Plan), a Party may claim relief under this clause 26 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event.

26.2 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this clause 26 to the extent that consequences of the relevant Force Majeure Event:

26.2.1 are capable of being mitigated by any of the Services and / or compliance with the Service Continuity Plan, but the Supplier has failed to do so; and/or

26.2.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement.

26.3 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

SECTION H: TERMINATION AND EXIT MANAGEMENT

27. **TERMINATION RIGHTS**

Termination by the Customer

27.1 The Customer may terminate this Agreement by issuing a Termination Notice to the Supplier:

27.1.1 if a Supplier Termination Event occurs;

27.1.2 if a Force Majeure Event endures for a continuous period of more than ninety (90) days; or

27.1.3 if the Agreement has been amended to the extent that the Public Contracts Regulations require a new procurement procedure,

and this Agreement shall terminate on the date specified in the Termination Notice.

Termination by the Supplier

27.2 The Supplier may terminate this Agreement by issuing a Termination Notice to the Customer if:

27.2.1 the Customer fails to pay an undisputed sum due to the Supplier under this Agreement which in aggregate exceeds £[INSERT – NOT LESS THAN THREE MONTH'S AVERAGE INVOICED CHARGES] and such amount remains outstanding sixty (60) Working Days after the receipt by the Customer of a notice of non-payment from the Supplier and this

Agreement or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice);

27.2.2 the Customer commits a material breach of the terms of clause 15 (Rights Granted by the Supplier) which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Customer written notice specifying the breach and requiring its remedy; or

27.2.3 a Force Majeure Event endures for a continuous period of more than ninety (90) days.

28. CONSEQUENCES OF EXPIRY OR TERMINATION

General Provisions on Expiry or Termination

28.1 The provisions of clauses 1 (Definitions and Interpretations), 6.1 (Implementation Plan and Delays), **9.2 and 9.3 (Financial) - DELETE IF LOT 3 IS AWARDED TO A LOT 1 BIDDER**, 10 (Records and Audit), 12.9 (Staff Transfer), 14 (Intellectual Property Rights), 15 (Rights Granted by the Supplier), 17.1 (IPRs Indemnity), 19 (Confidentiality), 20 (Data Protection), 22 (Limitations on Liability), 28 (Consequences of Expiry or Termination), 33 (Entire Agreement), 34 (Third Party Rights), 36 (Disputes) and 37 (Governing Law and Jurisdiction), and the provisions of Schedules 6 (Charges and Invoicing), 7 (Exit Management) and 8 (Data Processing Clauses) shall survive the termination or expiry of this Agreement.

Exit Management

28.2 The Supplier shall comply with the provisions of Schedule 7 (Exit Management) and any current Exit Plan in relation to the orderly transition of the Services to the Customer or a Replacement Supplier.

Payments by the Customer

28.3 If this Agreement is terminated (in part or in whole) by the Customer or the Term expires, the only payments that the Customer shall be required to make as a result of such termination (whether by way of compensation or otherwise) are payments in respect of any:

28.3.1 Assets in accordance with Schedule 7 (Exit Management); and

28.3.2 unpaid Charges for Services received up until the Termination Date.

Payments by the Supplier

28.4 In the event of termination or expiry of this Agreement, the Supplier shall repay to the Customer all Charges it has been paid in advance in respect of Services not provided by the Supplier as at the date of expiry or termination.

28.5 If this Agreement is terminated (in whole or in part) by the Customer pursuant to clause 27.1.1 (Termination by the Customer) prior to Achievement of one or more CPP Milestones, the Customer may at any time on or within twelve (12) months of the issue of the relevant Termination Notice by issue to the Supplier of written notice require the Supplier to repay to the Customer an amount equal to the aggregate Milestone Payments already paid to the Supplier in respect of each CPP Milestone to which the notice relates less a reasonable amount to reflect any Deliverables relating to the relevant CPP Milestone that the Customer wishes to retain (taking into account the Supplier's costs of providing that Deliverable and the benefit derived by the Customer).

SECTION I: MISCELLANEOUS AND GOVERNING LAW

29. ASSIGNMENT AND NOVATION

29.1 The Customer shall not assign, charge or transfer this Agreement or any of its rights under it without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed), provided that the Supplier's consent shall not be required where it is between the Customer and its direct or indirect holding companies and its direct or indirect subsidiaries (within the meaning of s1159 Companies Act 2006) ("Successor Body").

29.2 The Supplier shall not assign, charge or transfer this Agreement or any of its rights under it without the prior written consent of the Customer (such consent not to be unreasonably withheld or delayed). Any assignment, charge or transfer of this Agreement or any of the Supplier's rights under it by the Supplier must comply with the provisions of clause 20 (Data Protection).

30. WAIVER AND CUMULATIVE REMEDIES

30.1 The failure or delay by any Party to enforce at any time or for any period any of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.

30.2 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

31. RELATIONSHIP OF THE PARTIES

31.1 Except as expressly provided otherwise in this Agreement, nothing in this Agreement, nor any actions taken by the Parties pursuant to this Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

32. PREVENTION OF FRAUD AND BRIBERY AND MODERN SLAVERY

General

32.1 The Supplier shall comply with all applicable anti-bribery, anti-corruption and anti-slavery legislation including the Bribery Act 2010 and Modern Slavery Act 2015.

32.2 The Supplier shall, and shall procure that its Subcontractor shall, in respect of the Supplier Personnel and in connection with the provision of the Services and generally:

32.2.1 have in place and maintain procedures and policies in accordance with Good Industry Practice to eliminate discrimination, harassment or victimisation of any kind;

32.2.2 have in place and maintain procedures and policies in accordance with Good Industry Practice to advance equality of opportunity and good relations between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it; and

32.2.3 take all efforts to ensure they have fair working practices and that they meet all obligations around anti-slavery, minimum wage and employment law.

Bribery Act Compliance

- 32.3 The Supplier shall maintain and enforce its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with all applicable anti-bribery and anti-corruption legislation. Adequate procedures shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of the Act).
- 32.4 The Supplier shall use reasonable endeavours to ensure that all persons associated with the Supplier (as defined by section 8 of the Bribery Act 2010) including any subcontractors and suppliers comply with this clause.

Modern Slavery Act Requirements

- 32.5 The Supplier shall implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
- 32.6 The Supplier shall use reasonable endeavours not to purchase any raw materials, resources or products from any country that has been sourced from producers or manufacturers using forced labour in its operations or practice.

33. ENTIRE AGREEMENT

- 33.1 This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 33.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.
- 33.3 Nothing in this clause 33 shall exclude any liability in respect of misrepresentations made fraudulently.

34. THIRD PARTY RIGHTS

- 34.1 A person who is not a Party to this Agreement has no right under the CRTPA to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

35. NOTICES

- 35.1 Any notices sent under this Agreement must be in writing.
- 35.2 Subject to clause 35.4, the following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Email	9.00am on the first Working Day after sending	Dispatched as a PDF attachment to an email to the correct email address without any error message.

- 35.3 Subject to clause 35.7, notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Agreement:

	Supplier	Customer
Contact	[INSERT]	[INSERT] Chief Financial Officer
Address	[INSERT]	[INSERT] 2 New Bailey, 6 Stanley Street, Manchester M3 5GS.
Email	[INSERT]	[INSERT] finance@ourfuturehealth.org.uk

- 35.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table below:

- 35.4.1 notices issued by the Supplier pursuant to clause 27.2 (Termination by the Supplier);
- 35.4.2 Termination Notices; and
- 35.4.3 Dispute Notices.

Manner of Delivery	Deemed time of service	Proof of service
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt.
Prepaid, Royal Mail Signed for 1st Class or other prepaid, next working day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt.

- 35.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with clause 35.4 shall invalidate the service of the related e-mail transmission. The deemed time of

delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in clause 35.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

35.6 Clause 34.1 (Third Party Rights) does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under clause 36.1.1 (Disputes)).

35.7 Where a notice is served to the Customer in accordance with Schedule 8 (Data Processing Clauses), that notice may only be served by email to the email address set out at paragraph 1.11 of Schedule 8 (Data Processing Clauses).

36. **DISPUTES**

36.1 Subject to clause 36.3, neither Party may commence proceedings in relation to a Dispute that arises out of or in connection with this Agreement (including in relation to any non- contractual obligations) unless that Party has:

36.1.1 served a written notice (a "Dispute Notice") on the other Party notifying it of the relevant Dispute; or

36.1.2 already received a Dispute Notice from the other Party in relation to the same Dispute.

36.2 Following service of the Dispute Notice in relation to a Dispute, each Party will respectively procure that such Dispute will be referred for resolution to legal counsel for the time of each Party. Those representatives will meet at the earliest convenient time and in any event within seven (7) days of the date of service of the relevant Dispute Notice and will negotiate in good faith and in order to resolve the Dispute.

36.3 If a Dispute has not been resolved within seven (7) days of the date of service of the relevant Dispute Notice each party will respectively procure that such Dispute be referred for resolution to the Chief Executives for the time being of each Party. Those representatives will meet at the earliest convenient time and in any event within fourteen (14) days of the date of service of the relevant Dispute Notice and will negotiate in good faith and in order to resolve the Dispute.

36.4 If a Dispute is not resolved within fourteen (14) days of service of the relevant Dispute Notice either Party may commence proceedings in accordance with clause 37 or, if both Parties agree in writing to do so, the Parties will attempt to settle the Dispute by mediation in accordance with the CEDR Model Mediation Procedure in each case irrespective of whether clauses 36.2 and 36.3 have been complied with. The provisions of this clause 36.4 are without prejudice to any right that either Party may have to damages in respect of any breach by the other Party of clauses 36.2 and 36.3. Either Party may withdraw from mediation at any time.

36.5 Nothing in this clause 36 (Disputes) will prevent or delay either Party from:

36.5.1 seeking orders for specific performance, interim or final injunctive relief;

36.5.2 exercising any rights it has to terminate this Agreement; or

36.5.3 commencing any proceedings where this is necessary to avoid any loss of a claim due to the rules on limitation of actions.

37. **GOVERNING LAW AND JURISDICTION**

- 37.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 37.2 Subject to clause 36 (Disputes), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

Schedule 1: Specification and Supplier Solution

Part A – Specification

[INSERT]

Part B – Supplier Solution

[INSERT FOR EACH POINT BELOW]

- Supplier Solution;
- Maintenance Schedule;
- Security measures with regard to the protection of Customer Data (including any Personal Data);
- Key Personnel and Key Roles;
- Key Subcontractors; and
- Software:
 - Specially Written Software;
 - Supplier Software
 - Third Party Software
 - Third Party COTS Software.

Schedule 2: Performance Levels

1. Definitions

In this Schedule 2 (Performance Levels), the following definitions shall apply:

“Available”	has the meaning given in paragraph 1.1 of Part II of Annex 1 to Schedule 2 (Performance Levels)
“End User”	any person authorised by the Customer to use the Platform and/or the Services
“Help Desk”	the single point of contact help desk set up and operated by the Supplier for the purposes of this Agreement
“Maintenance Schedule”	has the meaning given in clause 8.2
“Non-Available”	in relation to the Platform, that the Platform is not Available
“Operational Hours”	in relation to a Help Desk response times, 8:00am to 7:00pm, UK time
“Performance Monitoring Report”	has the meaning given in paragraph 1.1 of Part B of Schedule 2 (Performance Levels)
“Performance Review Meeting”	the regular meetings between the Supplier and the Customer to manage and review the Supplier’s performance under this Agreement
“Satisfaction Survey”	has the meaning given in paragraph 5.1 of Part II of Annex 1 of Schedule 2 (Performance Levels)
“Service Incident”	a reported occurrence of a failure to deliver any part of the Platform or Services in accordance with Customer Requirements or the Target Performance Levels
“Severity 1 Service Incident (Critical)”	<p>a Service Incident which, in the reasonable opinion of the Customer:</p> <ul style="list-style-type: none"> (a) constitutes a loss of the Service which prevents a large group of End Users from working; (b) has a critical impact on the activities of the Customer; (c) causes significant financial loss and/or disruption to the Customer; or (d) results in any material loss or corruption of Customer Data; <p>Non-exhaustive examples:</p> <ul style="list-style-type: none"> (e) a loss of power to a data centre causing failure of Services; or (f) a failure of the Services to provide user authentication service

“Severity 2 Service Incident (Major)”	<p>a Service Incident which, in the reasonable opinion of the Customer has the potential to:</p> <ul style="list-style-type: none"> (a) have a major (but not critical) adverse impact on the activities of the Customer and no workaround acceptable to the Customer is available; (b) have a major (but not critical) adverse impact on the activities of End Users and no workaround acceptable to the Customer or its End Users is available; or (c) cause a financial loss and/or disruption to the Customer which is more than trivial but less severe than the significant financial loss described in the definition of a Severity 1 Service Failure:
	<p>Non-exhaustive examples:</p> <ul style="list-style-type: none"> (d) corruption of organisational database tables; or (e) loss of ability to update Customer Data
“Severity 3 Service Incident (Minor)”	<p>a Service Incident which, in the reasonable opinion of the Customer has the potential to:</p> <ul style="list-style-type: none"> (a) have a major adverse impact on the activities of the Customer which can be reduced to a moderate adverse impact due to the availability of a workaround acceptable to the Customer; (b) have a minor or moderate adverse impact on the activities of the Customer; or (c) the potential to have a minor or moderate adverse impact on the provision of the Services to End Users;
	<p>Non-exhaustive example:</p> <ul style="list-style-type: none"> (d) inability to access data for a class of customers
“Support Request”	<p>a request from the Customer that is received by the Help Desk (or automated ticketing system) requiring support.</p> <p>Non-exhaustive examples:</p> <ul style="list-style-type: none"> (a) inability to access data for a single customer; or (b) Platform use query by End User
“Platform Availability”	<p>has the meaning given in paragraph 1.2 of Part II of Annex 1 to Schedule 2 (Performance Levels)</p>
“Platform Downtime”	<p>any period of time during which any of the Platform is Non-Available.</p>

PART A Performance Indicators

1. Performance Indicators

- 1.1. Annex 1 sets out the KPIs which the Parties have agreed shall be used to measure the performance of the Services by the Supplier.
- 1.2. The Supplier shall monitor its performance against each Performance Indicator and shall send the Customer a report detailing the level of service actually achieved in accordance with Part B.
- 1.3. Service Points, and therefore Service Credits, shall accrue for any KPI Failure and shall be calculated in accordance with paragraphs 2 and 4.

2. Service Points

- 2.1. If the level of performance of the Supplier during a Service Period achieves the Target Performance Level in respect of a KPI, no Service Points shall accrue to the Supplier in respect of that KPI.
- 2.2. If the level of performance of the Supplier during a Service Period is below the Target Performance Level in respect of a KPI, Service Points shall accrue to the Supplier in respect of that KPI as set out in paragraph 2.3.
- 2.3. The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure shall be the applicable number as set out in Annex 1.

3. Permitted Maintenance

- 3.1. The Supplier shall be allowed to book a maximum of 2 hours Platform Downtime for Permitted Maintenance in any one Service Period which shall take place between the hours and on the day specified in the Maintenance Schedule unless otherwise agreed in writing with the Customer (and no more than 4 hours Platform Downtime in any calendar quarter).

4. Service Credits

- 4.1. Schedule 6 (Charges and Invoicing) sets out the mechanism by which Service Points shall be converted into Service Credits.
- 4.2. The Customer shall use the Performance Monitoring Reports provided pursuant to Part B, among other things, to verify the calculation and accuracy of the Service Credits (if any) applicable to each Service Period.

PART B Performance Monitoring

1. Performance Monitoring and Performance Review

- 1.1. Within five (5) Working Days of the end of each Service Period, the Supplier shall provide a report to the Customer Representative which summarises the performance by the Supplier against each of the Performance Indicators as more particularly described in paragraph 1.2 (the "Performance Monitoring Report").

Performance Monitoring Report

- 1.2. The Performance Monitoring Report shall be in such format as agreed between the Parties from time to time and contain, as a minimum, the following information:

Information in respect of the Service Period just ended

- 1.2.1. for each KPI, the actual performance achieved over the Service Period, and that achieved over the previous three (3) Measurement Periods;
- 1.2.2. a summary of all Performance Failures that occurred during the Service Period;
- 1.2.3. whether each KPI Failure which occurred during the Service Period fell below the KPI Service Threshold;
- 1.2.4. which Performance Failures remain outstanding and progress in resolving them;
- 1.2.5. for any KPI Failures occurring during the Service Period, the cause of the relevant KPI Failure and the action being taken to reduce the likelihood of recurrence;
- 1.2.6. the status of any outstanding Rectification Plan processes, including:
 - 1.2.6.1. whether or not a Rectification Plan has been agreed; and
 - 1.2.6.2. where a Rectification Plan has been agreed, a summary of the Supplier's progress in implementing that Rectification Plan;
- 1.2.7. the conduct and performance of any agreed periodic tests that have occurred, such as the annual failover test of the Service Continuity Plan;
- 1.2.8. relevant particulars of any aspects of the Supplier's performance which fail to meet the requirements of this Agreement;
- 1.2.9. such other details as the Customer may reasonably require from time to time; and

Information in respect of previous Service Periods

- 1.2.10. a rolling total of the number of Performance Failures that have occurred over the past six (6) Service Periods;
- 1.2.11. the conduct and performance of any agreed periodic tests that have occurred in such Service Period such as the annual failover test of the Service Continuity Plan; and

Information in respect of the next Quarter

- 1.2.12. any scheduled Platform Downtime for Permitted Maintenance that has been agreed between the Customer and the Supplier for the next Quarter.

2. Performance Records

- 2.1. The Supplier shall keep appropriate documents and records (including Help Desk records, staff records, timesheets, training programmes, staff training records, goods received documentation, supplier accreditation records, complaints received etc) in relation to the Services being delivered. The records and documents of the Supplier shall be available for inspection by the Customer and/or its nominee at any time and the Customer and/or its nominee may make copies of any such records and documents.
- 2.2. In addition to the requirement in paragraph 2.1 to maintain appropriate documents and records, the Supplier shall provide to the Customer such supporting documentation as the Customer may reasonably require in order to verify the level of the performance of the Supplier for any specified period.

- 2.3. The Supplier shall ensure that the Performance Monitoring Report and any variations or amendments thereto, any reports and summaries produced in accordance with this Schedule 2 (Performance Levels) and any other document or record reasonably required by the Customer are available to the Customer on-line and are capable of being printed.

3. Performance Verification

- 3.1. The Customer reserves the right to verify Platform Availability and the Supplier's performance under this Agreement against the Performance Indicators including by sending test transactions through the Platform or otherwise.

ANNEX 1 of Schedule 2 (Performance Levels)

Key Performance Indicators

PART I: Key Performance Indicators

The KPIs that shall apply to the Services shall be such of the indicators set out below as are set out below:

KPI Number	KPI Title	Definition	Severity Levels	Service Points
#1	Platform Availability	See paragraph 1 of Part II of this Annex	Target Performance Level: 99.5%	[0]
			KPI Failure: less than 99.5%	[3]
			KPI Service Threshold: 95%	[10]
#2	Helpdesk Response Time	See paragraph 2 of Part II of this Annex	Response time:	
			Target Performance Level: 4 hours	[0]
			KPI Failure: more than 4 hours	[1]
			KPI Service Threshold: 12 hours	[2]
			Resolution time:	
			Target Performance Level: 3 days	[0]
			KPI Failure: more than 3 days	[1]
			KPI Service Threshold: 7 days	[2]
#3	Incident Response Times	See paragraph 2 of Part II of this Annex	Severity 1 Service Incident:	
			Target Performance Level: 1 hour	[0]
			KPI Failure: more than 1 hour	[3]
			KPI Service Threshold: 4 hours	[5]
			Severity 2 Service Incident:	
			Target Performance Level: 4 hours	[0]
			KPI Failure: more than 4 hours	[2]

KPI Number	KPI Title	Definition	Severity Levels	Service Points
			KPI Service Threshold: 12 hours	[3]
			Severity 3 Service Incident:	
			Target Performance Level: 24 hours	[0]
			KPI Failure: more than 24 hours	[2]
			KPI Service Threshold: 48 hours	[3]
#4	Fix Times	See paragraph 4 of Part II of this Annex	Severity 1 Service Incident:	
			Target Performance Level: 4 hours	[0]
			KPI Failure: more than 4 hours	[3]
			KPI Service Threshold: 12 hours	[5]
			Severity 2 Service Incident:	
			Target Performance Level: 24 hours	[0]
			KPI Failure: more than 24 hours	[2]
			KPI Service Threshold: 48 hours	[3]
			Severity 3 Service Incident:	
			Target Performance Level: 3 days	[0]
			KPI Failure: more than 3 days	[2]
			KPI Service Threshold: 5 days	[3]
#5	Satisfaction Survey Score	See paragraph 5 of Part II of this Annex	Target Performance Level: 70%	[0]
			KPI Failure: less than 70%	[2]
			KPI Service Threshold: 30%	[5]

Part II: Definitions

1. Platform Availability

- 1.1. The Platform shall be Available (and “Available” shall be interpreted accordingly) when:
- 1.1.1. End Users are able to access and utilise all the functions of the Platform and/or; and
 - 1.1.2. the Platform is able to process Customer Data and to provide any required reports within the timescales set out in the Services Description (as measured on a 24 x 7 basis).
- 1.2. Platform Availability shall be measured as a percentage of the total time in a Service Period, in accordance with the following formula:

$$\text{Platform Availability \%} = \frac{(\text{MP} - \text{SD}) \times 100}{\text{MP}}$$

where:

MP = total number of minutes, excluding Permitted Maintenance, within the relevant Service Period (on a 24 x 7 basis); and

SD = total number of minutes of Platform Downtime, excluding Permitted Maintenance, in the relevant Service Period.

- 1.3. When calculating Platform Availability in accordance with this paragraph 1, Platform Downtime arising due to Permitted Maintenance that is carried out by the Supplier in accordance with clause 8.2 (Maintenance) shall be subtracted from the total number of hours in the relevant Service Period, except where:
- 1.3.1. any Platform Downtime occurs as a result of Emergency Maintenance undertaken by the Supplier; or
 - 1.3.2. where maintenance undertaken by the Supplier exceeds 2 hours in any Service Period (or more than 4 hours in any calendar quarter).

2. Help Desk Response Times

- 2.1. Measurement of Help Desk response times will be based on the time taken for a Help Desk operative to acknowledge a Support Request (initiated either via telephone, email or web chat). For these purposes “response” shall mean acknowledgement of receipt of the Support Request. Support Requests receiving an automated response or placed into a queuing system shall be deemed not to have been responded to.
- 2.2. Measurement of Help Desk resolution times will be based on the time taken from receipt of the Support Request to resolve a Support Request. For these purposes “resolve” and “resolution” shall mean appropriate resolution of the Support Request to the satisfaction of the Customer and / or the End User, as applicable, each acting reasonably.
- 2.3. The Supplier shall monitor the Help Desk response times and resolution times and shall provide the results of such monitoring to the Customer in accordance with the provisions of Part B of this Schedule 2 (Performance Levels). The Help Desk response times and resolution

times will be measured in Operational Hours and the Key Performance Indicator is based on the Target Performance Level being achieved for 100% of Support Requests.

3. Incident Response Times

- 3.1. The “Incident Response Time” of a Service Incident is the period from the time that the Service Incident has been reported to the Supplier until the time the Supplier has provided an initial response to the Customer and/or the End User (as applicable) to confirm receipt of the report and commencement of Service Incident investigation.
- 3.2. Incident Response Times for Service Incidents shall be measured 24x7 and the KPI is based on the Target Performance Level being achieved for 100% of Service Incidents.

4. Fix Times

- 4.1. The “Fix Time” of a Service Incident is the period from the time that the Service Incident has been reported to the Supplier to the point of its Resolution and “Resolution” means in relation to a Service Incident either:
 - 4.1.1. the root cause of the Service Incident has been removed and the Platform or Services as applicable are being provided in accordance with the Services Description and Target Performance Levels; or
 - 4.1.2. the Customer has been provided with a workaround in relation to the Service Incident deemed acceptable by the Customer.
- 4.2. Fix Times for Service Incidents shall be measured 24x7 and the KPI is based on the Target Performance Level being achieved for 100% of Service Incidents.

5. Satisfaction

- 5.1. In order to assess the level of performance of the Supplier, the Customer may undertake satisfaction surveys in respect of Users or various groups of Users (each such survey a “Satisfaction Survey”), the results of which may be reflected in the Performance Monitoring Report. The subject matter of Satisfaction Surveys may include:
 - 5.1.1. the assessment by the End Users of the Supplier’s performance against the agreed KPIs; and/or
 - 5.1.2. other suggestions for improvements to the Services.
- 5.2. The Satisfaction Survey will take the form of a web survey made available to End Users on a regular basis. The End User shall be asked to provide their assessment of:
 - 5.2.1. Service Satisfaction: the End User shall be asked to register their level of satisfaction with the Platform service received (a client satisfaction score);
 - 5.2.2. Service Usability: the End User shall be asked to provide an assessment of the level of effort required to use the Platform to achieve their research goals (a client effort score);
 - 5.2.3. Service Promotion: the End User shall be asked to provide a rating of how likely they are to recommend the Platform to others users (a net promoter score); and

- 5.2.4. Support Satisfaction: on the basis that an End User has raised one or more support requests, the End User shall be asked to register their level of satisfaction with the support received and the resolution provided (a client satisfaction score).
- 5.3. Each score will be measured on a scale from 0 to 10, where 0 is the worst and 10 is the best, with equivalent weighting to create an aggregated Satisfaction Survey score of between 0 and 100%, where 0% is very poor and 100% is excellent satisfaction.
- 5.4. The results of such Satisfaction Surveys shall be reported by the Customer to the Supplier for inclusion within the Performance Monitoring Report and the average score included in the KPI calculation.

Schedule 3: Customer Responsibilities

The Customer shall:

1. perform those obligations of the Customer which are set out in the Clauses of this Agreement and the Paragraphs of the Schedules (except for Part B of Schedule 1 (Specification and Supplier Solution));
2. use its reasonable endeavours to provide the Supplier with access to appropriate members of the Customer's staff, as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Term and the Termination Assistance Period;
3. provide sufficient and suitably qualified staff to fulfil the Customer's roles and duties under this Agreement as defined in the Implementation Plan;
4. use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this Agreement provided that such documentation, data and/or information is available to the Customer and is authorised for release by the Customer; and
5. procure for the Supplier such agreed access and use of the Customer Premises (as a licensee only) and facilities (including relevant IT systems) as is reasonably required for the Supplier to comply with its obligations under this Agreement, such access to be provided during the Customer's normal working hours on each Working Day or as otherwise agreed by the Customer (such agreement not to be unreasonably withheld or delayed).

Schedule 4: Implementation Plan

1. Introduction

1.1 This Schedule 4 (Implementation Plan):

1.1.1 defines the process for the preparation and implementation of the Outline Implementation Plan and Detailed Implementation Plan; and

1.1.2 identifies the Milestones (and associated Deliverables) including the Milestones which trigger payment to the Supplier of the applicable Milestone Payments following the issue of the applicable Milestone Achievement Certificate.

2. Outline Implementation Plan

2.1 The Outline Implementation Plan is set out in Annex 1 of this Schedule 4 (Implementation Plan).

2.2 All changes to the Outline Implementation Plan shall be subject to the Change Control Procedure provided that the Supplier shall not attempt to postpone any of the Milestones using the Change Control Procedure or otherwise (except in accordance with clause 25 (Customer Cause)).

3. Approval of the Detailed Implementation Plan

3.1 The Supplier shall submit a draft of the Detailed Implementation Plan to the Customer for approval within ten (10) Working Days of the Commencement Date.

3.2 The Supplier shall ensure that the draft Detailed Implementation Plan:

3.2.1 incorporates all of the Milestones and Milestone Dates set out in the Outline Implementation Plan;

3.2.2 without prejudice to its obligation to meet all Milestone Dates, is structured and designed to ensure Achievement of the ATP Milestone Date;

3.2.3 includes (as a minimum) the Supplier's proposed timescales in respect of the following for each of the Milestones:

3.2.3.1 the completion of any design documents;

3.2.3.2 the completion of the build/configuration phase;

3.2.3.3 the completion of any Testing to be undertaken in accordance with Schedule 5 (Testing Procedures); and

3.2.3.4 training and roll-out activities; and

3.2.4 clearly outlines the required roles and responsibilities of both Parties, including staffing requirements.

3.3 Prior to the submission of the draft Detailed Implementation Plan to the Customer in accordance with Paragraph 3.1, the Customer shall have the right:

3.3.1 to review any documentation produced by the Supplier in relation to the development of the Detailed Implementation Plan, including:

- 3.3.1.1 details of the Supplier's intended approach to the Detailed Implementation Plan and its development;
 - 3.3.1.2 copies of any drafts of the Detailed Implementation Plan produced by the Supplier; and
 - 3.3.1.3 any other work in progress in relation to the Detailed Implementation Plan; and
 - 3.3.2 to require the Supplier to include any reasonable changes or provisions in the Detailed Implementation Plan.
- 3.4 Following receipt of the draft Detailed Implementation Plan from the Supplier, the Customer shall:
 - 3.4.1 review and comment on the draft Detailed Implementation Plan as soon as reasonably practicable; and
 - 3.4.2 notify the Supplier in writing that it approves or rejects the draft Detailed Implementation Plan no later than five (5) Working Days after the date on which the draft Detailed Implementation Plan is first delivered to the Customer.
- 3.5 If the Customer rejects the draft Detailed Implementation Plan:
 - 3.5.1 the Customer shall inform the Supplier in writing of its reasons for its rejection; and
 - 3.5.2 the Supplier shall then revise the draft Detailed Implementation Plan (taking reasonable account of the Customer's comments) and shall re-submit a revised draft Detailed Implementation Plan to the Customer for the Customer's approval within ten (5) Working Days of the date of the Customer's notice of rejection. The provisions of Paragraph 3.4 and this Paragraph 3.5 shall apply again to any resubmitted draft Detailed Implementation Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 3.6 If the Customer approves the draft Detailed Implementation Plan, it shall replace the Outline Implementation Plan from the date of the Customer's notice of approval.
- 4. **Updates to and Maintenance of the Detailed Implementation Plan**
 - 4.1 Following the approval of the Detailed Implementation Plan by the Customer:
 - 4.1.1 the Supplier shall submit a revised Detailed Implementation Plan to the Customer every month starting one month from the Commencement Date;
 - 4.1.2 without prejudice to Paragraph 4.1.1, the Customer shall be entitled to request a revised Detailed Implementation Plan at any time by giving written notice to the Supplier and the Supplier shall submit a draft revised Detailed Implementation Plan to the Customer within 20 Working Days of receiving such a request from the Customer (or such longer period as the Parties may agree provided that any failure to agree such longer period shall be referred to the Dispute Resolution Procedure); and
 - 4.1.3 any revised Detailed Implementation Plan shall (subject to Paragraph 4.2) be submitted by the Supplier for approval in accordance with the procedure set out in Paragraph 3.

- 4.2 Save for any amendments which are of a type identified and notified by the Customer (at the Customer's discretion) to the Supplier in writing as not requiring approval, any material amendments to the Detailed Implementation Plan shall be subject to the Change Control Procedure provided that:
- 4.2.1 any amendments to elements of the Detailed Implementation Plan which are based on the contents of the Outline Implementation Plan shall be deemed to be material amendments; and
- 4.2.2 in no circumstances shall the Supplier be entitled to alter or request an alteration to any Milestone Date except in accordance with clause 25 (Customer Cause).
- 4.3 Any proposed amendments to the Detailed Implementation Plan shall not come into force until they have been approved in writing by the Customer.

ANNEX 1

OUTLINE IMPLEMENTATION PLAN

The Outline Implementation Plan includes Deliverables and activities across all three Lots. The Supplier shall be required to collaborate with the Other Suppliers in respect of the Achievement of each Milestone.

Milestone	Deliverables	Description	Date	Key Milestone
1	Contract award		Commencement Date	No
2	Project kick off	Supplier responsible for Project Definition Workshop to inform completion of Detailed Implementation Plan	One week after Commencement Date	No
3	Delivery of Detailed Implementation Plan		Two weeks after Commencement Date	No
4	Alpha TRE hosted in Cloud	<ul style="list-style-type: none"> TRE (Lot 2) running on cloud (Lot 1) On-boarding and access to the TRE for Customer staff Ingestion and availability of synthetic data for preliminary configuration. 	As soon as possible after Commencement Date, no later than <u>31 July 2022</u>	No
5	Beta TRE hosted in Cloud	<ul style="list-style-type: none"> Ingestion and availability of Customer Data to TRE (questionnaire and demographic data only) Delivery of the functionality required as set out in the Specification Successful completion of testing as set 	30 th September 2022	Yes

		<p>out in Section 5.3 of the Specification and Schedule 5 (Testing Procedures) of the Agreement</p> <ul style="list-style-type: none"> ● On-boarding and access to the TRE for additional approved researchers as identified by the Customer ● Researcher Billing MVP functional for approved researchers with required integration between all Lots 		
6	Phase 1 TRE	<ul style="list-style-type: none"> ● Accreditation of TRE ● Ingestion and availability of Our Future Health data to TRE (questionnaire and demographic data, linked health data (if available) and initial SNP arrays) ● Triage of Beta bugs and backlog for launch. ● General availability and access for all approved registered researchers (with on- boarding determined by User demand). ● Full Researcher Billing functionality live 	31 st December 2022	Yes

Schedule 5: Testing Procedures

1. Definitions

1.1 In this Schedule 5 (Testing Procedures), the following definitions shall apply:

“Component”	any constituent parts of the Platform or Services
“Material Test Issue”	a Test Issue of Severity Level 1 or Severity Level 2
“Security Level”	the level of severity of a Test Issue, criteria for which are described in Annex 1 of this Schedule 5 (Testing Procedures)
“Test Certificate”	a certificate issued by the Customer when a Deliverable has satisfied its relevant Test Success Criteria
“Test Issue”	any variance or non-conformity of a Deliverable from its requirements (such requirements to be set out in the relevant Test Success Criteria)
“Test Issue Threshold”	in relation to the Tests applicable to readiness of the Operational Services or completion of a Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as specified by the Customer for the Test Plan concerned
“Test Issue Management Log”	a log for the recording of Test Issues as described further in Paragraph 9 of this Schedule 5 (Testing Procedures)
“Test Plan”	a plan: (a) for the Testing of Deliverables; and (b) setting out other agreed criteria related to the achievement of the Transition Date as described further in Paragraph 5 of this Schedule 5 (Testing Procedures)
“Test Reports”	the reports to be produced by the Supplier setting out the results of Tests
“Test Specification”	the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in Paragraph 7 of this Schedule 5 (Testing Procedures)
“Test Strategy”	a strategy for the conduct of Testing as described further in Paragraph 4 of this Schedule 5 (Testing Procedures)
“Test Success Criteria”	in relation to a Test, the test success criteria for that Test as referred to in Paragraph 6 of this Schedule 5 (Testing Procedures)
“Test Witness”	any person appointed by the Customer pursuant to Paragraph 10 of this Schedule 5 (Testing Procedures)

2. **Risk**

2.1 The issue of a Test Certificate, a Milestone Achievement Certificate and/or a conditional Milestone Achievement Certificate shall not:

2.1.1 operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Customer's requirements for that Deliverable or Milestone; or

2.1.2 affect the Customer's right subsequently to reject:

2.1.2.1 all or any element of the Deliverables to which a Test Certificate relates; or

2.1.2.2 any Milestone to which a Milestone Achievement Certificate relates.

2.2 Notwithstanding the issuing of any Milestone Achievement Certificate (including the Milestone Achievement Certificate in respect of the Customer to Proceed) or Test Certificate, the Supplier shall remain solely responsible for ensuring that:

2.2.1 the Platform and Supplier as designed, developed and configured is suitable for the delivery of the Services and meets the Customer Requirements;

2.2.2 the Platform and Operational Services are implemented in accordance with this Agreement; and

2.2.3 each Target Performance Level is met from the Operational Services Commencement Date.

3. **Testing Overview**

3.1 All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy, the Test Plans and the Test Specifications.

3.2 The Supplier shall not submit any Deliverable for Testing:

3.2.1 unless the Supplier is reasonably confident that it will satisfy the relevant Test Success Criteria;

3.2.2 until the Customer has issued a Test Certificate in respect of any prior, dependant Deliverable(s); and

3.2.3 until the Parties have agreed the Test Plan and the Test Specification relating to the relevant Deliverable(s).

3.3 The Supplier shall submit each Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Deliverable.

3.4 Prior to the issue of a Test Certificate, the Customer shall be entitled to review the relevant Test Reports and the Test Issue Management Log.

3.5 Any Disputes between the Customer and the Supplier regarding Testing shall be referred to the Dispute Resolution Procedure with each Party using its reasonable endeavours to expedite such process.

4. **Test Strategy**

4.1 The Supplier shall develop the final Test Strategy as soon as practicable after the Commencement Date but in any case, no later than ten (10) Working Days (or such other period as the Parties may agree in writing) after the Commencement Date.

4.2 The final Test Strategy shall include:

- 4.2.1 an overview of how Testing will be conducted in accordance with the Implementation Plan;
- 4.2.2 the process to be used to capture and record Test results and the categorisation of Test Issues;
- 4.2.3 the method for mapping the expected Test results to the Test Success Criteria;
- 4.2.4 the procedure to be followed if a Deliverable fails to satisfy the Test Success Criteria or produces unexpected results, including a procedure for the resolution of Test Issues;
- 4.2.5 the procedure to be followed to sign off each Test;
- 4.2.6 the process for the production and maintenance of Test Reports and reporting, including templates for the Test Reports and the Test Issue Management Log, and a sample plan for the resolution of Test Issues;
- 4.2.7 the names and contact details of the Customer's and the Supplier's Test representatives;
- 4.2.8 a high-level identification of the resources required for Testing, including facilities, infrastructure, tools, personnel and the Customer and/or third-party involvement in the conduct of the Tests;
- 4.2.9 the technical environments required to support the Tests; and
- 4.2.10 the procedure for managing the configuration of the Test environments.

5. **Test Plans**

5.1 The Supplier shall develop Test Plans and submit these for the approval of the Customer as soon as practicable but in any case, no later than ten (10) Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start date for the relevant Testing (as specified in the Implementation Plan).

5.2 Each Test Plan shall include as a minimum:

- 5.2.1 the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being tested, for each Test, the specific Test Success Criteria to be satisfied;
- 5.2.2 a detailed procedure for the Tests to be carried out, including:

- 5.2.2.1 the timetable for the Tests, including start/end dates;
 - 5.2.2.2 the Testing mechanism;
 - 5.2.2.3 dates and methods by which the Customer can inspect Test results or witness the Tests in order to establish that the Test Success Criteria have been met;
 - 5.2.2.4 the mechanism for ensuring the quality, completeness and relevance of the Tests;
 - 5.2.2.5 the format and an example of Test progress reports and the process with which the Customer accesses daily Test Schedules;
 - 5.2.2.6 the process which the Customer will use to review Test Issues and the Supplier's progress in resolving these in a timely basis;
 - 5.2.2.7 the Test Schedule;
 - 5.2.2.8 the re-Test procedure, the timetable and the resources which would be required for re-Testing; and
 - 5.2.2.9 the process for escalating Test Issues from a re-Test situation to the taking of specific remedial action to resolve the Test Issue
- 5.3 The Customer shall not unreasonably withhold or delay its approval of the Test Plans provided that the Supplier shall incorporate any reasonable requirements of the Customer in the Test Plans.
6. **Test Success Criteria**
- 6.1 The Test Success Criteria for Tests shall be agreed between the Parties as part of the relevant Test Plan pursuant to paragraph 5.
7. **Test Specification**
- 7.1 Following approval of the Test Plan, the Supplier shall develop the Test Specification for the relevant Deliverables as soon as reasonably practicable and in any event at least ten (10) Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start of the relevant Testing (as specified in the Implementation Plan).
- 7.2 Each Test Specification shall include as a minimum:
- 7.2.1 the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Customer and the extent to which it is equivalent to live operational data;
 - 7.2.2 a plan to make the resources available for Testing;
 - 7.2.3 Test scripts;
 - 7.2.4 Test pre-requisites and the mechanism for measuring them; and
 - 7.2.5 expected Test results including:

7.2.5.1 a mechanism to be used to capture and record Test results; and

7.2.5.2 a method to process the Test results to establish their content.

8. **Testing**

8.1 Before submitting any Deliverables for Testing the Supplier shall subject the relevant Deliverables to its own internal quality control measures.

8.2 The Supplier shall manage the progress of Testing in accordance with the relevant Test Plan and shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test Witnesses in accordance with Paragraph 10.

8.3 The Supplier shall notify the Customer at least ten (10) Working Days (or such other period as the Parties may agree in writing) in advance of the date, time and location of the relevant Tests and the Customer shall ensure that the Test Witnesses attend the Tests except where the Customer has specified in writing that such attendance is not necessary.

8.4 The Customer may raise and close Test Issues during the Test witnessing process.

8.5 The Supplier shall provide to the Customer in relation to each Test:

8.5.1 a draft Test Report not less than two (2) Working Days (or such other period as the Parties may agree in writing) prior to the date on which the Test is planned to end; and

8.5.2 the final Test Report within five (5) Working Days (or such other period as the Parties may agree in writing) of completion of Testing.

8.6 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:

8.6.1 an overview of the Testing conducted;

8.6.2 identification of the relevant Test Success Criteria that have been satisfied;

8.6.3 identification of the relevant Test Success Criteria that have not been satisfied together with the Supplier's explanation of why those criteria have not been met;

8.6.4 the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;

8.6.5 the Test Success Criteria that were satisfied, not satisfied or which were not Tested, and any other relevant categories, in each case grouped by Severity Level in accordance with Paragraph 9; and

8.6.6 the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.

9. **Test Issues**

9.1 Where a Test Report identifies a Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in Annex 1 of this Schedule 5 (Testing Procedures) and the Test Issue Management Log maintained by the Supplier shall log Test Issues reflecting the Severity Level allocated to each Test Issue.

- 9.2 The Supplier shall be responsible for maintaining the Test Issue Management Log and for ensuring that its contents accurately represent the current status of each Test Issue at all relevant times. The Supplier shall make the Test Issue Management Log available to the Customer upon request.
- 9.3 The Customer shall confirm the classification of any Test Issue unresolved at the end of a Test in consultation with the Supplier. If the Parties are unable to agree the classification of any unresolved Test Issue, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure with the Parties using reasonable endeavours to expedite the time scales entailed.
10. **Test Witnessing**
- 10.1 The Customer may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Customer each of whom shall have appropriate skills to fulfil the role of a Test Witness.
- 10.2 The Supplier shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test Witness to perform their role as a Test Witness in respect of the relevant Tests.
- 10.3 The Test Witnesses:
- 10.3.1 shall actively review the Test documentation;
 - 10.3.2 will attend and engage in the performance of the Tests on behalf of the Customer so as to enable the Customer to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the Test should be re-Tested;
 - 10.3.3 shall not be involved in the execution of any Test;
 - 10.3.4 shall be required to verify that the Supplier conducted the Tests in accordance with the Test Success Criteria and the relevant Test Plan and Test Specification;
 - 10.3.5 may produce and deliver their own, independent reports on Testing, which may be used by the Customer to assess whether the Tests have been achieved;
 - 10.3.6 may raise Test Issues on the Test Issue Management Log in respect of any Testing; and
 - 10.3.7 may require the Supplier to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.
11. **Outcome of Testing**
- 11.1 The Customer shall issue a Test Certificate when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.
- 11.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria, then the Customer shall notify the Supplier and:
- 11.2.1 the Customer may issue a Test Certificate conditional upon the remediation of the Test Issues;
 - 11.2.2 where the Parties agree that there is sufficient time, in accordance with the Implementation Plan, the Customer may extend the Test Plan by such reasonable period or periods as the Parties may reasonably agree and require the Supplier to

rectify the cause of the Test Issue and resubmit the Deliverables (or the relevant part) to Testing; or

- 11.2.3 where the failure to satisfy the Test Success Criteria results, or is likely to result, in a Delay, then without prejudice to the Customer's other rights and remedies, such failure shall constitute a Notifiable Default for the purposes of clause 23.1 (Rectification Plan Process).

12. **Issue of Milestone Achievement Certificate**

- 12.1 The Customer shall issue a Milestone Achievement Certificate as soon as is reasonably practicable following:

12.1.1 the issuing by the Customer of Test Certificates and/or conditional Test Certificates in respect of all Deliverables related to the Milestone concerned; and

12.1.2 performance by the Supplier to the reasonable satisfaction of the Customer of any other tasks identified in the Implementation Plan as associated with the Milestone concerned (which may include the submission of a Deliverable that is not due to be Tested, such as the production of Documentation).

- 12.2 The grant of a Milestone Achievement Certificate shall entitle the Supplier to invoice for the Milestone Payment (if any) relating to that Milestone (when it becomes due) in accordance with Schedule 6 (Charges and Invoicing).

- 12.3 If a Milestone is not Achieved by the date set out in the Implementation Plan the Customer shall promptly issue a report to the Supplier setting out:

12.3.1 the applicable Test Issues; and

12.3.2 any other reasons for its non-Achievement.

- 12.4 If there are Test Issues but these do not exceed the Test Issues Threshold, then provided there are no Material Test Issues, the Customer shall issue the Milestone Achievement Certificate.

- 12.5 If there is one or more Material Test Issue(s), the Customer may refuse to issue the Milestone Achievement Certificate and, without prejudice to the Customer's other rights and remedies, such failure shall constitute a Notifiable Default for the purposes of clause 23.1 (Rectification Plan Process).

- 12.6 If there are Test Issues which exceed the Test Issues Threshold but there are no Material Test Issues, the Customer may at its discretion (without waiving any rights in relation to the other options) choose to issue the Milestone Achievement Certificate conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that any Rectification Plan shall be agreed before the issue of a conditional Milestone Achievement Certificate unless the Customer agrees otherwise (in which case the Supplier shall submit a Rectification Plan for approval by the Customer within seven (7) Working Days of receipt of the Customer's report pursuant to Paragraph 12.3).

Schedule 6: Charges and Invoicing

Part A: Charging Mechanisms

1. Milestone Payments

- 1.1 On the Achievement of a Milestone the Supplier shall be entitled to invoice the Customer for the Milestone Payment associated with that Milestone as set out in the Annex to this Schedule 6 (Charges and Invoicing).
- 1.2 Each invoice relating to a Milestone Payment shall be supported by a Milestone Achievement Certificate.

2. Service Charges

- 2.1 Each Service to which a Service Charge relates shall commence on the Achievement of the Milestone set out against that Service in the Annex to this Schedule 6 (Charges and Invoicing) and shall be for the amount as specified therein, as applicable.
- 2.2 Service Charges shall be invoiced by the Supplier for each Service Period in arrear in accordance with the requirements of Part C (Invoicing and Payment Terms).
- 2.3 If the relevant Service:
 - 2.3.1 commences on a day other than the first day of a month; and/or
 - 2.3.2 ends on a day other than the last day of a month,
 the Service Charge for the relevant Service Period shall be pro-rated based on the proportion which the number of days in the month for which the Service is provided bears to the total number of days in that month.
- 2.4 An invoice for a Service Charge shall not be payable by the Customer unless all adjustments relating to the Service Charges for the immediately preceding Service Period have been agreed.

3. Exit Charges

The Exit Charges may be invoiced by the Supplier and shall be payable by the Customer upon successful completion by the Supplier of the Termination Services and performance of its obligations as set out in Schedule 7 (Exit Management).

4. [End User Charges]

- 4.1 The Supplier shall charge Users the End User Charges for use of the services provided by the Cloud Infrastructure Provider,. The End User Charges as at the Commencement Date are as set out in the Annex to this Schedule 6 (Charges and Invoicing). The Customer shall be entitled to vary the End User Charges from time to time, on the basis of the applicable charges agreed with the Cloud Infrastructure Provider, by notice in writing to the Supplier. The Supplier shall remit all End User Charges received to the Cloud Infrastructure Provider promptly and in any event within thirty (30) days of receipt.- DELETE IF LOT 3 IS AWARDED TO A LOT 1 BIDDER]

Part B: Adjustments to the Charges

1. **Delay Payments**

1.1 If a Key Milestone has not been Achieved on or before the relevant Milestone Date, and the Supplier is not entitled to relief under clauses 25 (Customer Cause) or 26 (Force Majeure), the Supplier shall pay a Delay Payment to the Customer in respect of that Key Milestone. Delay Payments shall accrue:

1.1.1 at the daily rate of 0.25% of the total Milestone Payments;

1.1.2 from (but excluding) the relevant Milestone Date to (and including) the earlier of:

1.1.2.1 the date on which the Key Milestone is Achieved; and

1.1.2.2 the expiry of the Delay Deduction Period; and

1.1.3 on a daily basis, with any part day's Delay counting as a day.

2. **Changes to Charges**

2.1 Where the Parties agree that a change to the Services or any obligation of the Supplier under this Agreement requires a change to the Charges, such change shall be developed and agreed by the Parties in accordance with the applicable provisions of this Agreement and on the basis that the Supplier's profit margin on such Charges shall be no greater than that applying to Charges using the same pricing mechanism as at the Commencement Date. Time based Charges will be calculated on the basis of the most applicable of the Day Rates set out in the Annex of this Schedule 6 (Charges and Invoicing).

3. **Service Credits**

3.1 Service Credits shall be calculated by reference to the number of Service Points accrued in any one Service Period pursuant to the provisions of Schedule 2 (Performance Levels).

3.2 For each Service Period:

3.2.1 the Service Points accrued shall be converted to a percentage deduction from the Service Charges for the relevant Service Period on the basis of one point equating to a [1%] deduction in the Service Charges; and

3.2.2 the total Service Credits applicable for the Service Period shall be calculated in accordance with the following formula:

$$SC = TSP \times X \times AC$$

where:

SC is the total Service Credits for the relevant Service Period;

TSP is the Total Service Points that have accrued for the relevant Service Period;

X is 1%; and

AC is the total Services Charges payable for the relevant Service Period (prior to deduction of applicable Service Credits).

- 3.3 The liability of the Supplier in respect of Service Credits shall be subject to clause 22.2.1 (Financial and other Limits) provided that, for the avoidance of doubt, the operation of the Service Credit Cap shall not affect the continued accrual of Service Points in excess of such financial limit in accordance with the provisions of Schedule 2 (Performance Levels).
- 3.4 Service Credits are a reduction of the Service Charges payable in respect of the relevant Services to reflect the reduced value of the Services actually received and are stated exclusive of VAT.
- 3.5 Service Credits shall be shown as a deduction from the amount due from the Customer to the Supplier in the invoice for the Service Period immediately succeeding the Service Period to which they relate.

Part C: Invoicing and Payment Terms

1. Supplier Invoices

- 1.1 The Supplier shall prepare and provide to the Customer for approval of the format a template invoice within ten (10) Working Days of the Commencement Date which shall include, as a minimum, the details set out in Paragraph 1.2 together with such other information as the Customer may reasonably require to assess whether the Charges that will be detailed therein are properly payable. If the template invoice is not approved by the Customer then the Supplier shall make such amendments as may be reasonably required by the Customer. If the Customer uses an e-invoicing system then the Supplier shall instead comply with the requirements of that system.
- 1.2 The Supplier shall ensure that each invoice is submitted in the correct format for the Customer's e-invoicing system, or that it contains the following information:
 - 1.2.1 the date of the invoice;
 - 1.2.2 a unique invoice number;
 - 1.2.3 the Service Period or other period(s) to which the relevant Charge(s) relate;
 - 1.2.4 the correct reference for this Agreement;
 - 1.2.5 the reference number of the purchase order to which it relates;
 - 1.2.6 the dates between which the Services subject of each of the Charges detailed on the invoice were performed;
 - 1.2.7 the pricing mechanism used to calculate the Charges (Fixed Price, Time and Materials etc);
 - 1.2.8 any payments due in respect of Achievement of a Milestone, including the Milestone Achievement Certificate number for each relevant Milestone;
 - 1.2.9 the total Charges gross and net of any applicable deductions and, separately, any VAT or other sales tax payable in respect of each of the same;
 - 1.2.10 details of deductions that shall apply to the Charges detailed on the invoice;

- 1.2.11 reference to any reports required by the Customer in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by the Customer, then to any such reports as are validated by the Customer in respect of the Services);
 - 1.2.12 a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries; and
 - 1.2.13 the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number).
- 1.3 The Supplier shall invoice the Customer in respect of Services in accordance with the requirements of Part A (Charging Mechanisms). The Supplier shall first submit to the Customer a draft invoice setting out the Charges payable. The Parties shall endeavour to agree the draft invoice within five (5) Working Days of its receipt by the Customer, following which the Supplier shall be entitled to submit its invoice.
 - 1.4 Sufficient information in writing to enable the Customer reasonably to assess whether the Charges and other sums due from the Customer detailed in the information are properly payable, including copies of any applicable Milestone Achievement Certificates or receipts, is required for each invoice.
 - 1.5 The Supplier shall submit all invoices via email to invoices@ourfuturehealth.org.uk.
 - 1.6 All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Customer in writing.
 - 1.7 The Customer shall regard an invoice as valid only if it complies with the provisions of this Part C. Where any invoice does not conform to the Customer's requirements set out in this Part C, the Customer shall return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.
2. **Payment Terms**
 - 2.1 Subject to the relevant provisions of this Schedule 6 (Charges and Invoicing), the Customer shall make payment to the Supplier within thirty (30) days of receipt of a valid invoice by the Customer.
 - 2.2 Unless the Parties agree otherwise in writing, all Supplier invoices shall be paid in sterling by electronic transfer of funds to the bank account that the Supplier has specified on its invoice.

ANNEX

[To be populated from successful bid]

To include:

- Milestone Payments covering implementation and integration
- Services Charges covering licence and support
- Exit Charges
- End User Charges
- Estimated Initial Service Charges
- Estimated Year 1 Charges]

Schedule 7: Exit Management

1. Definitions and Interpretations

1.1 In this Schedule 7 (Exit Management), the following definitions shall apply:

“Exit Information”	has the meaning given in paragraph 3.1 of this Schedule 7 (Exit Management)
“Exit Manager”	the person appointed by each Party pursuant to paragraph 2 of this Schedule 7 (Exit Management) for managing the Parties’ respective obligations under this Schedule 7 (Exit Management)
“Net Book Value”	the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Customer of the same date as this Agreement
“Termination Assistance Period”	has the meaning given in paragraph 5.1.3 of this Schedule 7 (Exit Management)
“Transferable Contracts”	the Subcontracts, licences for Supplier Software, licences for Third Party Software or other agreements which are necessary to enable the Customer or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation [and the Key Subcontract with the Researcher Billing Provider - DELETE IF LOT 3 IS AWARDED TO A LOT 1 BIDDER]
“Transferring Contracts”	has the meaning given in paragraph 6.2.3 of this Schedule 7 (Exit Management).

2. Exit Manager

2.1 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule 7 (Exit Management) and provide written notification of such appointment to the other Party within three (3) months of the Commencement Date. The Supplier’s Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Subcontractors comply with this Schedule 7 (Exit Management). The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule 7 (Exit Management). The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Agreement and all matters connected with this Schedule 7 (Exit Management) and each Party's compliance with it.

3. Obligations to Assist on Re-Tendering of Services

3.1 On reasonable notice at any point during the Term, the Supplier shall provide to the Customer and/or its potential Replacement Supplier (subject to the potential Replacement Supplier entering into reasonable written confidentiality undertakings), the following material and information in

order to facilitate the preparation by the Customer of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:

- 3.1.1 details of the Service(s);
 - 3.1.2 an inventory of the Customer Data in the Supplier's possession or control; and
 - 3.1.3 such other material and information as the Customer shall reasonably require,
- (together, the "Exit Information").

3.2 The Supplier acknowledges that the Customer may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Customer is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Customer may not under this paragraph 3.2 disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Subcontractors' prices or costs).

3.3 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:

- 3.3.1 prepare an informed offer for those Services; and
- 3.3.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

4. **Exit Plan**

4.1 The Supplier shall, no later than twenty (20) Working Days after the Commencement Date, deliver to the Customer an Exit Plan which:

- 4.1.1 sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to the Customer and/or its Replacement Supplier on the expiry or termination of this Agreement;
- 4.1.2 complies with the requirements set out in paragraph 4.2; and
- 4.1.3 is otherwise reasonably satisfactory to the Customer.

4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

4.3 The Exit Plan shall set out, as a minimum:

- 4.3.1 the mechanism for dealing with exit, including transfer and cessation processes and provision for the supply by the Supplier of all such reasonable assistance as the Customer shall require to enable the Customer or its subcontractors to provide the Services;
- 4.3.2 how the Services will transfer to the Replacement Supplier and/or the Customer, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Customer's technology components from any

technology components operated by the Supplier or its Subcontractors (where applicable);

4.3.3 the scope of the Termination Services that may be required for the benefit of the Customer; and

4.3.4 a timetable and critical issues for providing the Termination Services.

4.4 The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule in the first month of each Contract Year (commencing with the second Contract Year) to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such an update the Supplier shall submit the revised Exit Plan to the Customer for review and approval. If the Parties are unable to agree the contents of the revised Exit Plan within that twenty (20) Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

5. Termination Services

Notification of Requirements for Termination Services

5.1 The Customer shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a "Termination Assistance Notice") at least three (3) months prior to the date of termination or expiry of this Agreement or as soon as reasonably practicable (but in any event, not later than one (1) month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:

5.1.1 the date from which Termination Services are required;

5.1.2 the nature of the Termination Services required; and

5.1.3 the period during which it is anticipated that Termination Services will be required, which shall continue no longer than twelve (12) months after the date that the Supplier ceases to provide the Services ("Termination Assistance Period").

5.2 The Customer shall have an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six (6) months after the date the Supplier ceases to provide the Services and provided that it shall notify the Supplier to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Services are otherwise due to expire. The Customer shall have the right to terminate its requirement for Termination Services by serving not less than twenty (20) Working Days' written notice upon the Supplier to such effect.

Termination Assistance Period

5.3 Throughout the Termination Assistance Period, or such shorter period as the Customer may require, the Supplier shall:

5.3.1 continue to provide the Services (as applicable) and, if required by the Customer pursuant to paragraph 5.1, provide the Termination Services;

5.3.2 in addition to providing the Services and the Termination Services, provide to the Customer any reasonable assistance requested by the Customer to allow the Services to continue without interruption following the termination or expiry of this Agreement

and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Customer and/or its Replacement Supplier;

- 5.3.3 use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph 5.3.2 without additional costs to the Customer; and
 - 5.3.4 provide the Services and the Termination Services at no detriment to the Target Performance Levels.
- 5.4 Without prejudice to the Supplier's obligations under paragraph 5.3.3, if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in paragraph 5.3.2 without additional costs to the Customer, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be agreed between the Parties in accordance the principles set out paragraph 4.3.5.

Termination Obligations

- 5.5 The Supplier shall comply with all of its obligations contained in the Exit Plan.
- 5.6 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), the Supplier shall:
 - 5.6.1 cease to use Customer Data;
 - 5.6.2 provide the Customer and/or the Replacement Supplier with a complete and uncorrupted version of Customer Data in electronic form (or such other format as reasonably required by the Customer);
 - 5.6.3 erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Customer Data and promptly certify to the Customer that it has completed such deletion;
 - 5.6.4 return to the Customer such of the following as is in the Supplier's possession or control:
 - 5.6.4.1 all copies of Customer Software and any other software licensed by the Customer to the Supplier under this Agreement;
 - 5.6.4.2 all materials created by the Supplier under this Agreement in which the IPRs are owned by the Customer;
 - 5.6.4.3 any parts of the IT Environment and any other equipment which belongs to Customer; and
 - 5.6.4.4 any items that have been on-charged to the Customer, such as consumables; and
 - 5.6.5 vacate any Customer Premises.
- 5.7 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), each Party

shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.

- 5.8 Except where this Agreement provides otherwise, all licences, leases and authorisations granted by the Customer to the Supplier in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

6. Subcontracts and Software

- 6.1 Following notice of termination of this Agreement and during the Termination Assistance Period, the Supplier shall not, without the Customer's prior written consent:

6.1.1 terminate, enter into or vary any Subcontract except to the extent that such change does not or will not affect the provision of Services or the Charges; or

6.1.2 terminate, enter into or vary any licence for software in connection with the Platform or Services.

- 6.2 The Customer shall provide written notice to the Supplier setting out which, if any, of the Transferable Contracts the Customer requires to be assigned or novated to the Customer and/or the Replacement Supplier (the "Transferring Contracts"), in order for the Customer and/or its Replacement Supplier to receive and / or provide the Services or Replacement Services from the expiry of the Termination Assistance Period, or as the Customer may otherwise require. Where requested by the Customer and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Customer and/or its Replacement Supplier to enable it to determine which Transferable Contracts the Customer and/or its Replacement Supplier requires to provide the Services or Replacement Services.

- 6.3 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Customer and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Customer reasonably requires to effect this novation or assignment.

- 6.4 The Customer shall:

6.4.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and

6.4.2 once a Transferring Contract is novated or assigned to the Customer and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.

- 6.5 The Supplier shall hold any Transferring Contracts on trust for the Customer until such time as the transfer of the relevant Transferring Contract to the Customer and/or the Replacement Supplier has been effected.

6.6 The Supplier shall indemnify the Customer (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Customer (and/or Replacement Supplier) pursuant to paragraph 6.6 in relation to any matters arising prior to the date of assignment or novation of such Subcontract.

7. **Charges**

7.1 The Customer shall pay the Exit Charges to the Supplier in respect of the Termination Services as set out in Schedule 6 (Charges and Invoicing). If the scope or timing of the Termination Services is changed and this results in a change to the costs of the Supplier in performing such Termination Services, any Change to the Exit Charges shall be agreed in accordance with the Change Control Procedure.

7.2 Except as otherwise expressly specified in this Agreement, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Customer shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule 7 (Exit Management) including the preparation and implementation of the Exit Plan and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

Schedule 8: Data Processing Clauses

1. Data Protection

- 1.1 The Customer authorises the Supplier to Process the Customer Data during the term of this Agreement for the purposes of the roles set out in clauses 20.1.1 and 20.1.2 of this Agreement and to the extent described in Annex 1 to this Schedule 8 (Data Processing Clauses) and as otherwise authorised or permitted under this Agreement from time to time.
- 1.2 The Customer warrants to the Supplier that:
 - 1.2.1 it (on its own or on behalf of its Users) has all necessary rights to authorise the Supplier to Process Agreement Personal Data in accordance with this Agreement and the Data Protection Laws; and
 - 1.2.2 its instructions to the Supplier (on its own or on behalf of its Users) relating to Processing of Customer Data will not put the Supplier in breach of Data Protection Laws, including with regard to Restricted Transfers.
- 1.3 If the Supplier considers that any instructions from the Customer relating to Processing of Customer Data may put the Supplier in breach of Data Protection Laws, the Supplier will be entitled not to carry out that Processing and will not be in breach of this Agreement or otherwise liable to the Customer as a result of its failure to carry out that Processing.
- 1.4 In performing the Services and its other obligations under this Agreement the Supplier will:
 - 1.4.1 comply with the Data Protection Laws;
 - 1.4.2 not cause the Customer to breach any obligation under the Data Protection Laws; and
 - 1.4.3 notify the Customer without undue delay if it identifies any areas of actual or potential non-compliance with the Data Protection Laws or this paragraph 1, without prejudice to its obligations to comply with, or to any rights or remedies which the Customer may have for breach of, the Data Protection Laws or this paragraph 1.
- 1.5 The Supplier will not engage or use any third party for the Processing of Customer Data or permit any third party to Process Customer Data without the prior written consent of the Customer.
- 1.6 If the Supplier appoints a Sub-Processor, the Supplier will ensure that, prior to the Processing taking place, there is a written contract in place between the Supplier and the Sub-Processor that specifies the Sub-Processor's Processing activities and imposes on the Sub-Processor the same terms as those imposed on the Supplier in this paragraph 1. The Supplier will procure that Sub-Processors will perform all obligations set out in this paragraph 1 and the Supplier will remain responsible and liable to the Customer for all acts and omissions of Sub-Processors as if they were its own.
- 1.7 The Supplier will:
 - 1.7.1 Process the Customer Data only on documented instructions (including without limitation this Agreement) from the Customer (unless the Supplier or the relevant Sub-Processor is required to Process Customer Data to comply with United Kingdom law to which the Supplier is subject, in which case the Supplier will notify the Customer of such legal requirement prior to such Processing unless such law prohibits notice to the Customer on public interest grounds);

- 1.7.2 comply with any instruction(s) from the Customer to change or restrict Processing of Customer Data through or otherwise in respect of any specific cloud storage node(s), with any requested changes being made no later than twenty eight (28) days after the documented instruction is received by the Supplier from the Customer;
 - 1.7.3 immediately notify the Customer if, in its reasonable opinion, any instruction received from the Customer infringes any Data Protection Laws;
 - 1.7.4 without prejudice to paragraph 1.7.1, ensure that Customer Data will only be used for the purpose and to the extent described in Annex 1 of this Schedule 8 (Data Processing Clauses);
 - 1.7.5 without prejudice to paragraph 1.7.4, not without the prior written consent of the Customer:
 - 1.7.5.1 convert any Customer Data into anonymised, pseudonymised, depersonalised, aggregated or statistical data;
 - 1.7.5.2 use any Customer Data for “big data” analysis or purposes; or
 - 1.7.5.3 match or compare any Customer Data with or against any other Personal Data (whether the Supplier’s or any third party’s);
 - 1.7.6 ensure that any individual authorised to Process Customer Data accesses such Customer Data strictly on a need to know basis as necessary to perform their role in the performance of this Agreement, and:
 - 1.7.6.1 is subject to confidentiality obligations equivalent to those set out in clause 19 of this Agreement or is under an appropriate statutory obligation of confidentiality; and
 - 1.7.6.2 complies with this paragraph 1; and
 - 1.7.6.3 is appropriately reliable, qualified and trained in relation to their Processing of Customer Data;
 - 1.7.7 keep all Customer Data confidential in accordance with the provisions of clause 19, provided that in the event and to the extent only of any conflict between this paragraph 1 and clause 19, this paragraph 1 will prevail; and
 - 1.7.8 at the option of the Customer, securely delete or return to Customer or transfer to any Replacement Supplier (in the format required by the Customer) all Customer Data promptly after the end of the provision of Services relating to Processing or at any time upon request, and securely delete any remaining copies and promptly certify (via a director) when this exercise has been completed.
- 1.8 The Supplier will not make a Restricted Transfer without the Customer’s prior written consent. If the Customer gives its prior written consent to a Restricted Transfer, before making that Restricted Transfer the Supplier will demonstrate and implement, to the Customer’s satisfaction, appropriate safeguards for that Restricted Transfer in accordance with Data Protection Laws and will ensure that enforceable rights and effective legal remedies for Data Subjects are available. Such appropriate safeguards may include without limitation:

- 1.8.1 an appropriate safeguard as directed and determined by the Customer in accordance with the Data Protection Laws;
- 1.8.2 that the country or territory to which the Restricted Transfer is to be made ensures an adequate level of protection for Processing of Personal Data pursuant to a valid adequacy decision made in accordance with Data Protection Laws; and
- 1.8.3 an appropriate safeguard provided by the relevant Processor in accordance with the Data Protection Laws, in which case the Customer will execute any documents (including data transfer agreements containing the standard contractual clauses for the transfer of personal data to Processors established in third countries) relating to that Restricted Transfer which the relevant Processor requires it to execute from time to time.

If the appropriate safeguards demonstrated and implemented by the Supplier (or the relevant Processor) in accordance with this paragraph 1.8 are deemed at any time not to provide an adequate level of protection in relation to Customer Data, the Supplier will implement such alternative measures as may be required by the Customer to ensure that the relevant Restricted Transfer and all resulting Processing are compliant with Data Protection Laws.

1.9 The Supplier will:

- 1.9.1 implement, and assist the Customer to implement, technical and organisational measures at a minimum to the standard set out in Schedule 11 (Information Security Requirements) to ensure a level of security appropriate to the risk presented by Processing the Customer Data, in particular from a Data Security Incident;
- 1.9.2 notify the Customer immediately if at any time the Supplier or a Sub-Processor is, or ought to be, aware of any reason why it is unable to comply with paragraph 1.9.1, without prejudice to its obligation to comply with, or to any rights or remedies which the Customer may have for breach of, paragraph 1.9.1;
- 1.9.3 notify the Customer promptly after becoming aware of a reasonably suspected, “near miss” or actual Data Security Incident, including without limitation the nature of the Data Security Incident, the categories and approximate number of Data Subjects and Customer Data records concerned, the likely consequences of the Data Security Incident and any measure proposed to be taken to address the Data Security Incident and to mitigate its possible adverse effects. Where, and in so far as, it is not possible to provide all the relevant information at the same time, the information may be provided in phases without undue delay, but the Supplier (and Sub-Processors) may not delay notification under this paragraph 1.9.3 on the basis that an investigation is incomplete or ongoing;
- 1.9.4 promptly (and in any event within seventy two (72) hours) notify the Customer of any request that it receives for exercise of a Data Subject’s rights under the Data Protection Laws or communication or complaint that it receives from a Data Subject or Supervisory Authority or other third party in connection with Customer Data;
- 1.9.5 provide reasonable assistance to the Customer in responding to requests for exercising Data Subjects’ rights under the Data Protection Laws and communications and complaints from Data Subjects and Supervisory Authorities and other third parties in connection with Customer Data, including without limitation by appropriate technical and organisational measures, insofar as this is possible;

- 1.9.6 not, without the Customer's prior written consent, make or permit any announcement in respect of a Data Security Incident or respond to any request for exercise of a Data Subject's rights under the Data Protection Laws or communication or complaint from a Data Subject or Supervisory Authority in connection with Customer Data; and
- 1.9.7 assist the Customer in:
 - 1.9.7.1 documenting any Data Security Incidents and reporting any Data Security Incidents to any Supervisory Authority and/or Data Subjects;
 - 1.9.7.2 taking measures to address Data Security Incidents, including without limitation, where appropriate, measures to mitigate their possible adverse effects; and
 - 1.9.7.3 conducting privacy impact assessments of any Processing operations and consulting with Supervisory Authorities, Data Subjects and their representatives accordingly.
- 1.10 The Supplier will:
 - 1.10.1 make available to the Customer all information necessary to demonstrate compliance with the obligations set out in this paragraph 1; and
 - 1.10.2 allow for and contribute to audits, including without limitation inspections, conducted by the Customer or another auditor mandated by the Customer.
- 1.11 The Supplier will prepare and securely maintain a record of all categories of Processing activities carried out on behalf of the Customer in relation to Customer Data, including without limitation as a minimum:
 - 1.11.1 its name and contact details and details of its Data Protection Officer or other person with responsibility for data protection compliance;
 - 1.11.2 the categories of Processing it carries out on behalf of the Customer;
 - 1.11.3 Restricted Transfers;
 - 1.11.4 a general description of the technical and organisational security measures referred to in paragraph 1.9.1; and
 - 1.11.5 the same information in relation to any Sub-Processor, together with its name and contact details (together the "Data Record").

The Supplier will promptly upon request securely supply a copy of the Data Record to the Customer.
- 1.12 Where, under this paragraph 1, the Supplier is required to notify the Customer of any matter or thing, such notification will be marked for the attention of the Customer's Data Protection Officer and sent by e-mail to the following e-mail address: dp@ourfuturehealth.org.uk.
- 1.13 Wherever under this Agreement the Customer's consent is required before the Supplier is permitted to do a particular act or thing, unless otherwise expressly provided, the Customer is entitled to give or withhold consent or make consent subject to conditions at its sole discretion.

ANNEX 1 Customer Data

	Processing of Customer Data
Subject matter of Processing	
Duration of Processing	
Nature of Processing	
Purpose of Processing	
Type of Personal Data	
Categories of Data Subject	

Schedule 9: Collaboration Agreement

This Collaboration Agreement is made on **[ENTER DATE]**

between:

- (1) Our Future Health Ltd (registered number 12212468) whose office is at 2 New Bailey, 6 Stanley Street, Salford, Greater Manchester, United Kingdom, M3 5GS (the “Customer”); and
- (2) [Company name] a company incorporated in [company address] under [registration number], whose registered office is at [registered address]; and
- (3) [Company name] a company incorporated in [company address] under [registration number], whose registered office is at [registered address] together (the Collaboration Suppliers and each of them a Collaboration Supplier).

(each a “Party” and together the “Parties” of this Collaboration Agreement).

BACKGROUND / INTRODUCTION

Whereas:

The Customer and the Collaboration Suppliers have entered into the Broader Agreements (defined below) for the provision of various IT and telecommunications (ICT) services.

Collaboration Suppliers now wish to provide for the ongoing cooperation of the Collaboration Suppliers in the provision of services under their respective Broader Agreements to the Customer.

In consideration of the mutual covenants contained in the Broader Agreements and this Collaboration Agreement and intending to be legally bound, the parties agree as follows:

1. Definitions and Interpretations

- 1.1 As used in this Agreement, the capitalised expressions will have the following meanings unless the context requires otherwise:

“Broader Agreement”	the agreement that this Schedule 9 (Collaboration Agreement) is a schedule of
“Collaboration Activities”	the activities set out in this Agreement
“Collaboration Agreement”	this collaboration agreement, containing the Clauses and Schedules
“Contract”	each contract that is awarded by the Customer to one of the Collaboration Suppliers
“Confidential Information”	the Customer’s Confidential Information or any Collaboration Supplier’s Confidential Information
“Customer Confidential Information”	has the meaning set out in the Broader Agreement

“Default”	any breach of the obligations of any Collaboration Supplier or any Default, act, omission, negligence or statement of any Collaboration Supplier, its employees, servants, agents or subcontractors in connection with or in relation to the subject matter of this Collaboration Agreement and in respect of which such Collaboration Supplier is liable (by way of indemnity or otherwise) to the other parties
“Detailed Collaboration Plan”	has the meaning given in clause 3.2 of this Collaboration Agreement
“Dispute Resolution Process”	means the process described in clause 9 of this Collaboration Agreement
“Effective Date”	the date on which this Collaboration Agreement commences, which is [INSERT]
“Force Majeure Event”	has the meaning given in clause 11.1.1 of this Collaboration Agreement
Good Industry Practice	has the meaning set out in the Broader Agreement
“Mediator”	has the meaning given to it in clause 9.3.1 of this Collaboration Agreement
“Outline Collaboration Plan”	has the meaning given to it in clause 3.1 of this Collaboration Agreement
“Term”	has the meaning given to it in clause 2.1 of this Collaboration Agreement
“Working Day”	any day other than a Saturday, Sunday or public holiday in England and Wales

General

1.2 As used in this Collaboration Agreement:

- 1.2.1 the masculine includes the feminine and the neuter;
- 1.2.2 the singular includes the plural and the other way round;
- 1.2.3 a reference to any statute, enactment, order, regulation or other similar instrument will be viewed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment;
- 1.2.4 headings are included for ease of reference only and will not affect the interpretation or construction of this Collaboration Agreement;

- 1.2.5 references to Clauses and Schedules are, unless otherwise provided, references to clauses of and schedules to this Collaboration Agreement;
- 1.2.6 except as otherwise expressly provided in this Collaboration Agreement, all remedies available to any Party under this Collaboration Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy will not exclude the exercise of any other remedy;
- 1.2.7 the Party receiving the benefit of an indemnity under this Collaboration Agreement will use its reasonable endeavours to mitigate its loss covered by the indemnity.

2. **Term of this Collaboration Agreement**

- 2.1 This Collaboration Agreement will come into force on the Effective Date and, unless earlier terminated in accordance with **clause 10**, will expire six (6) months after the expiry or termination (however arising) of the exit period of the Broader Agreement (the “Term”).
- 2.2 A Collaboration Supplier’s duty to perform the Collaboration Activities will continue until the end of the exit period of the Broader Agreement.

3. **Provision of the collaboration plan**

- 3.1 The Collaboration Suppliers will, within two (2) weeks (or any longer period as notified by the Customer in writing) of the Effective Date, provide to the Customer detailed proposals for the Collaboration Activities they require from each other (the “Outline Collaboration Plan”).
- 3.2 Within ten (10) Working Days (or any other period as agreed in writing by the Customer and the Collaboration Suppliers) of **[receipt of the proposals] or [the Effective Date]**, the Customer will prepare a plan for the Collaboration Activities (the “Detailed Collaboration Plan”). The Detailed Collaboration Plan will include full details of the activities and interfaces that involve all of the Collaboration Suppliers to ensure the receipt of the services under each Collaboration Supplier’s respective Broader Agreement, by the Customer. The Detailed Collaboration Plan will be based on the Outline Collaboration Plan and will be submitted to the Collaboration Suppliers for approval.
- 3.3 The Collaboration Suppliers will provide the help the Customer needs to prepare the Detailed Collaboration Plan.
- 3.4 The Collaboration Suppliers will, within ten (10) Working Days of receipt of the Detailed Collaboration Plan, either:
 - 3.4.1 approve the Detailed Collaboration Plan; or
 - 3.4.2 reject the Detailed Collaboration Plan, giving reasons for the rejection.
- 3.5 The Collaboration Suppliers may reject the Detailed Collaboration Plan under clause 3.4.2 only if it is not consistent with their Outline Collaboration Plan in that it imposes additional, more onerous, obligations on them.
- 3.6 If the parties fail to agree the Detailed Collaboration Plan under clause 3.4, the dispute will be resolved using the Dispute Resolution Process.

4. **Collaboration activities**

- 4.1 The Collaboration Suppliers will perform the Collaboration Activities and all other obligations of this Agreement in accordance with the Detailed Collaboration Plan.
- 4.2 The Collaboration Suppliers will provide all additional cooperation and assistance as is reasonably required by the Customer to ensure the continuous delivery of the services under the Broader Agreement.
- 4.3 The Collaboration Suppliers will ensure that their respective subcontractors provide all co-operation and assistance as set out in the Detailed Collaboration Plan.
- 5. **Invoicing**
 - 5.1 If any sums are due under this Agreement, the Collaboration Supplier responsible for paying the sum will pay within 30 Working Days of receipt of a valid invoice.
 - 5.2 Interest will be payable on any late payments under this Agreement under the Late Payment of Commercial Debts (Interest) Act 1998, as amended.
- 6. **Confidentiality**
 - 6.1 Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information, the Collaboration Suppliers acknowledge that any Confidential Information obtained from or relating to the Crown, its servants or agents is the property of the Crown.
 - 6.2 Each Collaboration Supplier warrants that:
 - 6.2.1 any person employed or engaged by it (in connection with this Agreement in the course of such employment or engagement) will only use Confidential Information for the purposes of this Agreement;
 - 6.2.2 any person employed or engaged by it (in connection with this Agreement) will not disclose any Confidential Information to any third party without the prior written consent of the other Party;
 - 6.2.3 it will take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (except as agreed) or used other than for the purposes of this Agreement by its employees, servants, agents or subcontractors;
 - 6.2.4 neither it nor any person engaged by it, whether as a servant or a consultant or otherwise, will use the Confidential Information for the solicitation of business from the other or from the other Party's servants or consultants or otherwise.
 - 6.3 The provisions of clauses 6.1 and 6.2 will not apply to any information which is:
 - 6.3.1 or becomes public knowledge other than by breach of this clause 6;
 - 6.3.2 in the possession of the receiving Party without restriction in relation to disclosure before the date of receipt from the disclosing Party;
 - 6.3.3 received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - 6.3.4 independently developed without access to the Confidential Information;

6.3.5 required to be disclosed by law or by any judicial, arbitral, regulatory or other authority of competent jurisdiction.

6.4 The Customer's right, obligations and liabilities in relation to using and disclosing any Collaboration Supplier's Confidential Information provided under this Agreement and the Collaboration Supplier's right, obligations and liabilities in relation to using and disclosing any of the Customer's Confidential Information provided under this Collaboration Agreement, will be as set out in the Broader Agreement.

7. **Warranties**

7.1 Each Collaboration Supplier warrant and represent that:

7.1.1 it has full capacity and authority and all necessary consents (including but not limited to, if its processes require, the consent of its parent company) to enter into and to perform this Collaboration Agreement and that this Collaboration Agreement is executed by an authorised representative of the Collaboration Supplier;

7.1.2 its obligations will be performed by appropriately experienced, qualified and trained personnel with all due skill, care and diligence including but not limited to Good Industry Practice and (without limiting the generality of this clause 7) in accordance with its own established internal processes;

7.1.3 except as expressly stated in this Collaboration Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to fitness for purpose) are excluded to the extent permitted by law.

8. **Limitation of liability**

8.1 None of the parties exclude or limit their liability for death or personal injury resulting from negligence, or for any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

8.2 Nothing in this Collaboration Agreement will exclude or limit the liability of any Party for fraud or fraudulent misrepresentation.

8.3 Subject always to clauses 8.1 and 8.2, the liability of the Customer to any Collaboration Suppliers for all claims (by way of indemnity or otherwise) arising whether in contract, tort (including negligence), misrepresentation (other than if made fraudulently), breach of statutory duty or otherwise under this Collaboration Agreement (excluding Clause 6.4, which will be subject to the limitations of liability set out in the relevant Broader Agreement) will be limited to one million pounds (£1,000,000).

8.4 Subject always to clauses 8.1 and 8.2, the liability of each Collaboration Supplier for all claims (by way of indemnity or otherwise) arising whether in contract, tort (including negligence), misrepresentation (other than if made fraudulently), breach of statutory duty or otherwise under this Collaboration Agreement will be limited to one million pounds (£1,000,000).

8.5 Subject always to clauses 8.1, 8.2 and 8.6 and except in respect of liability under clause 6 (excluding clause 6.4, which will be subject to the limitations of liability set out in the relevant Broader Agreement, in no event will any Party be liable to any other for:

8.5.1 indirect loss or damage;

- 8.5.2 special loss or damage;
- 8.5.3 consequential loss or damage;
- 8.5.4 loss of profits (whether direct or indirect);
- 8.5.5 loss of turnover (whether direct or indirect);
- 8.5.6 loss of business opportunities (whether direct or indirect);
- 8.5.7 damage to goodwill (whether direct or indirect).
- 8.6 Subject always to clauses 8.1 and 8.2, the provisions of clause 8.5 will not be taken as limiting the right of the Customer to among other things, recover as a direct loss any:
 - 8.6.1 additional operational or administrative costs and expenses arising from a Collaboration Supplier's Default;
 - 8.6.2 wasted expenditure or charges rendered unnecessary or incurred by the Customer arising from a Collaboration Supplier's Default.
- 9. **Dispute resolution process**
 - 9.1 All disputes between any of the parties arising out of or relating to this Collaboration Agreement will be referred, by any Party involved in the dispute, to the representatives of the parties specified in the Detailed Collaboration Plan.
 - 9.2 If the dispute cannot be resolved by the parties' representatives nominated under clause 9.1 within a maximum of five (5) Working Days (or any other time agreed in writing by the parties) after it has been referred to them under clause 9.1, then except if a Party seeks urgent injunctive relief, the parties will refer it to mediation under the process set out in clause 9.3 unless the Customer considers (acting reasonably and considering any objections to mediation raised by the other parties) that the dispute is not suitable for resolution by mediation.
 - 9.3 The process for mediation and consequential provisions for mediation are:
 - 9.3.1 a neutral adviser or mediator will be chosen by agreement between the parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other parties to appoint a Mediator or if the Mediator agreed upon is unable or unwilling to act, any Party will within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to the parties that he is unable or unwilling to act, apply to the President of the Law Society to appoint a Mediator;
 - 9.3.2 the parties will within ten (10) Working Days of the appointment of the Mediator meet to agree a programme for the exchange of all relevant information and the structure of the negotiations;
 - 9.3.3 unless otherwise agreed by the parties in writing, all negotiations connected with the dispute and any settlement agreement relating to it will be conducted in confidence and without prejudice to the rights of the parties in any future proceedings;

9.3.4 if the parties reach agreement on the resolution of the dispute, the agreement will be put in writing and will be binding on the parties once it is signed by their authorised representatives;

9.3.5 failing agreement, any of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. The opinion will be provided on a without prejudice basis and will not be used in evidence in any proceedings relating to this Agreement without the prior written consent of all the parties;

9.3.6 if the parties fail to reach agreement in the structured negotiations within twenty (20) Working Days of the Mediator being appointed, or any longer period the parties agree on, then any dispute or difference between them may be referred to the courts.

9.4 The parties must continue to perform their respective obligations under this Collaboration Agreement and under their respective Broader Agreements pending the resolution of a dispute.

10. **Termination and consequences of termination**

Termination

10.1 The Customer has the right to terminate this Collaboration Agreement at any time by notice in writing to the Collaboration Suppliers whenever the Customer has the right to terminate a Collaboration Supplier's respective Broader Agreement.

10.2 Failure by any of the Collaboration Suppliers to comply with their obligations under this Collaboration Agreement will constitute a Default under their relevant Broader Agreement. In this case, the Customer also has the right to terminate by notice in writing the participation of any Collaboration Supplier to this Collaboration Agreement and sever its name from the list of Collaboration Suppliers, so that this Collaboration Agreement will continue to operate between the Customer and the remaining Collaboration Suppliers.

Consequences of termination

10.3 Subject to any other right or remedy of the parties, the Collaboration Suppliers and the Customer will continue to comply with the obligations under their respective Broader Agreement following the termination (however arising) of this Collaboration Agreement.

10.4 Except as expressly provided in this Collaboration Agreement, termination of this Collaboration Agreement will be without prejudice to any accrued rights and obligations under this Collaboration Agreement.

11. **General provisions**

Force majeure

11.1 For the purposes of this Collaboration Agreement, the expression "Force Majeure Event" will mean any cause affecting the performance by a Party of its obligations under this Collaboration Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to any Party, the Party's personnel or any other failure of a Subcontractor.

- 11.2 Subject to the remaining provisions of this clause 11, any Party to this Collaboration Agreement may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event.
- 11.3 A Party cannot claim relief if the Force Majeure Event or its level of exposure to the event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 11.4 The affected Party will immediately give the other parties written notice of the Force Majeure Event. The notification will include details of the Force Majeure Event together with evidence of its effect on the obligations of the affected Party, and any action the affected Party proposes to take to mitigate its effect.
- 11.5 The affected Party will notify the other parties in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the affected Party to be unable to comply with its obligations under this Collaboration Agreement. Following the notification, this Collaboration Agreement will continue to be performed on the terms existing immediately before the Force Majeure Event unless agreed otherwise in writing by the parties.

Assignment and subcontracting

- 11.6 Subject to clause 11.7, the Collaboration Suppliers will not assign, transfer, novate, sub-license or declare a trust in respect of its rights under all or a part of this Collaboration Agreement or the benefit or advantage without the prior written consent of the Customer.
- 11.7 Any subcontractors identified in the Detailed Collaboration Plan can perform those elements identified in the Detailed Collaboration Plan to be performed by the Subcontractors.

Notices

- 11.8 Any notices sent under this Collaboration Agreement must be in writing.
- 11.9 The following table sets out the method by which notices may be served under this Collaboration Agreement and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Email	9.00am on the first Working Day after sending	Dispatched as a PDF attachment to an email to the correct email address without any error message.

- 11.10 For the purposes of clause 11.9, the email address of each of the parties are those in the Detailed Collaboration Plan.

Entire agreement

- 11.11 This Collaboration Agreement, together with the documents and agreements referred to in it, constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes any previous agreement between the Parties about this.

- 11.12 Each of the parties agrees that in entering into this Collaboration Agreement and the documents and agreements referred to in it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Collaboration Agreement. The only remedy available to each Party in respect of any statements, representation, warranty or understanding will be for breach of contract under the terms of this Collaboration Agreement.
- 11.13 Nothing in clauses 11.10 and 11.11 will exclude any liability for fraud.

Rights of third parties

- 11.14 Nothing in this Collaboration Agreement will grant any right or benefit to any person other than the parties or their respective successors in title or assignees, or entitle a third party to enforce any provision and the parties do not intend that any term of this Collaboration Agreement should be enforceable by a third party by virtue of the Contracts (Rights of Third Parties) Act 1999.

Severability

- 11.15 If any provision of this Collaboration Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, that provision will be severed without effect to the remaining provisions. If a provision of this Collaboration Agreement that is fundamental to the accomplishment of the purpose of this Collaboration Agreement is held to any extent to be invalid, the parties will immediately commence good faith negotiations to remedy that invalidity.

Variations

- 11.16 No purported amendment or variation of this Collaboration Agreement or any provision of this Collaboration Agreement will be effective unless it is made in writing by the parties.

No waiver

- 11.17 The failure to exercise, or delay in exercising, a right, power or remedy provided by this Collaboration Agreement or by law will not constitute a waiver of that right, power or remedy. If a Party waives a breach of any provision of this Collaboration Agreement this will not operate as a waiver of a subsequent breach of that provision, or as a waiver of a breach of any other provision.

Governing law and jurisdiction

- 11.18 This Collaboration Agreement will be governed by and construed in accordance with English law and without prejudice to the Dispute Resolution Process, each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

Executed and delivered as an agreement by the parties or their duly authorised attorneys the day and year first above written.

For and on behalf of the Customer

Signed by:

Full name (capitals):

Position:

Date:

For and on behalf of the [Company name]

Signed by:

Full name (capitals):

Position:

Date:

For and on behalf of the [Company name]

Signed by:

Full name (capitals):

Position:

Date:

Collaboration Agreement Schedule 1: List of contracts

Collaboration supplier

Name/reference of contract

Effective date of contract

Collaboration Agreement Schedule 2: Outline Collaboration Plan

[Insert Outline Collaboration Plan]

Schedule 10: Researcher Billing Terms

[INSERT / DELETE SCHEDULE IF LOT 3 IS AWARDED TO A LOT 1 BIDDER]

Schedule 11: Information Security Requirements

The Our Future Health baseline for cyber security utilises the current ISO27001, Annex A controls across the following domain areas:

- **Information security policies**
Information security is lead from upper management, and clearly communicated across the organisation through policy and process documentation that is regularly updated.
- **Organization of information security**
Information security is led and championed by Senior Management.
- **Human resource security**
Robust Joiners, Movers and Leavers processes, that are linked to appropriate levels of vetting and contractual controls for all staff.
- **Asset management**
Detailed understand of all applicable business information assets and their owners. Clear guidance in place showing appropriate classification and handling of assets based on sensitivity levels.
- **Access control**
All access management processes, are based on the concept of least privilege, with systems including Role Based Access Control and detailed audit trails and access review processes in place.
- **Cryptography**
Where sensitive data is processed, transmitted or stored, appropriately strong cryptography is in place to protect data in transit and at rest.
- **Physical and environmental security**
Appropriate physical security to protect operational environments, and environmental protection to mitigate threats such as power failure and flooding. Where responsibility is outsourced to third parties such as hosting partners, there should be clear minimum requirements set.
- **Operations Security**
Security controls are built into standard operational processes and Business as Usual, across end user computing, back-office systems and management of online services.
- **Communication Security**
All internal and public network communications are appropriately protected based on their sensitivity, including email and collaboration services.
- **System Acquisition, Development and Maintenance**
Where services include bespoke development, scripting or customisation a robust development lifecycle is used that includes security at all stages.
- **Supplier Relationships**

Use of supply chain is carefully managed and monitored for all vendors, partners, contractors that are utilised in service delivery.

- **Information Security Incident Management**

All security incidents are managed through formal process, that includes investigation, root cause analysis and remediation where needed. Learning from incidents will be fully shared to enhance the security program.

- **Business Continuity Management**

Business continuity that considers people, processes, systems and locations will be designed, implemented and tested regularly to ensure it is fit for purpose.

- **Compliance**

All applicable compliance requirements will be monitored and updated based on contractual and regulatory changes, and monitoring of the threat landscape that may identify new requirements.

Building on the baseline suppliers are expected to meet additions from other regulation and security requirements, which currently include:

- NHS Data Security & Protection Toolkit
- UK DPA 2018 and UK General Data Protection Regulation
- GDPR as it applies to European citizens and their data
- PCI DSS (Where there are applicable payment channels)

The current assurance process for new and existing suppliers will be based on current published versions of the various sources above. Our Future Health will monitor and review these sources and will require suppliers to meet current versions as requirements are updated or superseded.

Where significant change is required a formal review and remediation plan will be agreed, to allow all parties to meet changes in a reasonable time scale.

[ONLY APPLICABLE FOR LOT 3] [For Credit Card payments, the environment provided (such as a billing user, payment portal or service) and associated third party payment providers and gateways must be PCI DSS compliant. An Attestation of Compliance (AOC) that covers all services and any third parties, must be in place that is updated on an annual basis and a copy provided to Our Future Health on request.]

It is the supplier's responsibility to ensure that the current version of the PCI DSS standard is applied, and upcoming changes from version 4 of the standard are applied as they become available. Where there may be instances when Our Future Health comes in scope for any shared responsibilities to meet requirements, these should be communicated and agreed as soon as they are identified.]

SIGNED BY or on behalf of the parties on the date stated at the beginning of this Agreement.

Signed by)

[])

for and on behalf of)

OUR FUTURE HEALTH)

Signature of director

Date:

Signed by)

[] as director)

for and on behalf of)

[])

Signature of director

Date: