

[NOTE: This draft is based on the G-Cloud framework agreement and call-off contract]

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]

Contract relating to Lot 1 [and 3 - DELETE IF LOT 3 IS AWARDED TO A LOT 2 BIDDER] for the provision of Public Cloud Infrastructure [and Researcher Billing - DELETE IF LOT 3 IS AWARDED TO A LOT 2 BIDDER] services

THIS CONTRACT is made on

[DATE] 2022

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) [], [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 Contract for the provision of Public Cloud Infrastructure (lot 1) [and Researcher Billing (lot 3) - DELETE IF LOT 3 IS AWARDED TO A LOT 2 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 1 [and 3 - DELETE IF LOT 3 IS AWARDED TO A LOT 2 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 Contract.
- c. The Supplier is a leading provider of public cloud infrastructure services [and researcher billing services - DELETE IF LOT 3 IS AWARDED TO A LOT 2 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 Public Cloud Infrastructure [and Researcher Billing services - DELETE IF LOT 3 IS AWARDED TO A LOT 2 BIDDER].

Part A: Order Form

Contract reference	[Enter reference]
Contract title	[Enter title]
Contract description	[Enter description]
Start Date	[Enter start date]
Expiry Date	[Enter expiry date]

Purchase order number

[Enter purchase order number]

Representatives

For the Customer:

Title: [Enter title]

Name: [Enter name]

Email: [Enter email]

Phone: [Enter phone number]

For the Supplier:

Title: [Enter title]

Name: [Enter name]

Email: [Enter email]

Phone: [Enter phone number]

Contract term

Start Date	This Contract commences on [enter a date] .
Initial Term	The period of three years from the Start Date to the Expiry Date.
Ending (termination)	<p>The notice period for the Customer is a minimum of 30 days from the date of written notice for Ending without cause (as per clause 17.1).</p> <p>The notice period for the Supplier needed for Ending the Call-Off Contract is at least 60 Working Days from the date of written notice for undisputed sums (as per clause 17.8).</p>

Extension Period	<p>This Contract can be extended beyond the Initial Term by the Customer for two period(s) of up to twelve months each, by giving the Supplier three months written notice before its expiry. The extension periods are subject to clauses 1.3 and 1.4 in Part B below.</p>
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Customer contractual details

This Contract is for the Cloud Services [and Researcher Billing Services if applicable] DELETE IF LOT 3 IS AWARDED TO A LOT 2 BIDDER]. It is acknowledged by the Parties that the volume of the Cloud Services used by Our Future Health and may vary during this Contract.

Quality standards	<p>The quality standards required for this Contract are detailed in the Specification</p>
Technical standards:	<p>The technical standards used as a requirement for this Contract are as detailed in the Specification</p>

Service level agreement:	The service level and availability criteria required for this Contract are [enter text] . [Supplier offering to be taken from the Response / Supplier Solution and inserted here.]
Collaboration agreement	This Contract is conditional on the Supplier providing a collaboration agreement to the Customer before the Start date in the form set out in Schedule 7: Collaboration Agreement.
Force majeure	A Party may End this Contract if the Other Party is affected by a Force Majeure Event that lasts for more than 60 consecutive days. This section relates to clause 22.1 in Part B below.
Customer's responsibilities	Not applicable

Supplier's information

Subcontractors or Partners	The following is a list of the Supplier's Subcontractors or Partners [enter text] . [Include details of any Subcontractors to be used to deliver the Services.]
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Contract charges and payment

The Charges and payment details are in the table below **[TO BE COMPLETED FROM RESPONSE]**. See Schedule 2 for a full breakdown.

Payment method	The payment method for this Contract is [enter payment method] .
Payment profile	<p>The payment profile for this Contract is [[monthly][quarterly] in arrears].</p> <p>[Many suppliers offer payment options, state here which method of payment and profile has been agreed. The Customer doesn't have to agree to pay in advance.]</p>
Invoice details	The Supplier will issue electronic invoices [[monthly][quarterly] in arrears]. The Customer will pay the Supplier within [30] days of receipt of a valid invoice.
Who and where to send invoices to	Invoices will be sent to [enter name and contact information] .
Invoice information required	<p>All invoices must include [enter required information].</p> <p>[for example: purchase order, project reference]</p>
Invoice frequency	Invoice will be sent to the Customer [enter frequency] .
Contract charges	<p>The breakdown of the Charges is [enter information here].</p> <p>[Supplier day rates should only be used to calculate the Charges for performance of the Services and Deliverables. All invoiced Charges will be for delivery of the service and Deliverables.]</p>

Estimated Year 1 Charges		A cumulative total of Charges paid by the Customer under the Contract of £250,000 by the end of Year 2 and £1,000,000 by the end of Year 3 (for the avoidance of doubt the £1,000,000 is inclusive of the £250,000).
Contract Value	Commitment	
Exit Charges		
End User Charges		

Signed	Supplier	Customer
Name	[Enter name]	[Enter name]
Title	[Enter title]	[Enter title]

Signature		
Date	[Enter date]	[Enter date]

Formation of contract

- 1.1 The Supplier agrees to enter into this Contract with the Customer.
- 1.2 The Parties agree that they have read the Contract terms and by signing agree to be bound by this Contract.
- 1.3 This Contract will be formed when the Customer acknowledges receipt of the signed copy of the Contract from the Supplier.
- 1.4 In cases of any ambiguity or conflict, the terms and conditions of this Contract (excluding Schedule 6) will supersede those of the Supplier Terms.

Schedule 1: Services

Cloud Services

1.1. Cloud Services are cloud platform or infrastructure Services that can help Our Future Health do at least one of the following, and only pay for what they use:

- 1.1.1. deploy, manage and run software
- 1.1.2. provision and use processing, storage or networking resources

1.2. Cloud Suppliers will provide Services in these categories:

- 1.2.1. archiving, backup and disaster recovery
- 1.2.2. compute and application hosting
- 1.2.3. container service
- 1.2.4. content delivery network
- 1.2.5. database
- 1.2.6. data warehousing
- 1.2.7. NoSQL database
- 1.2.8. relational database
- 1.2.9. load balancing
- 1.2.10. logging and analysis
- 1.2.11. message queuing and processing
- 1.2.12. networking (including Network as a Service)
- 1.2.13. Platform as a Service (PaaS)
- 1.2.14. infrastructure and platform security (including Infrastructure as a Service)
- 1.2.15. distributed denial of service attack (DDOS) protection
- 1.2.16. firewall
- 1.2.17. intrusion detection
- 1.2.18. protective monitoring
- 1.2.19. Search
- 1.2.20. storage
- 1.2.21. block storage
- 1.2.22. object storage

The Cloud Services Lot is equivalent to the National Institute of Standards and Technology (NIST) definitions of 'Platform as a Service' and 'Infrastructure as a Service'.

The Supplier must help the Customer comply with the [Technology Code of Practice](#).

For more detail see Specification.

[Researcher Billing Services – see Specification][DELETE IF LOT 3 IS AWARDED TO A LOT 2 BIDDER].

Specification [INSERT]

Supplier Solution [INSERT]

In cases of any ambiguity or conflict between the Specification and the Supplier Solution, the Specification will supersede the Supplier Solution.

Schedule 2: Contract charges

[The Supplier's pricing document from the Response] will set out the Charges for each of the Services to be provided by the Supplier.

The Charges will be applied to the Services used and charged monthly in arrears.

During the term of the Customer and the Supplier have the ability to vary the Charges by agreement of both parties. The Variation of Charges will be done in accordance with the Contract Variation Clause 47. Otherwise the Charges will be fixed for the Term.

Part B: Terms and conditions

1. Contract Start date and length

- 1.1 The Supplier must start providing the Services on the Start Date.
- 1.2 This Contract will expire on the Expiry Date in the Contract and will be for up to 36 months from the Start Date, unless Ended earlier under clause 17 or extended by the Customer under clause 1.3.
- 1.3 The Customer can extend this Contract, with written notice to the Supplier as stated in the Order Form for up to a maximum of 2 periods of up to 12 months each.
- 1.4 The Parties must comply with the requirements under clauses 20.4 to 20.9 if the Customer reserves the right in the Contract to extend the contract beyond 36 months.

2. Supply of services

- 2.1 The Supplier agrees to supply the Cloud Services, [Researcher Billing Services] and any Additional Services under the terms of the Contract and in compliance with the Response (to the extent that this does not conflict with the terms of the Contract)).
- 2.2 The Supplier undertakes that each of the Services will meet Our Future Health's Specification.
- 2.3 The Parties shall comply with the provisions of Schedule 5 (Implementation Plan) in relation to the agreement and maintenance of the Detailed Implementation Plan.
- 2.4 The Parties shall comply with the Implementation Plan and the Supplier shall ensure that each Milestone is Achieved on or before its Milestone Date.
- 2.5 If the Supplier becomes aware that there is, or there is reasonably likely to be, a delay in the Achievement of a Milestone such that it will or may not be Achieved on or before its applicable Milestone Date ("Delay"), it shall promptly notify the Customer and shall use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.
- 2.6 The Supplier ensure that Users who have entered into an End User Agreement and paid the applicable End User Charges may use the Cloud Services in respect of Customer Data on a fair, equivalent and non-discriminatory basis in accordance with the time scales set out in this Contract and that the Cloud Services and the applicable Customer Data is made available to all Users who:
 - 2.6.1 enter into an End User Agreement on the End User Terms;
 - 2.6.2 comply with the End User Terms; and
 - 2.6.3 pay the End User Charges due under the End User Agreement.
- 2.7 The Supplier shall collaborate with the TRE 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 TRE 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 to time to comment on the same. The Supplier shall jointly with the TRE 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 is written approval.

- 2.8 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.

- 2.8 [Where the Supplier is responsible for the provision of the Researcher Billing Services, the Supplier shall be solely responsible for collection of the End User Charges.] [Where the TRE Provider is responsible for the provision of the Researcher Billing Services, the TRE Provider shall be solely responsible for collection of the End User Charges and remitting the same to the Supplier. The Supplier and the TRE Provider shall cooperate with each other in respect of the End User Agreements and the collection of the End User Charges in accordance with the Collaboration Agreement]. 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 Cloud Services by or on behalf of a User. The Customer shall have no liability for payment of any End User Charges. [DELETE AS APPLICABLE]

3. Supplier staff

- 3.1. The Supplier Staff must:
- 3.1.1. be appropriately experienced, qualified and trained to supply the Services
 - 3.1.2. apply all due skill, care and diligence in faithfully performing those duties
 - 3.1.3. obey all lawful instructions and reasonable directions of Customer and provide the Services to the reasonable satisfaction of Customer
 - 3.1.4. respond to any enquiries about the Services as soon as reasonably possible
 - 3.1.5. complete any necessary Supplier Staff vetting as specified by Customer
- 3.2 The Supplier must retain overall control of the Supplier Staff so that they are not considered to be employees, workers, agents or contractors of Customer.
- 3.3 The Supplier may substitute any Supplier Staff as long as they have the equivalent experience and qualifications to the substituted staff member.
- 3.4 The Customer may conduct IR35 assessments using the ESI tool to assess whether the Supplier's engagement under the Contract is Inside or Outside IR35.
- 3.5 The Customer may End this Contract for material breach as per clause 17.5 hereunder if the Supplier is delivering the Services Inside IR35.
- 3.6 The Customer may need the Supplier to complete an indicative test using the ESI tool before the Start Date or at any time during the provision of Services to provide a preliminary view of whether the Services are being delivered Inside or Outside IR35. If the Supplier has completed the

indicative test, it must download and provide a copy of the PDF with the 14-digit ESI reference number from the summary outcome screen and promptly provide a copy to Customer.

- 3.7 If the indicative test indicates the delivery of the Services could potentially be Inside IR35, the Supplier must provide Customer with all relevant information needed to enable Customer to conduct its own IR35 Assessment.
- 3.8 If it is determined by Customer that the Supplier is Outside IR35, Customer will provide the ESI reference number and a copy of the PDF to the Supplier.

4. Due diligence

- 4.1 Both Parties agree that when entering into a Contract they:
 - 4.1.1. have made their own enquiries and are satisfied by the accuracy of any information supplied by the other Party
 - 4.1.2. are confident that they can fulfil their obligations according to the Contract terms
 - 4.1.3. have raised all due diligence questions before signing the Contract
 - 4.1.4. have entered into the Contract relying on its own due diligence

5. Business continuity and disaster recovery

- 5.1 The Supplier will have a clear business continuity and disaster recovery plan in their Supplier Solution.
- 5.2 The Supplier's business continuity and disaster recovery services are part of the Services and will be performed by the Supplier when required.
- 5.3 If requested by the Customer prior to entering into this Contract, the Supplier must ensure that its business continuity and disaster recovery plan is consistent with the Customer's own plans.

6. Payment, VAT and Charges

- 6.1 The Customer must pay the Charges following clauses 6.2 to 6.12 for the Supplier's delivery of the Services.
- 6.2 The Customer will pay the Supplier within the number of days specified in the Order Form on receipt of a valid invoice.
- 6.3 The Charges include all Charges for payment processing.
- 6.4 The Supplier must ensure that each invoice contains a detailed breakdown of the Services supplied. The Customer may request the Supplier provide further documentation to substantiate the invoice.
- 6.5 If the Supplier enters into a Subcontract it must ensure that a provision is included in each Subcontract which specifies that payment must be made to the Subcontractor within 30 days of receipt of a valid invoice.
- 6.6 All Charges payable by Customer to the Supplier will include VAT at the appropriate Rate.
- 6.7 The Supplier must add VAT to the Charges at the appropriate rate with visibility of the amount as a separate line item.
- 6.8 The Supplier will indemnify Customer on demand against any liability arising from the Supplier's failure to account for or to pay any VAT on payments made to the Supplier under this Contract.
- 6.9 The Supplier must not suspend the supply of the Cloud Services unless the Supplier is entitled to End this Contract under clause 17.8 for Customer's failure to pay undisputed sums of money. Interest will be payable by Customer on the late payment of any undisputed sums of money properly invoiced under the Late Payment of Commercial Debts (Interest) Act 1998.
- 6.10 If there's an invoice dispute, Customer must pay the undisputed portion of the amount and return the invoice no more than 10 Working Days of the invoice due date. The Customer will provide a covering statement with proposed amendments and the reason for any non-payment. The Supplier must notify Customer within 10 Working Days of receipt of the returned invoice if it accepts the amendments. If it does then the Supplier must provide a replacement valid invoice with the response.
- 6.11 Due to the nature of Cloud Services, it isn't possible to exactly define the consumption of services over the duration of the Contract. The Supplier agrees that any Customer's volumes indicated in the Contract are indicative only.
- 6.12 The Customer commits to purchase and pay for Services during the Initial Term at a minimum to the amount of the Contract Commitment Value. If at the end of Year 2 and / or Year 3 the Customer has not purchased and paid for Services in aggregate to the applicable amount of the Contract Commitment Value at that point in time, the Supplier may invoice the Customer for the difference and the Customer shall pay such invoice in accordance with the provisions of this Contract. The

amount so invoiced shall be used as a credit to set off against future Charges incurred by the Customer, but subject to the provisions of clauses 17.6 and 17.7.

7. Recovery of sums due and right of set-off

7.1 If a Supplier owes money to Customer, Customer may deduct that sum from the Contract Charges.

8. Insurance

8.1 The Supplier will maintain the insurances required by Customer including those in this clause.

8.2 The Supplier will ensure that:

8.2.1 during this Contract, 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

8.2.2 the third-party public and products liability insurance contains an 'indemnity to principals' clause for Customer's benefit

8.2.3 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 Contract, and for 6 years after the End or Expiry Date

8.2.4 the Supplier and its Subcontractors, agents and professional consultants involved in the Services hold employers' liability insurance (except where exempt under Law) to a minimum indemnity of £5,000,000 for each individual claim during the Contract, and for 6 years after the End or Expiry Date

8.3 If requested by Customer, the Supplier will obtain additional insurance policies, or extend existing policies bought under this Contract.

8.4 If requested by Customer, the Supplier will provide the following to show compliance with this clause:

8.4.1 a broker's verification of insurance

8.4.2 receipts for the insurance premium

8.4.3 evidence of payment of the latest premiums due

- 8.5 Insurance will not relieve the Supplier of any liabilities under the Contract and the Supplier will:
- 8.5.1 take all risk control measures using Good Industry Practice, including the investigation and reports of claims to insurers
 - 8.5.2 promptly notify the insurers in writing of any relevant material fact under any Insurances
 - 8.5.3 hold all insurance policies and require any broker arranging the insurance to hold any insurance slips and other evidence of insurance
- 8.6 The Supplier will not do or omit to do anything, which would destroy or impair the legal validity of the insurance.
- 8.7 The Supplier will notify Customer as soon as possible if any insurance policies have been, or are due to be, cancelled, suspended, Ended or not renewed.
- 8.8 The Supplier will be liable for the payment of any:
- 8.8.1 premiums, which it will pay promptly
 - 8.8.2 excess or deductibles and will not be entitled to recover this from Customer

9. Confidentiality

- 9.1. The Supplier must during and after the Term keep Customer fully indemnified against all Losses, damages, costs or expenses and other liabilities (including legal fees) arising from any breach of the Supplier's obligations under the Data Protection Laws or under clauses 9.2 to 9.10. The indemnity doesn't apply to the extent that the Supplier breach is due to a Customer's instruction.
- 9.2. Unless disclosure is expressly permitted elsewhere in this Contract, each Party will
- 9.2.1. treat the other Party's Confidential Information as confidential and safeguard it accordingly
 - 9.2.2. not disclose it without the relevant Party's written consent
- 9.3. The Supplier must take all necessary precautions to ensure that any Customer's Confidential Information is only disclosed to Supplier Staff to the extent that it is strictly necessary for this contract and must ensure that they comply with the obligations under this clause.
- 9.4. The Confidentiality clauses will not apply to any Confidential Information received by one Party from the other which:
- 9.4.1. is or becomes public knowledge (unless by breach of this Contract)
 - 9.4.2. was already in the possession of the receiving Party without restriction as to its disclosure
 - 9.4.3. is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure
 - 9.4.4. is information independently developed without access to the other Party's Confidential Information
 - 9.4.5. must be disclosed under a statutory or legal obligation
 - 9.4.6. is disclosed on a Confidential Basis to a professional adviser
- 9.5. Nothing in this Contract will prevent Customer from disclosing the Supplier's Confidential Information (including Management Information):
- 9.5.1. for the examination and certification of Customer's accounts

- 9.5.2. for any examination under Section 6(1) of the National Audit Act 1983
- 9.5.3. to the UK Parliament, Scottish Parliament or Welsh or Northern Ireland Assemblies, including their committees
- 9.5.4. to any government department or any Customer on the basis that the information can only be further disclosed to central government bodies and Customers
- 9.5.5. If Customer (acting reasonably) deems disclosure is appropriate for the performance of public functions
- 9.5.6. for sharing knowledge of the Cloud Services and their performance to Customers on a Confidential Basis to exercise its rights or comply with its obligations under this Contract
- 9.5.7. on a Confidential Basis to a proposed transferee, assignee or novatee of, or successor in title to Customer
- 9.6. The Supplier will maintain physical and IT security that follows Good Industry Practice to ensure there is no unauthorised access to any Customer Confidential Information and data.
- 9.7. Information about Contract placed by Customer (including pricing information and the terms of any Contract) can be published by Customer and shared with other Customers. If Confidential Information is shared, Customer will notify the recipient that its contents are confidential
- 9.8. If the Supplier fails to comply with these confidentiality clauses, Customer reserves the right to End this Contract with immediate effect by notice in writing.
- 9.9. The Supplier will immediately tell Customer about any security breach of Customer's Confidential Information and will keep a record of those breaches. The Supplier will take all necessary steps to recover this information. The Supplier will cooperate with Customer in any investigation into the breach that Customer considers necessary.
- 9.10. Either Party can use techniques, ideas or knowledge gained during this Contract unless using them results in unauthorised disclosure of the other Party's Confidential Information or infringes Intellectual Property Rights under this Contract.

10. Intellectual Property Rights

- 10.1 Unless otherwise specified in this Contract, a Party will not acquire any right, title or interest in or to the Intellectual Property Rights (IPRs) of the other Party or its Licensors.
- 10.2 The Supplier grants Customer a non-exclusive, transferable, perpetual, irrevocable, royalty-free licence to use the Project Specific IPRs and any Background IPRs embedded within the Project Specific IPRs for the Customer's ordinary business activities.
- 10.3 The Supplier must obtain the grant of any third-party IPRs and Background IPRs so the Customer can enjoy full use of the Project Specific IPRs, including the Customer's right to publish the IPR as open source.
- 10.4 The Supplier must promptly inform Customer if it can't comply with the clause above and the Supplier must not use third-party IPRs or Background IPRs in relation to the Project Specific IPRs if it can't obtain the grant of a licence acceptable to Customer.

- 10.5 The Supplier will, on written demand, fully indemnify Customer for all Losses which it may incur at any time from any claim of infringement or alleged infringement of a third party's IPRs because of the:
- 10.5.1 rights granted to Customer under this Contract
 - 10.5.2 Supplier's performance of the Services
 - 10.5.3 use by Customer of the Services
- 10.6 If an IPR Claim is made, or is likely to be made, the Supplier will immediately notify Customer in writing and must at its own expense after written approval from Customer, either:
- 10.6.1 modify the relevant part of the Services without reducing its functionality or performance
 - 10.6.2 substitute Services of equivalent functionality and performance, to avoid the infringement or the alleged infringement, as long as there is no additional cost or burden to Customer
 - 10.6.3 buy a licence to use and supply the Services which are the subject of the alleged infringement, on terms acceptable to Customer
- 10.7 Clause 10.5 will not apply if the IPR Claim is from:
- 10.7.1 the use of data supplied by Customer which the Supplier isn't required to verify under this Contract
 - 10.7.2 other material provided Customer necessary for the Services
- 10.8 If the Supplier does not comply with clauses 10.2 to 10.6, Customer may End this Contract for material breach. The Supplier will, on demand, refund Customer all the money paid for the affected Services.

11. Protection of information

- 11.1 The Parties agree that the Customer:
- 11.1.1 will act as a Controller of its Customer Data processed by the Supplier as part of the Services; and
 - 11.1.2 may also act as a Processor of Customer Data on behalf of one or more individual User(s), acting as Controllers in each case, who make use of the Services.
- 11.2 The Parties agree that the Supplier:
- 11.2.1 will act as a Processor of Customer Data of which the Customer is the Controller; and
 - 11.2.2 may also act as a Sub-Processor of Customer Data of which one or more individual User(s) is the Controller,

in the provision of the Services, as set out in more detail in Annex 1 of Schedule 4 and the provisions of Schedule 4 will apply at all times when the Supplier acts as a Processor or Sub-Processor under this clause 11.2.

12 Customer Data

- 12.1 The Supplier must not remove any proprietary notices in the Customer Data.
- 12.2 The Supplier will not store or use Customer Data except if necessary to fulfil its obligations.
- 12.3 If Customer's Data is processed by the Supplier, the Supplier will supply the data to Customer as requested.
- 12.4 The Supplier must ensure that any Supplier system that holds any Customer Data is a secure system that complies with the Supplier's and Customer's security policies and all Customer requirements in the Contract.
- 12.5 The Supplier will preserve the integrity of Customer Data processed by the Supplier and prevent its corruption and loss.
- 12.6 The Supplier will ensure that any Supplier system which holds any protectively marked Customer Data or other government data will comply with:
 - 12.6.1 the principles in the Security Policy Framework:
[https://www.gov.uk/government/publications/security-policy-framework and](https://www.gov.uk/government/publications/security-policy-framework-and)
The Government Security Classification policy:
<https://www.gov.uk/government/publications/government-security-classifications>
 - 12.6.2 the National Cyber Security Centre's (NCSC) information risk management guidance:
<https://www.ncsc.gov.uk/collection/risk-management-collection>
 - 12.6.3 government best practice in the design and implementation of system components, including network principles, security design principles for digital services and the secure email blueprint:
<https://www.gov.uk/government/publications/technology-code-of-practice/technology-code-of-practice>
 - 12.6.4 the security requirements of cloud services using the NCSC Cloud Security Principles and accompanying guidance:
<https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles>
- 12.7 The Supplier shall comply with any security requirements for this project in the Contract, including the provisions of 8 (Information Schedule Security Requirements).
- 12.8 If the Supplier suspects that the Customer's Data has or may become corrupted, lost, breached or significantly degraded in any way for any reason, then the Supplier will notify Customer immediately and will (at its own cost if corruption, loss, breach or degradation of

Customer's Data was caused by the action or omission of the Supplier) comply with any remedial action reasonably proposed by Customer.

12.9 The Supplier agrees to use the appropriate organisational, operational and technological processes to keep the Customer's Data safe from unauthorised use or access, loss, destruction, theft or disclosure.

12.10 The provisions of this clause 12 will apply during the term of this Contract and for as long as the Supplier holds Customer's Data.

13. Standards and quality

13.1 The Supplier will comply with any standards in this Contract.

13.2 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.

13.3 [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 2 BIDDER]

14. Open source

14.1 All software created for Customer must be suitable for publication as open source, unless otherwise agreed by Customer.

14.2 If software needs to be converted before publication as open source, the Supplier must also provide the converted format unless otherwise agreed by Customer.

15. Security

15.1 If requested to do so by Customer before entering into this Contract the Supplier will, within 15 Working Days of the date of this Contract, develop (and obtain Customer's written approval of) a Security Management Plan and an Information Security Management System. After Customer's approval the Security Management Plan and Information Security Management System will apply during the Term of this Contract. Both plans will comply with Customer's security policy and protect all aspects and processes associated with the delivery of the Services.

15.2 The Supplier will use all reasonable endeavours, software and the most up-to-date antivirus definitions available from an industry-accepted antivirus software seller to minimise the impact of Malicious Software.

15.3 If Malicious Software causes loss of operational efficiency or loss or corruption of Service Data, the Supplier will help Customer to mitigate any losses and restore the Services to operating efficiency as soon as possible.

15.4 Responsibility for costs will be at the:

- 15.4.1 Supplier's expense if the Malicious Software originates from the Supplier software or the Service Data while the Service Data was under the control of the Supplier, unless the Supplier can demonstrate that it was already present, not quarantined or identified by Customer when provided
 - 15.4.2 Customer's expense if the Malicious Software originates from Customer software or the Service Data, while the Service Data was under Customer's control
- 15.5 The Supplier will immediately notify Customer of any breach of security of Customer's Confidential Information (and Customer of any Customer's Confidential Information breach). Where the breach occurred because of a Supplier Default, the Supplier will recover Customer's Confidential Information however it may be recorded.
- 15.6 Any system development by the Supplier should also comply with the government's '10 Steps to Cyber Security' guidance:
<https://www.ncsc.gov.uk/guidance/10-steps-cyber-security>
- 15.7 The Supplier shall attain Cyber Essentials Plus certification within 6 months of the Start 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.

16. Not used

17. Ending the Contract

- 17.1 The Customer can End this Contract at any time by giving not less than 90 days' written notice to the Supplier. The Supplier's obligation to provide the Services will end on the date specified in the notice.
- 17.2 The Parties agree that:
 - 17.2.1 the Customer's right to End the Contract under clause 17.1 is reasonable considering the type of service being provided; and
 - 17.2.2 any payment or foregoing of credit pursuant to clause 17.6 and the Charges paid during the notice period are reasonable compensation and covers all the Supplier's avoidable costs or Losses.
- 17.3 Subject to clause 24 (Liability), if Customer Ends this Contract under clause 17.1, it will indemnify the Supplier against any commitments, liabilities or expenditure which result in any unavoidable Loss by the Supplier, provided that the Supplier takes all reasonable steps to mitigate the Loss. If the Supplier has insurance, the Supplier will reduce its unavoidable costs by any insurance sums available. The Supplier will submit a fully itemised and costed list of the unavoidable Loss with supporting evidence.

- 17.4. The Customer will have the right to End this Contract at any time with immediate effect by written notice to the Supplier if either the Supplier commits:
- 17.4.1. a Supplier Default and if the Supplier Default cannot, in the reasonable opinion of Customer, be remedied
 - 17.4.2. any fraud
- 17.5. A Party can End this Contract at any time with immediate effect by written notice if:
- 17.5.1. the other Party commits a material breach of any term of this Contract (other than failure to pay any amounts due) and, if that breach is remediable, fails to remedy it within 15 Working Days of being notified in writing to do so
 - 17.5.2. an Insolvency Event of the other Supplier happens
 - 17.5.3. the other Party ceases or threatens to cease to carry on the whole or any material part of its business
- 17.6. If the Contract is Ended by the Customer pursuant to clause 17.1 or by the Supplier pursuant to clause 17.8, the Customer will upon such Ending pay to the Supplier the difference between the Charges paid under the Contract and the Contract Commitment Value, where the Charges paid (including any previous payment of the Contract Commitment Value pursuant to the provisions of clause 6.12) are less than the Contract Commitment Value applicable at the date the Contract Ends. Where the Customer has previously made a payment in respect of the Contract Commitment Value and been granted a credit to be set off against future Charges pursuant to the provisions of clause 6.12, the Customer shall forego any unused amount of such credit.
- 17.7.** If the Contract is Ended due to reasons listed in 9.8, 17.4, 17.5, 17.9, 25.2, 26.1.1, 34.2, 34.3 and/or 57.3, the Customer will not be liable to make any payment in respect of the Contract Commitment Value as aforesaid and will only be liable for payment of any Charges actually incurred by the Customer up until the Contract is Ended. In addition the Supplier will upon such Ending pay to the Customer the amount of any outstanding unused credit in respect of the Contract Commitment Value that has been granted to be set off against future Charges pursuant to the provisions of clause 6.12.
- 17.8. If the Customer fails to pay the Supplier undisputed sums of money when due which in aggregate exceeds £[INSERT – NOT LESS THAN THREE MONTH'S AVERAGE INVOICED CHARGES], the Supplier must notify the Customer and allow the Customer 30 days to pay. If the Customer doesn't pay within the 30 days, the Supplier may End this Call-Off Contract by giving the length of notice in the Order Form.
- 17.9. A Party who isn't relying on a Force Majeure event will have the right to End this Contract if clause 22.1 applies.

18. Consequences of suspension, ending and expiry

- 18.1. If the Customer has the right to End a Contract, it may elect to suspend this Contract or any part of it.

- 18.2 Even if a notice has been served to End this Contract or any part of it, the Supplier must continue to provide the Services until the dates set out in the notice.
- 18.3 The rights and obligations of the Parties will cease on the Expiry Date or End Date whichever applies) of this Contract, except those continuing provisions described in clause 18.4.
- 18.4 Ending or expiry of this Contract will not affect:
- 18.4.1 any rights, remedies or obligations accrued before its Ending or expiration
- 18.4.2 the right of either Party to recover any amount outstanding at the time of Ending or expiry
- 18.4.3 the continuing rights, remedies or obligations of the Customer or the Supplier under clauses:
- 6 (Payment, VAT and Call-Off Contract charges)
 - 7 (Recovery of sums due and right of set-off)
 - 8 (Insurance)
 - 9 (Confidentiality)
 - 10 (Intellectual property rights)
 - 11 (Protection of information)
 - 12 (Customer data)
 - 18 (Consequences of suspension, ending and expiry)
 - 20 (Exit plan)
 - 21 (Handover to replacement supplier)
 - 24 (Liability)
 - Schedule 4 (Processing Data)
- 18.4.4 any other provision of the Contract which expressly or by implication is in force even if it Ends or expires
- 18.5 At the end of the Term, the Supplier must promptly:
- 18.5.1 return all Customer's Data (in such electronic format as the Customer shall reasonably request) including all copies of Customer's software, code and any other software licensed by Customer to the Supplier
- 18.5.2 return any materials created by the Supplier under this Contract if the IPRs are owned by Customer
- 18.5.3 stop using the Customer's Data and, at the direction of Customer, provide Customer with a complete and uncorrupted version in electronic form in the formats and on media agreed with Customer
- 18.5.4 destroy all copies of Customer's Data when they receive Customer's written instructions to do so or 12 calendar months after the End or Expiry Date, and provide written confirmation to Customer that the data has been securely destroyed, except if the retention of Customer's Data is required by Law

18.5.5 work with Customer on any ongoing work

18.5.6 (subject to the provisions of clause 17.6) return any sums prepaid for Services which have not been delivered to Customer, within 10 Working Days of the End or Expiry Date

18.6 Each Party will return all of the other Party's Confidential Information and confirm this has been done, unless there is a legal requirement to keep it or this Contract states otherwise.

18.7 All licences, leases and authorisations granted by Customer to the Supplier will cease at the end of the Term without the need for Customer to serve notice except if this Contract states otherwise.

19. Notices

19.1 Any notices sent must be in writing. For the purpose of this clause, an email is accepted as being 'in writing'.

- Manner of delivery: email
- Deemed time of delivery: 9am on the first Working Day after sending
- Proof of service: Sent in an emailed letter in PDF format to the correct email address without any error message

19.2 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 Contract :

	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

- 19.3 Clause 19.1 does not apply to any legal action or other method of dispute resolution which should be sent not by e-mail but to the addresses in the Part A: Order Form (other than a dispute notice under this Contract).

20. Exit plan

- 20.1 The Supplier shall, no later than twenty (20) Working Days after the Start Date, deliver to the Customer an Exit Plan which:
- 20.1.1 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 of similar services on the expiry or Ending of this Contract;
 - 20.1.2 complies with the requirements set out in clause 20.9; and
 - 20.1.3 is otherwise reasonably satisfactory to the Customer.
- 20.2 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 clause 39 and 40.
- 20.3 When requested, the Supplier will help Customer to migrate the Services to a replacement supplier in line with the Exit Plan.
- 20.4 If Customer has reserved the right in the Contract to extend the Term beyond 36 months the Supplier must provide Customer with an additional updated Exit Plan for approval by Customer at least 8 weeks before the 18-month anniversary of the Start Date. Clause 20.2 shall apply to agreement of the additional updated Exit Plan.
- 20.5 The Supplier must ensure that the additional updated Exit Plan clearly sets out the Supplier's methodology for achieving an orderly transition of the Services from the Supplier to Customer or its replacement Supplier at the expiry of the proposed extension period or if the contract Ends during that period.
- 20.6 Before submitting the additional updated Exit Plan to the Customer for approval, the Supplier will work with the Customer to ensure that the additional updated Exit Plan is aligned with Customer's own exit plan and strategy.
- 20.7 The Supplier acknowledges that Customer's right to extend the Term beyond 36 months is subject to Customer's own governance process. The approval to extend will only be given if Customer can clearly demonstrate that the Supplier's additional updated Exit Plan ensures that:
- 20.7.1 Customer will be able to transfer the Services to a replacement supplier before the expiry or Ending of the Extension Period on terms that are commercially reasonable and acceptable to Customer
 - 20.7.2 there will be no adverse impact on service continuity

- 20.7.3 there is no vendor lock-in to the Supplier's Service at exit
- 20.7.4 it enables Customer to meet voluntary obligations under the Technology Code Of Practice
- 20.8 If approval is obtained by Customer to extend the Term, then the Supplier will comply with its obligations in the additional updated Exit Plan.
- 20.9 Each Exit Plan must set out full details of timescales, activities and roles and responsibilities of the Parties for:
 - 20.9.1 the transfer to Customer of any technical information, instructions, manuals and code reasonably required by Customer to enable a smooth migration from the Supplier
 - 20.9.2 the strategy for exportation and migration of Customer Data from the Supplier system to Customer or a replacement supplier, including conversion to open standards or other standards required by Customer and compliance with clause 18.5.1
 - 20.9.3 the transfer of Project Specific IPR items and other Customer customisations, configurations and databases to Customer or a replacement supplier
 - 20.9.4 the testing and assurance strategy for exported Customer's Data
 - 20.9.5 any other activities and information which is reasonably required to ensure continuity of Service during the exit period and an orderly transition.
- 20.10 The Customer shall pay the Exit Charges to the Supplier in respect of implementation of the Exit Plan. Otherwise 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, clauses 18, 20 and 21 including the preparation the Exit Plan.

21. Handover to replacement supplier

- 21.1 Subject to the provisions of the Exit Plan, at least 10 Working Days before the Expiry Date or End Date, the Supplier must provide any:
 - 21.1.1 data (including Customer Data), Customer Personal Data and Customer Confidential Information in the Supplier's possession, power or control
 - 21.1.2 other information reasonably requested by Customer
- 21.2 On reasonable notice at any point during the Term, the Supplier will provide any information and data about the Services reasonably requested by Customer (including information on

volumes, usage, technical aspects, service performance and staffing). This will help Customer understand how the Services have been provided and to run a fair competition for a new supplier.

- 21.3 This information must be accurate and complete in all material respects and the level of detail must be sufficient to reasonably enable a third party to prepare an informed offer for replacement services and not be unfairly disadvantaged compared to the Supplier in the buying process.

22. Force majeure

- 22.1 If a Force Majeure event prevents a Party from performing its obligations under this Contract for more than the number of consecutive days set out, the other Party may End this Contract with immediate effect by written notice.
- 22.2 A Party will promptly (on becoming aware of the same) notify the other Party of a Force Majeure event or potential Force Majeure event which could affect its ability to perform its obligations under this Contract.
- 22.3 Each Party will use all reasonable endeavours to continue to perform its obligations under the Contract and to mitigate the effects of Force Majeure. If a Force Majeure event prevents a Party from performing its obligations under the Contract for more than 60 consecutive Working Days, the other Party can End the Contract with immediate effect by notice in writing.

23. Warranties and representations

- 23.1 The Supplier warrants, represents and undertakes to Customer that:
- 23.1.1 it has full capacity, authority and all necessary authorisations, consents, licences and permissions, to enter into and perform its obligations under the Contract, including if a Supplier's processes need the consent of its Parent Company
- 23.1.2 the Supplier or an authorised representative will sign the Contract
- 23.1.3 it has used and will continue to use all reasonable endeavours, software and the most up to date antivirus definitions available from an industry accepted antivirus software seller to minimise the impact of Malicious Software accessing systems owned by, under the control of, or used by Customer via its own access to these systems
- 23.1.4 in entering into this Contract, it has not committed, will not commit or agree to commit a Prohibited Act
- 23.1.5 it will continue to pay all taxes due to HMRC and will not indulge in 'disguised employment' practises when delivering services under this Contract
- 23.1.6 not used
- 23.1.7 it will perform all obligations under this Contract complying with all Laws

23.1.8 it will perform its obligations with all reasonable care, skill and diligence, according to Good Industry Practice

23.1.9 on a Contract Start Date, all information, statements and representations in the Response are accurate and not misleading except if the Customer has been notified in writing before signing the Contract

23.1.10 the Services will comply in all respects with the Specification and the Supplier Solution]

23.2 The fact that any provision within this Contract is expressed as a warranty does not preclude any right of Ending Customer may have if the Supplier breaches that provision.

24. Liability

24.1 Neither Party excludes or limits its liability for:

24.1.1 death or personal injury caused by its negligence, or that of its Staff

24.1.2 bribery, Fraud or fraudulent misrepresentation by it or its employees

24.1.3 breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or sections 2 or 11B of the Supply of Goods and Services Act 1982

24.1.4 any liability that cannot be excluded or limited by Law

24.2 Nothing in this Contract affects a Party's duty to mitigate their loss.

24.3 Except for liabilities which can't be limited by Law, neither Party will be liable to the other for any:

24.3.1 loss of profits

24.3.2 loss of business

24.3.3 loss of revenue

24.3.4 loss of or damage to goodwill

24.3.5 loss of savings (whether anticipated or otherwise)

24.3.6 indirect, special or consequential loss or damage

24.4 The Supplier will be liable for the following types of loss which will be regarded as direct and will be recoverable by Customer for any:

24.4.1 regulatory losses or fines arising directly from the Supplier's breach of any Laws

- 24.4.2 additional operational or administrative costs and expenses from any material breach
- 24.4.3 wasted expenditure or unnecessary charges Customer pays because of the Supplier's Default
- 24.4.4 other liabilities suffered by Customer in connection with the loss of, corruption or damage to, or failure to deliver Customer Data by the Supplier
- 24.5 The Supplier will not be responsible for any injury, loss, damage, cost or expense that is directly caused by the negligence or wilful misconduct of Customer or breach by Customer of its obligations under the Contract.
- 24.6 Subject to clause 24.1, the Supplier's liability:
 - 24.6.1 in respect of any breach of clause 11 (Protection of Information) or Schedule 4 (Processing Data) that is caused by Defaults of the Supplier or pursuant to the indemnity in respect of any breach of the Supplier's obligations under the Data Protection Laws set out in clause 9.1 (Confidentiality); or
 - 24.6.2 pursuant to the indemnity set out in clause 10.5 (Intellectual Property Rights)shall in no event exceed £10,000,000.00 (ten million pounds) for each and every claim.
- 24.7 Subject to clause 24.1, each Party's aggregate liability in respect of all Losses (other than as set out in clause 24.6 and without prejudice to the Customer's obligation to pay the Charges (excluding the End User Charges)) incurred by the other Party under or in connection with this Contract as a result of Defaults by the Supplier shall in no event exceed:
 - 24.7.1 in relation to Defaults occurring in the first Year, an amount equal to the Estimated Year 1 Charges;
 - 24.7.2 in relation to Defaults occurring during any subsequent Year, an amount equal to the total Charges paid and/or due to be paid in connection with this Contract in the last three months immediately preceding the occurrence of the Default annualised by multiplying the same by four; and
 - 24.7.3 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 Contract in the twelve (12) month period immediately prior to the last day of the Term.

25. Ending on change of control

- 25.1 The Supplier must tell Customer immediately if the Supplier has a change of Control and, provided this does not contravene any Law, will notify Customer immediately in writing of any circumstances suggesting that a change of Control could happen.

- 25.2 Customer may End this Contract by giving notice in writing to the Supplier within 6 months of Customer either:
 - 25.2.1 being notified in writing by the Supplier that a change of Control could happen
 - 25.2.2 if it hasn't notified Customer, the date that Customer becomes aware that a change of Control could happen
- 25.3 Customer's right to terminate shall not apply where Customer has given its approval to the relevant change of control.

26. Fraud

- 26.1 If the Supplier commits any Prohibited Act, it will be a material breach and:
 - 26.1.1 Customer may End this Contract
 - 26.1.2 Customer may fully recover any resulting Losses from the Supplier
- 26.2 The Supplier must tell Customer immediately and in writing if it suspects that any Prohibited Act has happened, is happening or is likely to happen, except if complying with this provision would mean committing an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.

27. Records

- 27.1 The Supplier will maintain full and accurate records and accounts, using Good Industry Practice and generally accepted accounting principles, of the:
 - 27.1.1 operation of the Contract entered into with Customer
 - 27.1.2 Services provided under the Contract (including any Subcontracts)
 - 27.1.3 amounts paid by Customer under the Contract
- 27.2 The Supplier's records and accounts will be kept until the latest of the following dates:
 - 27.2.1 7 years after the date of Ending or expiry of this Contract
 - 27.2.2 another date agreed between the Parties
- 27.3 During the timeframes highlighted in clause 27.2 the Supplier will maintain:
 - 27.3.1 commercial records of the Charges and costs (including Subcontractors' costs) and any variations to them, including proposed variations
 - 27.3.2 books of accounts for this Contract

27.3.3 MI Reports

27.3.4 access to its published accounts and trading entity information

27.3.5 proof of its compliance with its obligations under the Data Protection Laws provisions under this Contract

27.3.6 records of its delivery performance under the Contract, including that of its Subcontractors

28. Not used

29. Audit or Inspection

29.1 The Customer will use reasonable endeavours to ensure that the Audit does not unreasonably disrupt the Supplier, but the Supplier accepts that control over the conduct of Audits carried out by the auditors is outside of Customers control.

29.2 Subject to any Confidentiality obligations, the Supplier will use reasonable endeavours to:

29.2.1 provide audit information without delay

29.2.2 provide all audit information within scope and give auditors access to Supplier Staff

29.3 The Supplier will allow the representatives of Customer, and any external auditor appointed by the Customer, access to the records, documents, and account information referred to in clause 29.4 (including at the Supplier's premises), as may be required by them, and subject to reasonable and appropriate confidentiality undertakings, to verify and review:

29.3.1 the accuracy of Charges (and proposed or actual variations to them under this Contract)

29.3.2 any books of accounts kept by the Supplier in connection with the provision of the Cloud Services for the purposes of auditing the Charges under the Contract only

29.3.3 the integrity, Confidentiality and security of the Customer Personal Data held or used by the Supplier

29.3.4 any other aspect of the delivery of the Services including to review compliance with any legislation

29.3.5 the accuracy and completeness of any MI delivered or required by the Contract

29.3.6 any MI Reports or other records about the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records

- 29.3.7 Customer's assets, including the Intellectual Property Rights, Equipment, facilities and maintenance, to ensure that the Customer's assets are secure and that any asset register is up to date

30. Costs of conducting audits or inspections

- 30.1 The Supplier will reimburse Customer its reasonable Audit costs if it reveals:
 - 30.1.1 an overpayment by the Customer to the Supplier in excess of 5% of the total Charges due in any monthly reporting and accounting period
 - 30.1.2 a material breach
- 30.2 The Customer can End this contract under for material breach if either event in clause 30.1 applies.
- 30.3 Each Party is responsible for covering all their own other costs incurred from their compliance with the Audit obligations.

31. Law and jurisdiction

- 31.1 Any disputes or matters (including non-contractual) under this Contract will be governed by and construed under the Laws of England and Wales and without prejudice to the dispute resolution process. Each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales and for all disputes to be conducted within England and Wales.

32. Legislative change

- 32.1 The Supplier won't be relieved of its obligations under this Contract, or be entitled to increase the Charges, as the result of a general change in Law or a Specific Change in Law that was reasonably foreseeable prior to the Start Date.
- 32.2 If a Specific Change in Law that was not reasonably foreseeable prior to the Start Date is made which has a material impact on the delivery of the Services, the Supplier will notify Customer of the likely effects of that change. This will include whether any change is required to the Services, the Charges or this Contract. Any Variation must be agreed in accordance with clause 47.

33. Bribery and corruption

- 33.1 The Supplier must ensure that neither it, nor any person acting on its behalf, will commit any Prohibited Act in connection with this Contract.
- 33.2 If the Supplier breaches the Bribery Act 2010, Customer can End this Contract.

- 33.3 If the Supplier breaches the Bribery and corruption provisions in this clause 33, Customer can End this Contract.
- 33.4 Customer will be entitled to recover in full from the Supplier and the Supplier will on demand compensate Customer in full for:
- 33.4.1 the amount of value of any such gift, consideration or commission
 - 33.4.2 any other Loss sustained by Customer because of any breach of these Bribery and corruption clauses 33.1 to 33.4 (inclusive)

34. Transfer and subcontracting

- 34.1 The Supplier must not assign, novate, Subcontract or in any other way dispose of this Contract or any part of it without Customer's prior written approval (not to be unreasonably withheld or delayed). Subcontracting any part of this Contract will not relieve the Supplier of its duties under this Contract.
- 34.2 The Supplier is responsible for the acts and omissions of its Subcontractors and Supplier Staff as though they are its own.

35. Contracts (Rights of Third Parties) Act 1999

- 35.1 A person who isn't a Party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms. This does not affect any right or remedy of any person which exists or is available otherwise.

36. Complaints handling and resolution

- 36.1 Either Party will notify the other Party of any complaints made by Customer's end users, which are not resolved within 5 Working Days.
- 36.2 If the Supplier is the Party providing the notice, the notice will contain full details of the Supplier's plans to resolve the complaint.
- 36.3 The Supplier will work to resolve the complaint within 10 Working Days.
- 36.4 The Supplier will provide full details of a complaint, including details of steps taken to resolve it, within 5 Working Days of a request by Customer.

37. Equality and diversity

- 37.1 The Supplier will comply with any discrimination Laws and other requirements and instructions which Customer reasonably require.
- 37.2 The Supplier will make sure that all Supplier Staff engaged in the performance of this Contract observe these equality and diversity clauses 37.1 to 37.3 (inclusive).
- 37.3 The Supplier will notify Customer immediately of any legal proceedings issued against it by any Supplier Staff on the grounds of discrimination.

38. Not used

39. Managing disputes

- 39.1 When either Party notifies the other of a dispute, both Parties will attempt in good faith to negotiate a settlement within 20 Working Days. This will include escalation of the dispute to the Customer Representative and the Supplier Representative.
- 39.2 The obligations of the Parties under this Contract will not be suspended, ceased or delayed by the reference of a dispute to mediation or arbitration and the Supplier and Supplier's Staff will continue to comply with the requirements of this Contract.
- 39.3 Nothing in this process prevents a Party from seeking any interim order restraining the other Party from, or compelling the other Party to do, any act.
- 39.4 If the dispute cannot be resolved, the parties will first attempt to settle the matter by mediation and before either party commences formal action.

40. Mediation and Expert process

- 40.1 A mediator will be agreed by both Parties. If the Parties cannot agree on a mediator within 10 Working Days after a request by one Party to the other, either Party will as soon as possible, apply to the mediation provider or to the Centre for Effective Dispute Resolution (CEDR) to appoint a mediator. This application to CEDR must take place within 12 Working Days from the date of the proposal to appoint a mediator, or within 3 Working Days of notice from the mediator to either Party that they can't or won't act.
- 40.2 The Parties will meet the mediator within 10 Working Days of the mediator's appointment to agree a structure for the negotiations. The Parties can at any stage ask the mediation provider for advice about the process.
- 40.3 Unless otherwise agreed, all negotiations and settlement agreements connected with the dispute will be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- 40.4 If the Parties reach agreement, it will be put in writing and will be binding once it's signed by the Parties' authorised representatives.

- 40.5 If agreement cannot be reached following a mediation either Party can invite the mediator to provide a non-binding opinion on settlement terms in writing. This opinion will be provided and will not be used in evidence in any proceedings about this Contract without the prior written consent of both Parties.
- 40.6 If the Parties fail to reach agreement within 60 Working Days of the mediator being appointed, or other period as agreed by the Parties, it can be referred to the courts or to arbitration (if both parties agree to determination by arbitration).
- 40.7.7 Either Party can request by written notice that the dispute is referred to expert determination if the dispute relates to:
- 43.7.1 any technical aspect of the delivery of the Services
 - 43.7.2 the underlying technology
 - 43.7.3 financial issues
- 40.8 An expert will be appointed by written agreement between the Parties, but if they fail to agree on an expert within 10 Working Days of the first proposal by a Party, or if the person appointed is unable or unwilling to act, the expert will be appointed on the instructions of the relevant professional body.
- 40.9 The expert will:
- 40.9.1 act fairly and impartially and not as an arbitrator
 - 40.9.2 provide a determination that will be final and binding on the Parties, unless there's a material failure to follow the agreed process
 - 40.9.3 decide the process to be followed and will be requested to make their determination within 30 Working Days of their appointment or as soon as possible and the Parties will provide the documentation that the expert needs
 - 40.9.4 decide how and by whom the costs of the determination, including their fees and expenses, are to be paid. Any amount payable by one Party to another will be due within 20 Working Days of the Parties being notified of the determination
- 40.10 The expert determination process will be conducted in private and will be confidential.

41. Waiver and cumulative remedies

- 41.1 The rights and remedies provided by this Contract can only be waived in writing by a Party if intent is clear and will only apply in the specific circumstances outlined here. Unless a right or remedy of Customer is expressed to be an exclusive right or remedy, the exercise of it by Customer doesn't affect Customer's other rights and remedies. Any failure or delay by a Party to exercise a right or remedy will not constitute a waiver.

- 41.2 The rights and remedies provided by this Contract are cumulative and, unless otherwise provided in this Contract, are not exclusive of any right or remedies provided at Law.

42. Corporate Social Responsibility

- 42.1 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:
- 42.1.1 have in place and maintain procedures and policies in accordance with Good Industry Practice to eliminate discrimination, harassment or victimisation of any kind;
 - 42.1.2 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
 - 42.1.3 take all efforts to ensure they have fair working practices and that they meet all obligations around anti-slavery, minimum wage and employment law.
- 42.2 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.
- 42.3 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.

43. Environmental requirements

- 43.1 Customer will provide a copy of its environmental policy to the Supplier on request, which the Supplier will comply with.
- 43.2 The Supplier must provide reasonable support to enable Customer to work in an environmentally friendly way, for example by helping them recycle or lower their carbon footprint.

44. The Employment Regulations (TUPE)

- 44.1 The Parties agree that neither the commencement nor the expiry or End of this Contract 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 Staff in such a manner as to avoid application of the Employment Regulations.
- 44.2 If any of the Supplier Staff claim, 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 a replacement supplier of similar services or the Customer ("Replacement Supplier") pursuant to the Employment Regulations, then:

- 44.2.1 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
- 44.2.2 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.
- 44.3 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.
- 44.4 If after the fifteen (15) Working Day period specified in clause 44.2.2 has elapsed:
 - 44.4.1 no such offer of employment has been made;
 - 44.4.2 such offer has been made but not accepted; or
 - 44.4.3 the situation has not otherwise been resolvedthe 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.
- 44.5 Subject to the Replacement Supplier acting in accordance with the provisions of clauses 44.2 to 44.4, 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 44.4 provided that the Replacement Supplier takes all reasonable steps to minimise any such Employee Liabilities.

45. Additional Cloud services

- 45.1 The Customer may require the Supplier to provide Additional Services. The Customer doesn't have to buy any Additional Services from the Supplier and can buy services that are the same as or similar to the Additional Services from any third party.
- 45.2 If reasonably requested to do so by the Customer the Supplier must provide and monitor performance of the Additional Services using an Implementation Plan.

46. Collaboration

- 46.1 The Supplier must give the Customer an executed Collaboration Agreement before the Start Date.
- 46.2 In addition to any obligations under the Collaboration Agreement, the Supplier must:

46.2.1 work proactively and in good faith with each of Customer's contractors

46.2.2 co-operate and share information with Customer's contractors to enable the efficient operation of Customer's ICT services and the Services

47. Variation process

- 47.1 The Customer can request in writing a change to this Contract if it isn't a material change to the Contract. Once implemented, it is called a Variation. The Supplier shall act reasonably in respect of any change to this Contract requested by the Customer (including with regard to pricing the same and any impact on the Charges) and shall not unreasonably decline to implement a change requested by the Customer.
- 47.2 The Supplier must notify Customer immediately in writing of any proposed changes to their Services or their delivery by submitting a Variation request. This includes any changes in the Supplier's supply chain.
- 47.3 If either Party can't agree to or provide the Variation, the Customer may agree to continue performing its obligations under this Contract without the Variation, or End this Contract by giving 30 days' notice to the Supplier.

Schedule 3: Glossary and interpretations.

1. If the context allows, any words in the singular also include the plural meaning and the other way round.
2. The words 'include', 'includes' 'including' and 'for example' and words of similar effect will not limit the general effect of the words which precede them.
3. References to any person will include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees.
4. References to any statute, enactment, order, regulation or other similar instrument will be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted.
5. Headings are included in this Contract for ease of reference only and will not affect the interpretation or construction of this Contract.
6. References in this Contract to any clause or Schedule without further designation will be construed as a reference to the clause or sub-clause or Schedule to this Contract so numbered.
7. References in this Contract to any paragraph or sub-paragraph without further designation will be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Contract so numbered.
8. Reference to a clause is a reference to the whole of that clause unless stated otherwise.
9. Approvals or agreements to be given by a Party should not be unreasonably withheld or delayed.. Reference to a month means a calendar month.

Word	Meaning and interpretation
Achieve	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 (Implementation Plan), and "Achieved" and "Achievement" shall be construed accordingly
Additional Services	Any services ancillary to the Cloud Services that are in the scope of Schedule 1 (Services) which the Customer may request.
Audit	An audit carried out under this Contract in accordance with clauses 29.1 to 29.2.
Customer	The party named as such at the start of this Contract.
Customer Data	All data supplied by or on behalf of the Customer to the Supplier, or which the Supplier is required to generate, process, store or transmit pursuant to this Contract, or 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, including Personal Data that is owned and managed by the Customer or Users.
Customer Software	Software owned by or licensed to the Customer (other than under or for this Contract), which is or will be used by the Supplier for the purposes of providing the Services.
Contract	The legally binding agreement for the provision of Services made between Customer and the Supplier
Contract Commitment Value	The amounts set out in the Order Form.
Charges	The prices (excluding any applicable VAT) payable to the Supplier by the Customer under the Contract as set out in Schedule 2 of Part A of this Contract.
Cloud Services	The cloud services described as such in Schedule 1 of Part A of this Contract.
Collaboration Agreement	An agreement between the Customer and any combination of the Supplier and contractors, to ensure collaborative working in their delivery of the Customer's Services and to ensure that the Customer receives end-to-end IT services.
Comparable Supply	The supply of services to another customer of the Supplier that are the same or similar to any of the Services.
Confidential Basis	Any disclosure by the recipient to a third party is subject to a confidentiality agreement or arrangement containing the same terms as those placed on the recipient under the confidentiality clauses.
Confidential Information	Data, Personal Data and any information, which may include (but is not limited to) any: (a) information that relates to the business, affairs, developments, trade secrets, know-how, personnel, and third parties, including all Intellectual Property Rights (IPRs), together with all information derived from any of the above; and (b) other information clearly designated as being confidential or which should reasonably be considered to be confidential (whether or not it is marked 'confidential').
Control	'Control' as defined in section 1124 and 450 of the Corporation Tax Act 2010. 'Controls' and 'Controlled' will be interpreted accordingly.
Customer Representative	The representative appointed by the Customer in relation to this Contract as set out in Part A: Order Form.
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 Event	(a) a breach of security leading to the actual or "near miss" accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Customer Data transmitted, stored or otherwise processed; or

	<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>
Default	<p>This means any:</p> <ul style="list-style-type: none"> • breach of the obligations of a party (including any fundamental breach or breach of a fundamental term) • other default, negligence or negligent statement of a party, and in the case of the Supplier, of its Subcontractors or any Supplier Staff (whether by act or omission), in connection with or in relation to this Contract.
Deliverable(s)	The Services the Customer contracts the Supplier to provide under a Contract
Detailed Implementation Plan	The plan developed and revised from time to time in accordance with Paragraphs 3 and 4 of Schedule 5 (Implementation Plan)
End	Means to terminate; and Ended and Ending will be construed accordingly.
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> <p>(a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;</p> <p>(b) unfair, wrongful or constructive dismissal compensation;</p> <p>(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;</p> <p>(d) compensation for less favourable treatment of part-time workers or fixed term employees;</p> <p>(e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;</p> <p>(f) employment claims whether in tort, contract or statute or otherwise; and</p> <p>(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;</p>
Employment Status Indicator test	<p>The HMRC Employment Status Indicator test tool. The most up-to-date version must be used. At the time of drafting, the tool is at: https://www.gov.uk/guidance/check-employment-status-for-tax</p>

tool or ESI tool	
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 TRE 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, as set out in the Order Form
End User Terms	the terms for use of the Cloud Services and the TRE platform by the Users as referred to in clause 2.7
Exit Charges	the charges made in accordance with as set out in Schedule 2 of Part A of this Contract in respect of compliance by the Supplier with the Exit Plan
Exit Plan	the plan produced and updated by the Supplier during the Term in accordance with clause 20
Expiry Date	The date of expiry of this Contract in the Order Form or, if the Customer exercises its right to extend the Contract pursuant to clause 1.3 of Part B and the Order Form, the end of the applicable Extension Period
Extension Period	The periods of extension of this Contract beyond the Expiry Date as provided for in the Order Form

Force Majeure	<p>A Force Majeure event means anything affecting either Party's performance of their obligations arising from any:</p> <ul style="list-style-type: none"> • acts, events or omissions beyond the reasonable control of the affected Party • riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare • acts of government, local government or Regulatory Bodies • fire, flood or disaster and any failure or shortage of power or fuel • industrial dispute affecting a third party for which a substitute third party is not reasonably available <p>The following do not constitute a Force Majeure event:</p> <ul style="list-style-type: none"> • any industrial dispute about the Supplier, its staff, or failure in the Supplier's (or a Subcontractor's) supply chain • any event which is attributable to the wilful act, neglect or failure to take reasonable precautions by the Party seeking to rely on Force Majeure the event was foreseeable by the Party seeking to rely on Force Majeure at the time this Contract was entered into • any event which is attributable to the Party seeking to rely on Force Majeure and its failure to comply with its own business continuity and disaster recovery plans
Fraud	Any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud any person.
Good Industry Practice	Standards, practices, methods and process conforming to the Law and the exercise of that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar undertaking under the same or similar circumstances.
Group of Economic Operators	A partnership or consortium not (yet) operating through a separate legal entity.
Implementation Plan	The Outline Implementation Plan or (if and when approved by the Customer pursuant to Paragraph 3 of Schedule 5 (Implementation Plan)) the Detailed Implementation Plan as updated in accordance with Paragraph 4 of Schedule 5 (Implementation Plan) from time to time
Information	This has the meaning given under section 84 of the Freedom of Information Act 2000.
Initial Term	The initial term of the Contract as set out in the Order Form.
IR35	IR35 is also known as 'intermediaries legislation'. It's a set of rules that affect tax and National Insurance if a Supplier is contracted to work for a client through an intermediary.
IR35 assessment	Assessment of employment status using the ESI tool to determine if engagement is Inside or Outside IR35.
Inside IR35	Employment engagements that would be within the scope of the IR35 if assessed by the ESI tool.

Insolvency Event	Can be: a voluntary arrangement a winding-up petition the appointment of a receiver or administrator an unresolved statutory demand a Schedule A1 moratorium
Intellectual Property Rights or IPR	(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, 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 (c) all other rights having equivalent or similar effect in any country or jurisdiction
Intermediary	For the purposes of the IR35 rules, an intermediary can be: the Supplier's own limited company a service or a personal service company a partnership It does not apply if you work for a client through a Managed Service Company (MSC) or agency (for example an employment agency).
Invitation to Tender	The Invitation to Tender for this Contract issued on [4 March 2022].
IR35	IR35 is also known as 'Intermediaries legislation'. It's a set of rules that affect tax and National Insurance where a Supplier is contracted to work for a client through an intermediary.
Know-How	All ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Cloud Services but excluding know-how already in the Supplier's or Customer's possession before the Start Date.
Law	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the relevant Party is bound to comply.
Loss	All losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and 'Losses' will be interpreted accordingly.
Lot	Any of the 3 lots specified in the Invitation to Tender and 'Lots' will be construed accordingly.
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 any part of the Customer Data

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
Milestone Date	The target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved
Order Form	The order form set out in Part A of this Contract.
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 5 (Implementation Plan)
Outside IR35	Contractual engagements which would be determined to not be within the scope of the IR35 if assessed using the ESI tool.
Parent Company	Any company which is the ultimate Holding Company of the Supplier.
Party	Party for the purposes of the: Customer or the Supplier Contract, the Supplier or Customer and 'Parties' will be interpreted accordingly
Partner	Any business entity with whom the Supplier works in order to provide the Services.
Prohibited Act	To directly or indirectly offer, promise or give any person working for or engaged by Customer a financial or other advantage to: induce that person to perform improperly a relevant function or activity reward that person for improper performance of a relevant function or activity commit any offence: <ul style="list-style-type: none"> • under the Bribery Act 2010 • under legislation creating offences concerning Fraud • at common Law concerning Fraud • committing or attempting or conspiring to commit Fraud
Regulations	The Public Contracts Regulations 2015 at http://www.legislation.gov.uk/ukSI/2015/102/contents/made and the Public Contracts (Scotland) Regulations 2015 at http://www.legislation.gov.uk/ssi/2015/446/contents/made
Regulatory Bodies	Government departments and other bodies which, whether under statute, codes of practice or otherwise, are entitled to investigate or influence the matters dealt with in this Contract.
Replacement Supplier	As defined in clause 44.2.
Response	The response submitted by the Supplier to the Invitation to Tender.
["Researcher Billing Provider" - DELETE IF LOT	[INSERT]

3 IS AWARDED TO A LOT 2 BIDDER]	
[Researcher Billing Services - DELETE IF LOT 3 IS AWARDED TO A LOT 2 BIDDER]	The services identified as such in Schedule 1 of Part A of this Contract
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
Services	Means Cloud Services[, Researcher Billing Services] and any/or Additional Services.
Specification	The specification and services description set out in Schedule 1 (Services).
Special Purpose Vehicle	A separate legal entity jointly controlled by a Group of Economic Operators to provide Services.
Specific Change in Law	A change in the Law that relates specifically to the business of Customer and which would not affect a Comparable Supply.
Start Date	For the Contract, the start date is as outlined as described in the Order Form.
Subcontract	Any contract or agreement or proposed agreement between the Supplier and a Subcontractor in which the Subcontractor agrees to provide to the Supplier the Services or any part thereof or facilities or goods and services necessary for the provision of the Services or any part thereof.
Subcontractor	Any third party engaged by the Supplier under a Subcontract (permitted under the Contract) and its servants or agents in connection with the provision of Services.
Subcontractor Staff	All persons employed by the Subcontractor, together with the Subcontractor's servants or agents.
Sub-Processor	Any third party appointed to process Personal Data on behalf of that Processor related to this Contract.
Supplier	The party named as such at the start of this Contract.
Supplier Representative	The representative appointed by the Supplier in relation to this Contract as set out in Part A: Order Form.
Supplier Solution	The Supplier's solution for the Services set out in Schedule 1 (Services)

Supplier Staff	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 Contract.
Supplier Terms	The Supplier's terms and conditions for the Services and as set out in Schedule 6: Supplier Terms.
Term	The term of this Contract from the Start Date to the Expiry Date or the Ending of this Contract if earlier.
TRE Provider	The provider(s) of the Trusted Research Environment platform to the Customer from time to time, including as at the date of this Contract [INSERT SUPPLIER NAME] and as shall be notified by the Customer to the Supplier from time to time.
Users	Researchers approved and authenticated by the Customer as entitled to access any part of the Customer Data and use the Cloud Services and who have entered into a Material Transfer Agreement with the Customer.
Working Days	Any day other than a Saturday, Sunday or public holiday in England and Wales.
Year	A period of 12 months from the Start Date and each successive period of 12 months from the anniversary of the Start Date or such shorter period from the final anniversary of the Start Date to the Expiry Date or Ending of the Contract where less than 12 months.

Schedule 4: Processing Data

1 Data Protection

- 1.1 The Customer authorises the Supplier to Process the Customer Data during the term of this Contract for the purposes of the roles set out in clauses 11.1 and 11.2 of this Contract and to the extent described in Annex 1 to this Schedule 4 and as otherwise authorised or permitted under this Contract 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 Customer ~Personal Data in accordance with this Contract 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 reasonably 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 Contract 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 Contract 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 Contract) 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 4 (Processing Data);
 - 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 Contract, and:
 - 1.7.6.1 is subject to confidentiality obligations equivalent to those set out in clause 9 of this Contract 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 9, provided that in the event and to the extent only of any conflict between this paragraph 1 and clause 9, 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 8 (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 on-going;
- 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: [\[dpo@ourfuturehealth.org.uk\]](mailto:dpo@ourfuturehealth.org.uk).

1.13 Wherever under this Contract 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 5: Implementation Plan

1. Introduction

1.1 This Schedule 5 (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).

2. Outline Implementation Plan

2.1 The Outline Implementation Plan is set out in Annex 1 of this Schedule 5 (Implementation Plan).

2.2 All changes to the Outline Implementation Plan shall be subject to the variation procedure set out in clause 47 provided that the Supplier shall not attempt to postpone any of the Milestones using such procedure or otherwise, except as a consequence of a Default by the Customer.

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 Start 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 Paragraph 5; 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 Start 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); 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 variation procedure set out in clause 47 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 as a consequence of a Default by the Customer.
- 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.
5. **Testing**
- 5.1 The parties shall within twenty (20) Working Days of the Start Date agree a testing process to be carried out by the Supplier to verify and demonstrate to the Customer's reasonable satisfaction that each Milestone has been Achieved, including agreement of a test strategy, plan and specification, appropriate test success criteria in respect of each Milestone and related Deliverables and arrangements with regard to the recording and resolution of test issues, test witnessing by the Customer and the issuing of Milestone Achievement Certificates.
- 5.2 The Customer shall issue a Milestone Achievement Certificate as soon as is reasonably practicable following:
- 5.2.1 demonstration of the successful passing of testing in respect of all Deliverables related to the Milestone concerned in accordance with the process agreed pursuant to Paragraph 5.1; and
- 5.2.2 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).
- 5.3 The grant of a Milestone Achievement Certificate shall entitle the Supplier to invoice for the Charges (if any) relating to that Milestone (when it becomes due) in accordance with Schedule 2 (Contract Charges).

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		Start Date	No
2	Project kick off	Supplier responsible for Project Definition Workshop to inform completion of Detailed Implementation Plan	One week after Start Date	No
3	Delivery of implementation plan		Two weeks after Start Date	No
4	Alpha TRE hosted in Cloud	<ul style="list-style-type: none"> TRE (Lot 2) running on cloud (Lot 1) 	As soon as possible after Start Date, no	No

		<ul style="list-style-type: none"> ● On-boarding and access to the TRE for Customer staff ● Ingestion and availability of synthetic data for preliminary configuration. 	later than <u>31 July</u> 2022	
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 out in Section 5.3 of the Specification and Schedule 5 (Implementation Plan) of the Contract ● 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 	30 th September 2022	Yes
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 6: Supplier Terms

[To be inserted from the successful bidder's tender document]

Schedule 7: 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 Plan”	Collaboration	has the meaning given in clause 3.2 of this Collaboration Agreement
“Dispute Process”	Resolution	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 Plan”	Collaboration	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 [(£,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 [(£,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 TRE contract version.Outline Collaboration Plan]

Schedule 8: Information Security Requirements

The Customer's 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.]

[Schedule 9: Additional Requirements related to Researcher Billing Services [DELETE IF RESEARCHER BILLING SERVICES ARE NOT PART OF THIS CONTRACT]]

- 1.1 The Researcher Billing Provider shall be a key Subcontractor. As such, except where the Customer has given its prior written consent, the Supplier shall ensure that the Subcontract shall include:
- 1.1.1 provisions which will enable the Supplier to discharge its obligations under this Contract;
 - 1.1.2 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 Subcontract without restriction (including any need to obtain and consent or approval) or payment by the Customer; and
 - 1.1.3 obligations no less onerous on the Subcontractor than those imposed on the Supplier under this Contract in respect of data protection requirements set out in clauses 11 (Protection of Information), 12 (Customer Data), 15 (Security) and 33 (Bribery and corruption), 37 (Equality and Diversity) and 42 (Corporate Social Responsibility) and Schedule 8 (Data Processing Clauses).
- 1.2 Without prejudice to the provisions of Paragraph 1.1, the Key Subcontract with the Researcher Billing Provider shall be on the terms set out in Annex 1 to this Schedule. The Supplier shall not terminate or materially amend the terms of such Key Subcontract without the Customer's prior written consent.
- 1.3 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 TRE Provider. The Supplier shall cooperate with the TRE Provider to suspend access to the TRE 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.

Annex 1 - Researcher Billing Terms