**DOCUMENT B**

**CONTRACT FOR THE PROVISION OF ESTATES MAINTENANCE SERVICES**

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| **QTS** | **QUALITY TRUSTED SOLUTIONS LLP**, a limited liability partnership registered in England and Wales with registered number OC419167, of 1st Floor, 350 Euston Road, London, NW1 3AX |
| **The Supplier** | ***[Insert name, address and, where applicable, the jurisdiction of registration and company or LLP registered number of the Supplier]*** |

|  |  |
| --- | --- |
| **Date of this Contract** | ***[Insert date when signed by both parties]*** |
| **Type of Services** | Estates Maintenance Services |

**Contract**

This Contract is made on the date set out above between QTS and the Supplier on the date set out above (which shall be the “**Commencement Date**”) and is subject to the terms set out in the schedules listed below (the “**Schedules**”). QTS and the Supplier undertake to comply with the provisions of the Schedules in the performance of this Contract.

The Supplier shall supply to QTS, and QTS shall receive and pay for, the Services on the terms of this Contract.

For the avoidance of doubt, any actions or work undertaken by the Supplier prior to the Commencement Date shall be undertaken at the Supplier’s risk and expense and the Supplier shall only be entitled to invoice for Services covered by this Contract.

The Definitions in Schedule 4 apply to the use of all capitalised terms in this Contract (including, for the avoidance of doubt, the Schedules except where and to the extent that any such Schedule expressly provides an alternative definition of a capitalised term in it).

**List of Schedules**

|  |  |
| --- | --- |
| **Schedule 1** | Key Provisions |
| **Schedule 2** | General Terms and Conditions |
| **Schedule 3** | Information Governance and Data Provisions |
| **Schedule 4** | Definitions and Interpretations |
| **Schedule 5** | Specification and Tender Response Document |
| **Schedule 6** | Pricing Schedule |
| **Schedule 7** | Performance Management Mechanism |
| **Schedule 8** | Staff Transfers and Pensions |
| **Schedule 9** | Expert Determination |
| **Schedule 10** | Form of Guarantee |
| **Schedule 11** | Mobilisation Plan |
| **Schedule 12** | Services by Site Matrix |
| **Schedule 13** | Data Protection Protocol |

**Signed by the authorised representative of QUALITY TRUSTED SOLUTIONS LLP**

|  |  |  |  |
| --- | --- | --- | --- |
| Name: |  | Signature: |  |
| Position: |  |  |  |

**Signed by the authorised representative of THE SUPPLIER**

|  |  |  |  |
| --- | --- | --- | --- |
| Name: |  | Signature | ……………………………………. |
| Position: | …………………………………. |  |  |



**Key Provisions**

1. **Application of the Key Provisions**
   1. The Key Provisions in clauses 1 to 23 (inclusive) in this Schedule 1 shall apply to this Contract.
2. **Commencement Date, Services Commencement Date and Long Stop Date**
   1. The Commencement Date of this Contract is the date of this Contract, or if no such date is stated, the date when both Parties have signed it.
   2. The Services Commencement Date shall be 1 April 2021 or any other date agreed by QTS.
   3. The Long Stop Date referred to in Clause 15.5.1 of Schedule 2 shall be 1 April 2021.
3. **Term**
   1. This Contract shall commence on the Commencement Date.
   2. Subject to early termination under any provision of this Contract, the term of this Contract will be from the Commencement Date until (and including) 31 March 2025 (i.e. the day before the fourth (4th) anniversary of the Services Commencement Date) unless it is extended on one or more occasions in accordance with Clause 15.2 of Schedule 2 for up to three (3) years. Whether there will be an/any extensions and their length, between 1 year and 3 years, will be at the sole and absolute discretion of QTS, provided that if QTS exercises all its rights to extend the Term under Clause 15.2 of Schedule 2, the duration of this Contract shall be no longer than from the Commencement Date until (and including) 31 March 2028 (i.e. the day before the seventh (7th) anniversary of the Services Commencement Date) (the “**Maximum Term**”).
4. **QTS’s Authorised Officer and the Parties’ Contract Managers**
   1. QTS’s Authorised Officer at the commencement of this Contract is:

**Gillian Stafford**

**Managing Director – QTS**

[gillian.stafford@nhs.net](mailto:gillian.stafford@nhs.net)

* 1. The Contract Managers at the commencement of this Contract are:
     1. for QTS:

***insert name, role and email address***.

* + 1. for the Supplier:

***insert name, role and email address***.

1. **Names and addresses for notices**
   1. Unless otherwise agreed by the Parties in writing, notices served under this Contract are to be delivered to:
      1. for QTS:

**Gillian Stafford**

**Managing Director**

Quality Trusted Solutions LLP

1st Floor, 350 Euston Road,

London, NW1 3AX

***insert email address***.

* + 1. for the Supplier:

***insert name and/or role and physical address***

***insert email address***.

1. **Management levels for escalation and dispute resolution**
   1. The management levels at which a Dispute may be dealt with as referred to as part of the Dispute Resolution Procedure are as follows:

|  |  |  |
| --- | --- | --- |
| **Level** | **QTS representative** | **Supplier representative** |
| 1 | ***Contract Manager*** | ***Contract Manager*** |
| ***2*** | ***Authorised Officer*** | ***insert role*** |

1. **Order of precedence**
   1. Subject always to Clause 1.10 of Schedule 4, if there is a conflict between any other parts of this Contract the order of priority for construction purposes shall be as follows (the higher priorities being listed first):
      1. the provisions on the first page of this Contract, including those under the heading “Contract”;
      2. Schedule 1: Key Provisions;
      3. Schedule 5: Specification and Tender Response Document (but only in respect of QTS’s requirements), Schedule 6: Pricing Schedules and Schedule 7: Performance Management Mechanism;
      4. Schedule 2: General Terms and Conditions;
      5. Schedule 3: Information Governance and Data Provisions;
      6. Schedule 8: Staff Transfer and Pensions;
      7. Schedule 4: Definitions and Interpretations;
      8. the order in which all other schedules, if any, appear; and
      9. any other documentation forming part of the Contract in the date order in which such documentation was created with the more recent documentation taking precedence over older documentation to the extent only of any conflict.
   2. For the avoidance of doubt, the Specification and Tender Response Document in Schedule 5 shall include, without limitation, QTS’s requirements in the form of its specification and other statements and requirements, the Supplier’s responses, proposals and/or method statements to meet those requirements included as part of Schedule 5, and any clarifications to the Supplier’s responses, proposals and/or method statements as included as part of Schedule 5. If there is a conflict or inconsistency between:
      1. QTS’s requirements stated in the “Specification” columns in the tables in Schedule 5 any stated elsewhere in Schedule 5 (“**QTS’s Requirements**”);
      2. any clarification to the Supplier’s responses, proposals and/or method statements in Schedule 5 (the “**Supplier’s Clarifications**”); and
      3. the Supplier’s responses, proposals and/or method statements in Schedule 5 (the “**Supplier’s Responses**”),

then:

* + 1. to the extent that the Supplier’s Responses and/or the Supplier’s Qualifications, if applicable, would add to the Services to be provided by the Supplier or otherwise increase the Supplier’s obligations under this Contract or increase the benefits for QTS or CNWL under this Contract, then QTS’s requirements and the Supplier’s obligations shall be deemed to have been increased to the extent of such increased Services, obligations or benefits, but QTS’s obligations (including without limitation QTS’s payment obligations) under this Contract shall not be increased; and
    2. to the extent that the Supplier’s Responses and/or Supplier’s Qualifications, if applicable, would not add to the Services to be provided by the Supplier or otherwise increase the Supplier’s obligations under this Contract or increase the benefits for QTS or CNWL under this Contract, or would fail to satisfy QTS’s Requirements, then in each case QTS’s Requirements shall prevail unchanged.
  1. Save as provided in Clause 7.2 of this Schedule 1, in accordance with Clause 1.10 in Schedule 4 to this Contract (Definitions and Interpretations), where there is a conflict or inconsistency between the Supplier’s Responses (as clarified by the Supplier’s Clarifications) and any other part of this Contract, such other part of this Contract shall prevail.

1. **Due Diligence**
   1. The Supplier acknowledges and confirms that:
      1. it has had an opportunity to carry out a thorough due diligence exercise in relation to QTS's requirements for the Services as set out in this Contract (including Schedule 5 (Specification and Tender Response Document) and Schedule 7 (Performance Management Mechanism)), as amended from time to time in accordance with the Change Control Process, and has asked QTS all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Contract and the costs and obligations that it incurs, or may incur, in performing the Services and meeting any Service Levels, Performance Parameters, KPIs, Minimum Standards or any other obligations under this Contract;
      2. it has received all information requested by it from QTS pursuant to clause 8.1.1 of this Schedule 1 to enable it to determine whether it is able to provide the Services in accordance with the terms of this Contract and the costs and obligations that it incurs, or may incur, in performing the Services and meeting any Service Levels, Performance Parameters, KPIs, Minimum Standards or any other obligations under this Contract;
      3. it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of QTS pursuant to clause 8.1.2 of this Schedule 1;
      4. it has raised all relevant due diligence questions with QTS before the Commencement Date; and
      5. it has entered into this Contract in reliance on its own due diligence.
   2. Save to the extent (if any) expressly provided in this Contract, no representations, warranties or conditions are given or undertaken by QTS in respect of any information which is or has been provided to the Supplier or its representatives by or on behalf of QTS. Any representations, warranties or conditions given or undertaken by or on behalf of QTS that are not set out expressly in this Contract are excluded, save to the extent (if any) that such exclusion is prohibited by law.
   3. The Supplier shall promptly notify QTS in writing if it becomes aware during the performance of this Contract of any inaccuracies in any information provided to it by or on behalf of QTS during such due diligence which materially and adversely affect the Supplier’s ability to perform the Services or meet any Service Levels, Performance Parameters, KPIs, Minimum Standards or any other obligations in this Contract.
   4. The Supplier shall not be entitled to recover any additional costs from QTS which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies in respect of any information which is provided to the Supplier or its representatives by or on behalf of QTS, whether or not notified to QTS by the Supplier in accordance with clause 8.3 of this Schedule 1.
   5. Nothing in this clause 8 of this Schedule 1 shall limit or exclude the liability of QTS for fraud or fraudulent misrepresentation.
   6. In this clause 8 of this Schedule 1 “Service Levels”, “Performance Parameters”, “KPIs”, and “Minimum Standards” each have the meanings in Schedule 7(Performance Management Mechanism).
2. **Application of TUPE at the commencement of the provision of Services**
   1. The Parties agree that the commencement of the provision of the Services under this Contract shall give rise to a relevant transfer as defined in TUPE and the provisions of Schedule 8 shall apply to such transfer.
3. **Mobilisation phase**
   1. Prior to commencement of delivery of the Services, there is an implementation and mobilisation phase and therefore all references in Schedule 2 to the Mobilisation Plan shall apply and the Mobilisation Plan is set out in Schedule 11.
4. **Induction training**
   1. The Supplier shall ensure that all Staff complete QTS’s induction training. All Staff shall complete the training prior to the Services Commencement Date and all new Staff appointed throughout the Term shall also complete the training. The Supplier shall further ensure that all Staff complete any extra training that QTS makes available to its own staff and notifies the Supplier in writing that it is appropriate for the Staff.
5. **Quality assurance standards** 
   1. The following quality assurance standards shall apply, as appropriate, to the provision of the Services:

* 9001:2008)
* ISO 14001:2018 Environmental Management Systems (previously ISO 14001:2004)
* ISO 45001:2018 Occupational Health and Safety (previously BS OHSAS 18001:2007)
* ISO 50001:2018 Energy Management Systems.
* ISO 55001:2014 Asset Management.
* PAS99:2006 Integrated Management System
* NHS Health Building Notes
* NHS Health Technical Memorandum
* SFG20 – Sch 6
* NHS Guidance Accommodation people with Mental illness
* NHS Estate Code
* And other Standard, Guidance or Regulation which may be required from time to time throughout the Contract duration

1. **Different levels and/or types of insurance** 
   1. The Supplier shall put in place and maintain in force the following insurances with the following minimum cover per claim:

|  |  |
| --- | --- |
| **Type of insurance required** | **Minimum cover** |
| Employer’s liability insurance | £10 million |
| Public liability insurance | £10 million |
| Professional indemnity insurance | £5 million |

1. **Intellectual Property Rights**
   1. The Supplier confirms and agrees that all Intellectual Property Rights in and to the deliverables, material and any other output developed by the Supplier as part of the Services in accordance with the Specification and Tender Response Document, shall be owned by the Authority. The Supplier hereby assigns with full title guarantee by way of present and future assignment all Intellectual Property Rights in and to such deliverables, material and other outputs. The Supplier shall ensure that all Staff assign any Intellectual Property Rights they may have in and to such deliverables, material and other outputs to the Supplier to give effect to Clause 14 of this Schedule 1 and that such Staff absolutely and irrevocably waive their moral rights in relation to such deliverables, material and other outputs. Clause 14 of this Schedule 1 shall continue notwithstanding the expiry or earlier termination of this Contract.
2. **Change Control Process** 
   1. Any changes to this Contract, including to the Services, may only be agreed in accordance with the Change Control Process set out in Schedule 5: Specification and Tender Response Document.
3. **QTS Step-In Rights** 
   1. QTS shall be entitled to exercise Step In Rights set out in Schedule 7: Performance Management Mechanism.
4. **Grant of licence**
   1. Promptly following execution of this Contract, the Supplier shall enter into the licence in the form set out in Schedule 14 (subject to such changes as QTS or CNWL (as the case may be) reasonably requires) if so required. Failure to comply with this Key Provision shall be an irremediable breach of this Contract.
5. **Guarantee**
   1. If requested by QTS, the Supplier shall promptly following the date of this Contract, if it has not already done so, deliver an executed deed of guarantee to QTS in the form set out in Schedule 10 as required by the procurement process followed by QTS. Failure to comply with this Key Provision shall be an irremediable breach of this Contract.
   2. The parent company that, if requested by QTS, will be required to give a guarantee in accordance with Key Provision 18.1 is as follows

**PARENT COMPANY TO GIVE GUARANTEE IF REQUESTED BY TRUST**

|  |  |  |  |
| --- | --- | --- | --- |
| **Parent Company** | ***insert name*** | | the "Guarantor" |
| **Parent Company Address** | ***insert address*** | | |
| **Parent Company’s Account Manager:** | **Name:** | ***insert name*** | |
|  | **Address:** | ***insert address*** | |
|  | **Phone:** | ***insert details*** | |
|  | **Email:** | ***insert details*** | |
|  | **Fax:** | ***insert details*** | |

1. **Supplier as Data Processor** 
   1. The Parties acknowledge that QTS is the Controller and the Supplier is the Processor in respect of Personal Data Processed under this Contract and that paragraph 2.2 of Schedule 3 and the provisions of the Data Protection Protocol in Schedule 13 must be complied with by the Parties as a term of this Contract.
2. **Purchase Orders** 
   1. QTS shall issue a Purchase Order to the Supplier in respect of any Services to be supplied to QTS under this Contract. The Supplier shall comply with the terms of such Purchase Order as a term of this Contract. For the avoidance of doubt, any actions or work undertaken by the Supplier under this Contract prior to the receipt of a Purchase Order covering the relevant Services shall be undertaken at the Supplier’s risk and expense and the Supplier shall only be entitled to invoice for Services covered by a valid Purchase Order. QTS require that Asset numbers are quoted on the Purchase Order and corresponding invoice with any related references in order that payment is not delayed.
3. **Monthly payment profile** 
   1. The payment profile for this Contract shall be monthly in arrears.
4. **Not used**
5. **Right to terminate following a specified number of material breaches**
   1. QTS may terminate this Contract by issuing a Termination Notice to the Supplier if the Supplier commits a material breach of this Contract in circumstances where it is served with a valid Breach Notice having already been served with at least two (2) previous valid Breach Notices within the last twelve (12) calendar month rolling period as a result of any previous material breaches of this Contract which are capable of remedy (whether or not the Supplier has remedied the breach in accordance with a Remedial Proposal). The twelve (12) month rolling period is the twelve (12) months immediately preceding the date of the third Breach Notice.
6. **Expert Determination**
   1. Except as provided in Clause 22.6 in Schedule 2, any Dispute between QTS and the Supplier shall be dealt in accordance with the expert determination process as specified at Schedule 9.
   2. For the avoidance of doubt, except as provided in Clause 22.6 in Schedule 2, all Disputes shall be dealt in accordance with Clause 24.1 of this Schedule 1 above and, except insofar as in Clause 22.6 in Schedule 2 applies, the entirety of Clause 22 of Schedule 2 shall be deemed not to apply and shall be deemed deleted in its entirety from this Contract.

**General Terms and Conditions**

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1. **Provision of Services**
   1. QTS appoints the Supplier and the Supplier agrees to provide the Services:
      1. promptly and in any event within any time limits as may be set out in this Contract;
      2. in accordance with all other provisions of this Contract;
      3. with reasonable skill and care;
      4. in accordance with any quality assurance standards as set out in the Key Provisions and/or the Specification and Tender Response Document;
      5. in accordance with the Law and with Guidance;
      6. in accordance with Good Industry Practice;
      7. in accordance with the Policies; and
      8. in a professional and courteous manner;

and in complying with its obligations under this Contract, the Supplier shall, and shall procure that all Staff shall, act in accordance with the NHS values as set out in the NHS Constitution from time to time.

* 1. The Supplier shall comply with the Mobilisation Requirements (if any) in accordance with any timescales as may be set out in the Specification and Tender Response Document.Without limitation to the foregoing provisions of this Clause 1.2 of this Schedule 2, immediately following the Commencement Date, the Supplier shall implement the Services fully in accordance with the Mobilisation Plan. If the Mobilisation Plan is an outline plan, the Supplier shall, as part of implementation and mobilisation, develop the outline plan into a full plan (and shall include in it any reasonable requirements requested by QTS) and shall on or before send it to QTS for approval (such approval not to be unreasonably withheld). After it is approved by QTS, the Supplier shall comply with the full Mobilisation Plan.
  2. The Supplier shall commence delivery of the Services on the Services Commencement Date.
  3. The Supplier shall comply fully with its obligations under this Contract, including, without limitation, those set out in Schedule 1 (Key Provisions), Schedule 5 (Specification and Tender Response Document) and Schedule 7(Performance Management Mechanism). (including the Service Levels, Performance Parameters, KPIs, Minimum Standards and Service Deductions as those terms are defined in Schedule 7). .
  4. The Supplier shall ensure that all relevant consents, authorisations, licences and accreditations required to provide the Services are in place at the Services Commencement Date and are maintained throughout the Term.
  5. If the Services, or any part of them, are regulated by any regulatory body, the Supplier shall ensure that at the Services Commencement Date it has in place all relevant registrations and shall maintain such registrations during the Term. The Supplier shall notify QTS forthwith in writing of any changes to such registration or any other matter relating to its registration that would affect the delivery or the quality of Services.
  6. The Supplier shall notify QTS forthwith in writing:
     1. of any pending inspection of the Services, or any part of them, by a regulatory body immediately upon the Supplier becoming aware of such inspection; and
     2. of any failure of the Services, or any part of them, to meet the quality standards required by a regulatory body, promptly and in any event within two (2) Business Days of the Supplier becoming aware of any such failure. This shall include without limitation any informal feedback received during or following an inspection raising concerns of any nature regarding the provision of the Services.
  7. Following any inspection of the Services, or any part of them, by a regulatory body, the Supplier shall provide QTS with a copy of any report or other communication published or provided by the relevant regulatory body in relation to the provision of the Services.
  8. Upon receipt of notice pursuant to Clause 1.7 of this Schedule 2 or any report or communication pursuant to Clause 1.8 of this Schedule 2, QTS shall be entitled to request further information from the Supplier and/or a meeting with the Supplier, and the Supplier shall cooperate fully with any such request.
  9. Where applicable, the Supplier shall implement and comply with the Policies on reporting and responding to all incidents and accidents, including serious incidents requiring investigation, shall complete QTS’s incident and accident forms in accordance with the Policies and provide reasonable support and information as requested by QTS to help QTS deal with any incident or accident relevant to the Services. The Supplier shall ensure that its Contract Manager informs QTS’s Contract Manager in writing forthwith upon:
     1. becoming aware that any serious incidents requiring investigation and/or notifiable accidents have occurred; or
     2. the Supplier’s Contract Manager having reasonable cause to believe any serious incidents and/or notifiable accidents requiring investigation have occurred,

and the Supplier shall ensure that its Contract Manager informs QTS’s Contract Manager in writing within forty eight (48) hours of all other incidents and/or accidents that have or may have an impact on the Services.

* 1. Save as provided in Clause 8 of Schedule 1, the Supplier shall be relieved from its obligations under this Contract to the extent that it is prevented from complying with any such obligations due to any acts, omissions or defaults of QTS. To qualify for such relief, the Supplier must notify QTS promptly (and in any event within five (5) Business Days) in writing of the occurrence of such act, omission, or default of QTS together with the potential impact on the Supplier’s obligations.
  2. Supplier should warn QTS as soon as they become aware of any delay in completion of PPM or Reactive or Minor Works, or meeting a Key date or where the performance of the works is impaired or any situation giving rise to additional costs, risks or impacts on time and quality .

1. Premises, locations and access
   1. The Services shall be provided at the Premises and Locations.
   2. Subject to the Supplier and the Staff complying with all relevant Policies applicable to the Premises and Locations, QTS shall grant reasonable access to the Supplier and the Staff to the Premises and Locations to enable the Supplier to provide the Services.
   3. Subject to Clause 2.4 of this Schedule 2, any access granted to the Supplier and the Staff under Clause 2.2 of this Schedule 2 shall be non-exclusive and revocable. Such access shall not be deemed to create any greater rights or interest than so granted (to include, without limitation, any relationship of landlord and tenant) in the Premises and Locations. The Supplier warrants and undertakes that it shall carry out all such reasonable further acts to give effect to this Clause 2.3 of this Schedule 2.
   4. If and where, in order to provide the Services, the Supplier requires any greater rights to use or occupy any specific space with any Premises and Locations over and above such reasonable access rights granted in accordance with Clause 2.2 and Clause 2.3 of this Schedule 2, such further rights shall be limited to any licence and/or lease rights granted in a lease or licence in the form in Schedule 14 (subject to such changes as QTS or CNWL (as the case may be) reasonably requires), signed by duly authorised representatives of both Parties, to the Supplier by QTS or CNWL in QTS’s and CNWL’s sole and absolute discretion. The Parties acknowledge and agree that, except for , no such lease or licence has been entered into before, or as at, the date of this Contract.
   5. Where it is provided for by a specific mechanism set out in the Specification and Tender Response Document, QTS may increase, reduce or otherwise vary the Premises and Locations in accordance with such mechanism. Where there is no such specific mechanism set out in the Specification and Tender Response Document, any variations to the Premises and Locations where the Services are to be provided shall be agreed by the Parties or determined in accordance with Clause 21 of this Schedule 2 and the Change Control Process.
2. Cooperation with third parties
   1. The Supplier shall, as reasonably required by QTS, cooperate with any other service providers to QTS and/or any other third parties as may be relevant in the provision of the Services.
3. Use of QTS equipment
   1. Unless otherwise set out in the Specification and Tender Response Document or otherwise agreed by the Parties in writing, any equipment or other items provided by QTS for use by the Supplier or any Sub-contractor:
      1. shall be provided at QTS’s sole discretion;
      2. shall be inspected by the Supplier in order that the Supplier can confirm to its reasonable satisfaction that such equipment and/or item is fit for its intended use and shall not be used by the Supplier or any Sub-contractor until the Supplier has satisfied itself of this;
      3. must be returned to QTS within any agreed timescales for such return or otherwise upon the request of QTS; and
      4. shall be used by the Supplier or any Sub-contractor at the Supplier’s risk and the Supplier shall upon written request by QTS reimburse QTS for any loss or damage relating to such equipment or other items caused by the Supplier or any Sub-contractor (fair wear and tear exempted).
4. Staff
   1. Subject to the requirements of this Contract and any Law, the Supplier shall be entirely responsible for the employment and conditions of service of Staff. The Supplier shall ensure that such conditions of employment are consistent with its obligations under this Contract.
   2. The Supplier will employ sufficient Staff to ensure that it complies with its obligations under this Contract. This will include, but not be limited to, the Supplier providing a sufficient reserve of trained and competent Staff to provide the Services during Staff holidays or absence.
   3. The Supplier shall use reasonable endeavours to ensure the continuity of all Staff in the provision of the Services and, where any member of Staff is designated as key to the provision of the Services as set out in Schedule 5 (Specification and Tender Response Document) or Schedule 7(Performance Management Mechanism) or as otherwise agreed between the Parties in writing, any redeployment and/or replacement of such member of Staff by the Supplier shall be subject to the prior written approval of QTS, such approval not to be unreasonably withheld or delayed.
   4. The Supplier shall ensure that all Staff are aware of, and at all times comply with, the Policies.
   5. The Supplier shall:
      1. employ only those Staff who are careful, skilled and experienced in the duties required of them;
      2. ensure that every member of Staff is properly and sufficiently trained and instructed;
      3. ensure all Staff have the qualifications to carry out their duties;
      4. maintain throughout the Term all appropriate licences and registrations with any relevant bodies (at the Supplier’s expense) in respect of the Staff; and
      5. ensure all Staff comply with such registration, continuing professional development and training requirements or recommendations appropriate to their role including those from time to time issued by the Department of Health or any relevant regulatory body or any industry body in relation to such Staff.
   6. The Supplier shall not deploy in the provision of the Services any person who has suffered from, has signs of, is under treatment for, or who is suffering from any medical condition which is known to, or does potentially, place the health and safety of QTS’s staff, patients, service users or visitors at risk unless otherwise agreed in writing with QTS.
   7. The Supplier shall ensure that all potential Staff or persons performing any of the Services during the Term who may reasonably be expected in the course of performing any of the Services under this Contract to have access to or come into contact with children or other vulnerable persons and/or have access to or come into contact with persons receiving health care services:
      1. are questioned concerning their Convictions; and
      2. obtain appropriate disclosures from the Disclosure and Barring Service (or other appropriate body) as required by Law and/or the Policies before the Supplier engages the potential staff or persons in the provision of the Services.
   8. The Supplier shall take all necessary steps to ensure that such potential staff or persons obtain standard and enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) and shall ensure all such disclosures are kept up to date. The obtaining of such disclosures shall be at the Supplier’s cost and expense.
   9. The Supplier shall ensure that no person is employed or otherwise engaged in the provision of the Services without QTS’s prior written consent if:
      1. the person has disclosed any Convictions upon being questioned about their Convictions in accordance with Clause 5.7.1 of this Schedule 2;
      2. the person is found to have any Convictions following receipt of standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) in accordance with Clause 5.7.2 of this Schedule 2; or
      3. the person fails to obtain standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) upon request by the Supplier in accordance with Clause 5.7.2 of this Schedule 2.
   10. In addition to the requirements of Clause 5.7 to Clause 5.9 of this Schedule 2, where the Services are or include regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 the Supplier:
       1. warrants and undertakes that it shall comply with all requirements placed on it by the Safeguarding Vulnerable Groups Act 2006;
       2. warrants and undertakes that at all times it has and will have no reason to believe that any member of Staff is barred in accordance with the Safeguarding Vulnerable Groups Act 2006; and
       3. shall ensure that no person is employed or otherwise engaged in the provision of the Services if that person is barred from carrying out, or whose previous conduct or records indicate that they would not be suitable to carry out, any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person.
   11. The Supplier shall ensure that QTS is kept advised at all times of any member of Staff who, subsequent to their commencement of employment as a member of Staff receives a Conviction or whose previous Convictions become known to the Supplier or any Sub-contractor or whose conduct or records indicate that they are not suitable to carry out any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person. The Supplier or any Sub-contractor shall only be entitled to continue to engage or employ such member of Staff with QTS’s written consent and with such safeguards being put in place as QTS may reasonably request. If QTS withholds consent, the Supplier shall remove such member of Staff from the provision of the Services forthwith.
   12. The Supplier shall immediately provide to QTS any information that QTS reasonably requests to enable QTS to satisfy itself that the obligations set out in Clause 5.7 to Clause 5.11 of this Schedule 2 have been met.
   13. QTS may at any time request that the Supplier remove and replace any member of Staff from the provision of the Services, provided always that QTS will act reasonably in making such a request, and the Supplier shall comply with any such reasonable request . Prior to making any such request QTS shall raise with the Supplier QTS’s concerns regarding the member of Staff in question with the aim of seeking a mutually agreeable resolution. QTS shall be under no obligation to have such prior discussion if QTS has concerns regarding patient or service user safety.
5. Business continuity 
   1. The Supplier and its Sub-Contractors shall use reasonable endeavours to ensure its Business Continuity Plan operates effectively alongside, and complements, QTS’s business continuity plan where relevant to the provision of the Services. The Supplier and its Sub-Contractors shall also ensure that its Business Continuity Plan complies on an ongoing basis with any specific business continuity requirements, as may be set out in the Specification and Tender Response Document.
   2. Throughout the Term, the Supplier will ensure its Business Continuity Plan provides for continuity during a Business Continuity Event. The Supplier and its Sub-Contractors confirms and agrees such Business Continuity Plan details and will continue to detail robust arrangements that are reasonable and proportionate to:
      1. the criticality of this Contract to QTS; and
      2. the size and scope of the Supplier’s business operations,

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

* 1. The Supplier and its Sub-Contractors shall test their Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Contract to QTS and the size and scope of the Supplier’s and its Sub-Contractors business operations. The Supplier and its Sub-Contractors shall promptly provide to QTS, at QTS’s written request, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that the Supplier and its Sub-Contractors test their Business Continuity Plan in accordance with the requirements of this Clause 6.3 of this Schedule 2 and reasonable and proportionate information regarding the outcome of such tests. The Supplier and its Sub-Contractors shall provide to QTS a copy of any updated or revised Business Continuity Plan within fourteen (14) Business Days of any material update or revision to the Business Continuity Plan.
  2. QTS may suggest reasonable and proportionate amendments to the Supplier and its Sub-Contractors regarding the Business Continuity Plan at any time. Where the Supplier, acting reasonably, deems such suggestions made by QTS to be relevant and appropriate, the Supplier and its Sub-Contractors will incorporate into the Business Continuity Plan all such suggestions made by QTS in respect of such Business Continuity Plan. If the Supplier and its Sub-Contractors do not incorporate any suggestion made by QTS into such Business Continuity Plan, it will explain the reasons for not doing so to QTS.
  3. If a Business Continuity Event occurs at any time, the Supplier and its Sub-Contractors shall implement and comply with their Business Continuity Plan and provide regular written reports to QTS on such implementation.
  4. During and following a Business Continuity Event, the Supplier and its Sub-Contractors shall use reasonable endeavours to continue to provide the Services in accordance with this Contract.

1. QTS’s obligations
   1. Subject to the Supplier providing the Services in accordance with this Contract, QTS will pay the Supplier for the Services in accordance with Clause 9 of this Schedule 2.
   2. QTS shall, as appropriate, provide copies of or give the Supplier access to such of the Policies that are relevant to the provision of the Services.
   3. QTS shall comply with QTS’s Obligations.
2. Contract management 
   1. Each Party shall appoint and retain in place throughout the Term (though replacement is permitted) a Contract Manager who shall be the primary point of contact for the other Party in relation to matters arising from this Contract.
   2. If the Supplier’s Contract Manager is to be replaced, the Supplier shall promptly inform QTS in writing of the name and contact details (including email address) for the proposed new Contract Manager, provided that the identity of any new Contract Manager for the Supplier shall require QTS’s approval (such approval not to be unreasonably withheld).
   3. If QTS’s Contract Manager or Authorised Officer is replaced, QTS shall promptly inform the Supplier in writing of the name and contact details (including email address) for QTS’s new Contract Manager or Authorised Officer (as the case may be).
   4. Each Contract Manager appointed shall be of sufficient seniority and experience to be able to make decisions on the day to day operation of the Contract. The Supplier confirms and agrees that it will be expected to work closely and cooperate fully with QTS’s Contract Manager.
   5. Save as otherwise instructed by QTS from time to time, all the Supplier’s and the Staff’s notifications and advice to, and other communications with, QTS shall be to QTS’s Contract Manager and (save as otherwise instructed by QTS) the QTS-provided, or CNWL-provided, site manager at the relevant Premises and Locations.
   6. Each Party shall ensure that its representatives (to include, without limitation, its Contract Manager) shall attend review meetings on a regular basis to review the performance of the Supplier under this Contract and to discuss matters arising generally under this Contract. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day to day operation of the Contract. Review meetings shall take place at the frequency specified in the Specification and Tender Response Document. If the Specification and Tender Response Document does not state the frequency, then the first such meeting shall take place on a date to be agreed on or around the end of the first month after the Commencement Date. Subsequent meetings shall take place at monthly intervals or as may otherwise be agreed in writing between the Parties.
   7. Two weeks prior to each review meeting (or at such time and frequency as may be specified in the Specification and Tender Response Document) the Supplier shall provide a written contract management report to QTS regarding the provision of the Services and the operation of this Contract. Unless otherwise agreed by the Parties in writing, such contract management report shall contain:
      1. details of the performance of the Supplier when assessed in accordance with the KPIs since the last such performance report;
      2. details of any complaints from or on behalf of patients or other service users, their nature and the way in which the Supplier has responded to such complaints since the last review meeting written report;
      3. the information specified in the Specification and Tender Response Document;
      4. a status report in relation to the implementation of any current Remedial Proposals by either Party; and
      5. Statutory Compliance completed
      6. Number of PPMs completed and Tracker
      7. Energy Management and Tracker
      8. Continuous Improvement Programme and Tracker
      9. Expert Determination
      10. such other information as reasonably required by QTS.
   8. Unless specified otherwise in the Specification and Tender Response Document, QTS shall take minutes of each review meeting and shall circulate draft minutes to the Supplier within a reasonable time following such review meeting. The Supplier shall inform QTS in writing of any suggested amendments to the minutes within five (5) Business Days of receipt of the draft minutes. If the Supplier does not respond to QTS within such five (5) Business Days the minutes will be deemed to be approved. Where there are any differences in interpretation of the minutes, the Parties will use their reasonable endeavours to reach agreement. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the Dispute Resolution Procedure.
   9. The Supplier shall provide such management information as QTS may request from time to time within seven (7) Business Days of the date of the request. The Supplier shall supply the management information to QTS in such form as may be specified by QTS and, where requested to do so, the Supplier shall also provide such management information to another Contracting Authority, whose role it is to analyse such management information in accordance with UK government policy (to include, without limitation, for the purposes of analysing public sector expenditure and planning future procurement activities) (“**Third Party Body”**). The Supplier confirms and agrees that QTS may itself provide the Third Party Body with management information relating to the Services purchased, any payments made under this Contract, and any other information relevant to the operation of this Contract.
   10. Upon receipt of management information supplied by the Supplier to QTS and/or the Third Party Body, or by QTS to the Third Party Body, the Parties hereby consent to the Third Party Body and QTS:
       1. storing and analysing the management information and producing statistics; and
       2. sharing the management information or any statistics produced using the management information with any other Contracting Authority.
   11. If the Third Party Body and/or QTS shares the management information or any other information provided under Clause 8.10 of this Schedule 2, any Contracting Authority receiving the management information shall, where such management information is subject to obligations of confidence under this Contract and such management information is provided direct by QTS to such Contracting Authority, be informed of the confidential nature of that information by QTS and shall be requested by QTS not to disclose it to any body that is not a Contracting Authority (unless required to do so by Law).
   12. QTS may make changes to the type of management information which the Supplier is required to supply and shall give the Supplier at least one (1) month’s written notice of any changes.
3. Price and payment
   1. The Contract Price and Baseline Contract Price shall be as calculated in accordance withSchedule 6 (Pricing Schedules), subject to deductions in accordance with Schedule 7(Performance Management Mechanism).
   2. Unless otherwise stated in the Pricing Schedules, the Contract Price:
      1. shall be payable from the Actual Services Commencement Date;
      2. shall remain fixed during the Term; and
      3. is the entire price payable by QTS to the Supplier in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses, the cost of Staff and all appropriate taxes (excluding VAT), duties and tariffs and any expenses arising from import and export administration.
   3. Unless stated otherwise in the Pricing Schedules:
      1. where the Key Provisions confirm that the payment profile for this Contract is monthly in arrears, the Supplier shall invoice QTS, within five (5) Business Days of the end of each calendar month, the Contract Price in respect of the Services provided in compliance with this Contract in the preceding calendar month; or
      2. where Clause 9.3.1 of this Schedule 2 does not apply, the Supplier shall invoice QTS for Services at any time following completion of the provision of the Services in compliance with this Contract.

Each invoice shall contain such information and be addressed to such individual as QTS may inform the Supplier from time to time.

* 1. The Contract Price is exclusive of VAT, which, if properly chargeable, QTS shall pay at the prevailing rate subject to receipt from the Supplier of a valid and accurate VAT invoice. Without limitation to other reasons why an invoice may not be valid, if an invoice is for Services or other matters for which there is an applicable Purchase Order, the invoice will be invalid if it does not contain the applicable Purchase Order Number or if it is for an amount not all of which falls within the amount authorised by the applicable Purchase Order that has not already been paid by QTS. Such VAT invoices shall show the VAT calculations as a separate line item.
  2. QTS shall verify and pay each valid and undisputed invoice received in accordance with Clause 9.3 of this Schedule 2 within thirty (30) days after receipt of such invoice at the latest. However, QTS shall use its reasonable endeavours to pay such undisputed invoices sooner in accordance with any applicable government prompt payment targets. If there is undue delay in verifying the invoice in accordance with this Clause 9.5, where such invoice has not been queried under Clause 9.6 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purposes this Clause 9.5 after a reasonable time has passed.
  3. Where QTS raises a query with respect to an invoice the Parties shall liaise with each other and endeavour to agree a resolution to such query within thirty (30) days after the query was raised. If the Parties do not agree a resolution within such thirty (30) days the query shall be referred to dispute resolution in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, QTS shall not be in breach of any of any of its payment obligations under this Contract in relation to any queried or disputed invoice sums unless the process referred to in this Clause 9.6 of this Schedule 2 has been followed and it has been determined that the queried or disputed invoice amount is properly due to the Supplier and QTS has then failed to pay such sum within thirty (30) days following such determination.
  4. The Supplier shall pay to QTS any service credits and/or other sums and/or deductions (to include, without limitation, Service Deductions relating to a reduction in the Contract Price) that may become due in accordance with the provisions of Schedule 5 (Specification and Tender Response Document), Schedule 6 (Pricing Schedules or Schedule 7(Performance Management Mechanism). For the avoidance of doubt, QTS may invoice the Supplier for such sums or deductions at any time in the event that they have not automatically been credited to QTS in accordance with the provisions of Schedule 5 (Specification and Tender Response Document), Schedule 6 (Pricing Schedules or Schedule 7(Performance Management Mechanism). Such invoice shall be paid by the Supplier within 30 days after the date of such invoice.
  5. QTS reserves the right to deduct or set-off:
     1. any monies due to the Supplier from QTS as against any monies due to QTS from the Supplier under this Contract; and
     2. any monies due to QTS from the Supplier as against any monies due to the Supplier from QTS under this Contract.
  6. Where QTS is entitled to receive any sums (including, without limitation, any costs, charges or expenses) from the Supplier under this Contract, QTS may invoice the Supplier for such sums. Such invoices shall be paid by the Supplier within 30 days after the date of such invoice.
  7. If a Party fails to pay any undisputed sum properly due to the other Party under this Contract, the Party due such sum shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

1. Warranties
   1. The Supplier warrants and undertakes that:
      1. it has, and shall ensure the Staff shall have, and shall maintain throughout the Term, all appropriate licences and registrations with the relevant bodies to fulfil its obligations under this Contract;
      2. it has, and shall ensure that the Staff shall have, all rights, consents, authorisations, licences and accreditations required to provide the Services and shall maintain such consents, authorisations, licences and accreditations throughout the Term;
      3. it has and shall maintain a properly documented system of quality controls and processes covering all aspects of its obligations under this Contract and/or under Law and/or Guidance and shall at all times comply with such quality controls and processes;
      4. it shall not make any significant changes to its system of quality controls and processes in relation to the Services without notifying QTS in writing at least twenty one (21) days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);
      5. where any act of the Supplier requires the notification to and/or approval by any regulatory or other competent body in accordance with any Law and Guidance, the Supplier shall comply fully with such notification and/or approval requirements;
      6. receipt of the Services by or on behalf of QTS and use of the deliverables or of any other item or information supplied or made available to QTS as part of the Services will not infringe any third party rights, to include without limitation any Intellectual Property Rights;
      7. it will comply with all Law, Guidance, Policies (including NHS guidelines, Health Technical Memoranda, Health Building Notes, Central Alerts System and NICE) and the Supplier Code of Conduct in so far as is relevant to the provision of the Services;
      8. it will provide the Services using reasonable skill and care and in accordance with Good Industry Practice and the Policies and shall fulfil all requirements of this Contract using appropriately skilled, trained and experienced staff;
      9. unless otherwise set out in the Specification and Tender Response Document and/or as otherwise agreed in writing by the Parties, it has and/or shall procure all resources, equipment, consumables and other items and facilities required to provide the Services;
      10. without limitation to the generality of Clause 10.1.7 of this Schedule 2, it shall comply with all health and safety processes, requirements safeguards, controls, and training obligations in accordance with its own operational procedures, Law, Guidance, Policies, Good Industry Practice, the requirements of the Specification and Tender Response Document and any notices or instructions given to the Supplier by QTS and/or any competent body, as relevant to the provision of the Services and the Supplier’s access to the Premises and Locations in accordance with this Contract;
      11. without prejudice to any specific notification requirements set out in this Contract, it will promptly notify QTS of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the performance of the Services and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;
      12. any equipment it uses in the provision of the Services shall comply with all relevant Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer’s specification and shall remain the Supplier’s risk and responsibility at all times;
      13. unless otherwise confirmed by QTS in writing (to include, without limitation, as part of the Specification and Tender Response Document), it will ensure that any products purchased by the Supplier partially or wholly for the purposes of providing the Services will comply with requirements five (5) to eight (8), as set out in Annex 1 of the Cabinet Office Procurement Policy Note - Implementing Article 6 of the Energy Efficiency Directive (Action Note 07/14 3rd June 2014), to the extent such requirements apply to the relevant products being purchased;
      14. it shall use Good Industry Practice to ensure that any information and communications technology systems and/or related hardware and/or software it uses are free from corrupt data, viruses, worms and any other computer programs or code which might cause harm or disruption to QTS's information and communications technology systems;
      15. it shall: (i) comply with all relevant Law and Guidance and shall use Good Industry Practice to ensure that there is no slavery or human trafficking in its supply chains; and (ii) notify QTS immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains;
      16. it shall at all times conduct its business in a manner that is consistent with any anti-slavery Policy of QTS and shall provide to QTS any reports or other information that QTS may request as evidence of the Supplier’s compliance with this Clause 10.1.16 and/or as may be requested or otherwise required by QTS in accordance with its anti-slavery Policy;
      17. it will fully and promptly respond to all requests for information and/or requests for answers to questions regarding this Contract, the provision of the Services, any complaints and any Disputes at the frequency, in the timeframes and in the format as requested by QTS from time to time (acting reasonably);
      18. all information included within the Supplier’s responses to any documents issued by QTS as part of the procurement relating to the award of this Contract (including, without limitation, all information included within, or referred to in, the Supplier’s responses in the Specification and Tender Response Document and the Pricing Schedules) and all accompanying materials is accurate;
      19. it has the right and authority to enter into this Contract and that it has the capability and capacity to fulfil its obligations under this Contract;
      20. it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Contract and the documents referred to in this Contract;
      21. all necessary actions to authorise the execution of and performance of its obligations under this Contract have been taken before such execution;
      22. there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Supplier;
      23. there are no material agreements existing to which the Supplier is a party which prevent the Supplier from entering into or complying with this Contract;
      24. it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Contract; and
      25. it has satisfied itself as to the nature and extent of the risks assumed by it under this Contract and has gathered all information necessary to perform its obligations under this Contract and all other obligations assumed by it.
   2. The Supplier warrants and undertakes that all information, data and other records and documents required by QTS as set out in the Specification and Tender Response Document shall be submitted to QTS in the format and in accordance with any timescales set out in the Specification and Tender Response Document and which should not exceed 10 business days.
   3. Without prejudice to the generality of Clause 10.2 of this Schedule 2, the Supplier acknowledges that a failure by the Supplier following the Actual Services Commencement Date to submit accurate invoices and other information on time to QTS may result in the commissioner of health services, or other entity responsible for reimbursing costs to QTS, delaying or failing to make relevant payments to QTS. Accordingly, the Supplier warrants and undertakes that, from the Actual Services Commencement Date, it shall submit accurate invoices and other information on time to QTS.
   4. The Supplier warrants and undertakes to QTS that it shall comply with any eProcurement Guidance as it may apply to the Supplier and shall carry out all reasonable acts required of the Supplier to enable QTS to comply with such eProcurement Guidance.
   5. The Supplier warrants to QTS that, as at the Commencement Date, it has notified QTS in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance and the Supplier undertakes to QTS that the Supplier shall promptly provide to QTS such other information in relation to such Occasion of Tax Non-Compliance or related litigation as QTS may reasonably require. Furthermore, the Supplier undertakes to QTS that if, at any time during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
      1. notify QTS in writing of such fact within five (5) Business Days after its occurrence; and
      2. promptly provide to QTS:
         1. details of the steps which the Supplier is taking to address such Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
         2. such other information in relation to such Occasion of Tax Non-Compliance or related litigation as QTS may reasonably require.
   6. The Supplier further warrants and undertakes to QTS that it will inform QTS in writing immediately upon becoming aware that any of the warranties or undertakings set out in Clause 10 of this Schedule 2 have been breached or there is a risk that any warranties or undertakings may be breached.
   7. Any warranties and undertakings provided under this Contract are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.
2. Intellectual property
   1. Subject to Clause 11.3, the Supplier warrants and undertakes to QTS that either it owns or is entitled to use and will continue to own or be entitled to use all Intellectual Property Rights used in the development and provision of the Services and/or necessary to give effect to the Services and/or to use any deliverables, matter or any other output supplied to QTS as part of the Services.
   2. Except to the extent specified otherwise in Clause 11.3, in the Key Provisions and/or in the Specification and Tender Response Document, the Supplier hereby grants to QTS, for the life of the use by QTS of any deliverables, material or any other output supplied to QTS in any format as part of the Services, an irrevocable, royalty-free, non-exclusive licence to use, modify, adapt or enhance such items in the course of QTS’s normal business operations. For the avoidance of doubt, unless specified otherwise , in the Key Provisions and/or in the Specification and Tender Response Document, QTS shall have no rights to commercially exploit (e.g. by selling to third parties) any deliverables, matter or any other output supplied to QTS in any format as part of the Services which pursuant to this Clause 11.2 are licensed to QTS.
   3. All physical property rights and all Intellectual Property Rights in the Asset Register (including, without limitation, the condition survey data), the asbestos registers and all other data on the CAFM system or other systems used by the Supplier or its Sub-Contractors, and all rights in them, hereby automatically vest in, and shall be the property of, QTS, on creation and the Supplier shall ensure such vesting. For the avoidance of doubt, QTS shall have the right to commercially exploit (including, without limitation, by selling to third parties) any deliverables, matter or any other output supplied to QTS in any format as part of the Services which pursuant to this Clause 11.3 vest in, and shall be the property of, QTS. In this Clause 11.3, “Asset Register”, “condition survey”, “asbestos register” and “CAFM system” or other systems used by the Supplier or its Sub-Contractors shall have their meanings in Specification and Tender Response Document.
   4. Clause 11 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.
3. Indemnity
   1. The Supplier shall be liable to QTS for, and shall indemnify and keep QTS indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings in respect of:
      1. any injury or allegation of injury to any person, including injury resulting in death; and/or
      2. any loss of or damage to property (whether real or personal); and/or
      3. any breach of Clause 10.1.6 and/or Clause 11 of this Schedule 2; and/or
      4. enhanced monitoring
      5. any failure by the Supplier to commence the delivery of the Services by the Services Commencement Date;

that arise or result from the Supplier’s negligent acts or omissions or breach of contract in connection with the performance of this Contract including the provision of the Services, except to the extent that such loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings have been caused by any wrongful act or omission by, or on behalf of, QTS or in accordance with wrongful instructions of, QTS.

* 1. Liability under Clauses 12.1.1, 12.1.3 and 17.13 of this Schedule 2 and Clause 2.6 of Schedule 3 shall be unlimited. Liability under Clauses 12.1.2 and 12.1.4 of this Schedule 2 shall be subject to the limitation of liability set out in Clause 13 of this Schedule 2.
  2. In relation to all third party claims against QTS, which are the subject of any indemnity given by the Supplier under this Contract, QTS shall use its reasonable endeavours, upon a written request from the Supplier, to transfer the conduct of such claims to the Supplier unless restricted from doing so. Such restrictions may include, without limitation, any restrictions:
     1. relating to any legal, regulatory, governance, information governance, or confidentiality obligations on QTS; and/or
     2. relating to QTS’s membership of any indemnity and/or risk pooling arrangements.

Such transfer shall be subject to the Parties agreeing appropriate terms for such conduct of the third party claim by the Supplier (to include, without limitation, the right of QTS to be informed and consulted on the ongoing conduct of the claim following such transfer and any reasonable cooperation required by the Supplier from QTS).

* 1. Clause 12 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.

1. Limitation of liability
   1. Nothing in this Contract shall exclude or restrict the liability of either Party:
      1. for death or personal injury resulting from its negligence;
      2. for fraud or fraudulent misrepresentation; or
      3. in any other circumstances where liability may not be limited or excluded under any applicable law.
   2. Subject to Clauses 12.2, 13.1, 13.3 and 13.5 of this Schedule 2, the total liability of each Party to the other under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to the greater of: (a) five million GBP (£5,000,000); or (b) one hundred and twenty five percent (125%) of the total Contract Price paid or payable by QTS to the Supplier for the Services over the Term.
   3. There shall be no right to claim losses, damages and/or other costs and expenses under or in connection with this Contract whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged. For the avoidance of doubt, without limitation, the Parties agree that for the purposes of this Contract the following costs, expenses and/or loss of income shall be direct recoverable losses (to include under any relevant indemnity) provided such costs, expenses and/or loss of income are properly evidenced by the claiming Party:
      1. extra costs incurred purchasing replacement or alternative services;
      2. costs associated with advising, screening, testing, treating, retreating or otherwise providing healthcare to patients;
      3. the costs of extra management time; and/or
      4. loss of income due to an inability to provide health care services,

in each case to the extent to which such costs, expenses and/or loss of income arise or result from the other Party’s breach of contract, negligent act or omission, breach of statutory duty, and/or other liability under or in connection with this Contract.

* 1. Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which that Party is entitled to bring a claim against the other pursuant to this Contract.
  2. If the total Contract Price paid or payable by QTS to the Supplier over the Term:
     1. is less than or equal to one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 shall be replaced with one million pounds (£1,000,000);
     2. is less than or equal to three million pounds (£3,000,000) but greater than one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 shall be replaced with three million pounds (£3,000,000);
     3. is equal to, exceeds or will exceed ten million pounds (£10,000,000), but is less than fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 shall be replaced with ten million pounds (£10,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 13.2 of this Schedule 2 shall be deemed to have been deleted and replaced with one hundred and fifteen percent (115%); and
     4. is equal to, exceeds or will exceed fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 shall be replaced with fifty million pounds (£50,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 13.2 of this Schedule 2 shall be deemed to have been deleted and replaced with one hundred and five percent (105%).
  3. Clause 13 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.

1. Insurance
   1. Subject to Clauses 14.2 and 14.3 of this Schedule 2 and unless otherwise confirmed in writing by QTS, as a minimum level of protection, the Supplier and its Sub-Contractors shall put in place and/or maintain in force at its own cost with a reputable commercial insurer, insurance arrangements in respect of employer’s liability, public liability and professional indemnity in accordance with Good Industry Practice with the minimum cover per claim of the greater of five million pounds (£5,000,000) or any sum as required by Law unless otherwise agreed with QTS in writing. These requirements shall not apply to the extent that the Supplier and its Sub-Contractors are a member and maintain membership of each of the indemnity schemes run by the NHS Litigation Authority.
   2. Without limitation to any insurance arrangements as required by Law, the Supplier and its Sub-Contractors shall put in place and/or maintain the different types and/or levels of indemnity arrangements explicitly required by QTS, if specified in the Key Provisions.
   3. Provided that the Supplier & its Sub-Contractors maintain all indemnity arrangements required by Law, the Supplier and its Sub-Contractor may self-insure in order to meet other relevant requirements referred to at Clauses 14.1 and 14.2 of this Schedule 2 on condition that such self-insurance arrangements offer the appropriate levels of protection and are approved by QTS in writing prior to the Commencement Date.
   4. The amount of any indemnity cover and/or self-insurance arrangements shall not relieve the Supplier or its Sub-Contractors of any liabilities under this Contract. It shall be the responsibility of the Supplier and its Sub-Contractors to determine the amount of indemnity and/or self-insurance cover that will be adequate to enable it to satisfy its potential liabilities under this Contract. Accordingly, the Supplier and its Sub-Contractors shall be liable to make good any deficiency if the proceeds of any indemnity cover and/or self-insurance arrangement is insufficient to cover the settlement of any claim.
   5. The Supplier and its Sub-Contractors warrant and undertake that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which its insurance cover may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances repayable in whole or in part.
   6. The Supplier and its Sub-Contractors shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to QTS that insurance arrangements taken out by the Supplier pursuant to Clause 14 of this Schedule 2 and the Key Provisions are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
   7. Upon the expiry or earlier termination of this Contract, the Supplier and its Sub-Contractors shall ensure that any ongoing liability they have or may have arising out of this Contract shall continue to be the subject of appropriate indemnity arrangements for the period of twenty one (21) years from termination or expiry of this Contract or until such earlier date as that liability may reasonably be considered to have ceased to exist.
   8. Clause 14 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.
2. Term and termination
   1. This Contract shall commence on the Commencement Date and, unless terminated earlier in accordance with the terms of this Contract or the general law, shall continue until the end of the Term.
   2. QTS shall be entitled but not required to extend the Term on one or more occasions by giving the Supplier written notice no less than three (3) months prior to the date on which this Contract would otherwise have expired, provided that the duration of this Contract shall be no longer than the Maximum Term specified in the Key Provisions.
   3. In the case of a breach of any of the terms of this Contract by either Party that is capable of remedy (including, without limitation any breach of any KPI and, subject to Clause 9.6 of this Schedule 2, any breach of any payment obligations under this Contract), the non-breaching Party may, without prejudice to its other rights and remedies under this Contract, issue a Breach Notice and shall allow the Party in breach the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Party in breach (“**Remedial Proposal**”) before exercising any right to terminate this Contract in accordance with Clause 15.4.2 of this Schedule 2. Such Remedial Proposal must be agreed with the non-breaching Party (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Party in breach in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Party in breach to:
      1. put forward and agree a Remedial Proposal with the non-breaching Party in relation to the relevant default or breach within a period of ten (10) Business Days (or such other period as the non-breaching Party may agree in writing) from written notification of the relevant default or breach from the non-breaching Party; and/or
      2. comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be thirty (30) days unless otherwise agreed between the Parties); and/or
      3. remedy the default or breach notwithstanding the implementation of such Remedial Proposal in accordance with the agreed timescales for implementation,

shall be deemed, for the purposes of Clause 15.4.2 of this Schedule 2, a material breach of this Contract by the Party in breach not remedied in accordance with an agreed Remedial Proposal.

* 1. Either Party may terminate this Contract by issuing a Termination Notice to the other Party if such other Party commits a material breach of any of the terms of this Contract which is:
     1. not capable of remedy; or
     2. in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal.
  2. QTS may terminate this Contract forthwith by issuing a Termination Notice to the Supplier if:
     1. the Supplier does not commence delivery of the Services by the Long Stop Date; or
     2. the Supplier, or any third party guaranteeing the obligations of the Supplier under this Contract, ceases or threatens to cease carrying on its business; suspends making payments on any of its debts or announces an intention to do so; is, or is deemed for the purposes of any Law to be, unable to pay its debts as they fall due or insolvent; enters into or proposes any composition, assignment or arrangement with its creditors generally; takes any step or suffers any step to be taken in relation to its winding-up, dissolution, administration (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) otherwise than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation; has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed (in each case, whether out of court or otherwise) in respect of it or any of its assets; has any security over any of its assets enforced; or any analogous procedure or step is taken in any jurisdiction; or
     3. the Supplier undergoes a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 (other than for an intra-group change of control) without the prior written consent of QTS and QTS shall be entitled to withhold such consent if, in the reasonable opinion of QTS, the proposed change of control will have a material impact on the performance of this Contract or the reputation of QTS; or
     4. the Supplier purports to assign, Sub-contract, novate, create a trust in or otherwise transfer or dispose of this Contract in breach of Clause 28.1 of this Schedule 2; or
     5. the NHS Business Services Authority has notified QTS that the Supplier or any Sub-contractor of the Supplier has, in the opinion of the NHS Business Services Authority, failed in any material respect to comply with its obligations in relation to the NHS Pension Scheme (including those under any Direction Letter) as assumed pursuant to the provisions of Part D of Schedule 8 (Staff Transfers and Pensions); or
     6. pursuant to and in accordance with any of the termination rights set out in any Key Provisions and Clauses 15.6, 23.8; 25.2; 25.4 and 29.2 of this Schedule 2; or
     7. the warranty given by the Supplier pursuant to Clause 10.5 of this Schedule 2 is materially untrue, the Supplier commits a material breach of its obligation to notify QTS of any Occasion of Tax Non-Compliance as required by Clause 10.5 of this Schedule 2, or the Supplier fails to provide details of proposed mitigating factors as required by Clause 10.5 of this Schedule 2 that in the reasonable opinion of QTS are acceptable.
  3. If QTS, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Supplier and/or any third party guaranteeing the obligations of the Supplier under this Contract and/or any material Sub-contractor of the Supplier when compared to any information provided to and/or assessed by QTS as part of any procurement process or other due diligence leading to the award of this Contract to the Supplier or the entering into a Sub-contract by the Supplier, the following process shall apply:
     1. QTS may (but shall not be obliged to) give notice to the Supplier requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Contract on such reasonable and proportionate terms as QTS may require within a reasonable time period as specified in such notice;
     2. a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 15.6 of this Schedule 2 in accordance with any reasonable timescales specified in any such notice issued by QTS shall be deemed a breach of this Contract by the Supplier and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and
     3. a failure to resolve such breach in accordance with such Dispute Resolution Procedure by the end of the final level of such Dispute Resolution Procedure in accordance with Clause 22.3 shall entitle, but shall not compel, QTS to terminate this Contract in accordance with Clause 15.4.1 of this Schedule 2.
  4. In order that QTS may act reasonably in exercising its discretion in accordance with Clause 15.6 of this Schedule 2, the Supplier shall provide QTS with such reasonable and proportionate up-to-date financial or other information relating to the Supplier or any relevant third party entity upon request.
  5. QTS may terminate this Contract by issuing a Termination Notice to the Supplier where:
     1. the Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure; or
     2. QTS has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract; or
     3. the Contract should not have been awarded to the Supplier in view of a serious infringement of obligations under European law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU or as amended from time to time;
     4. there has been a failure by the Supplier and/or any Sub-contractor to comply with legal obligations in the fields of environmental, social or labour Law. Where the failure to comply with legal obligations in the fields of environmental, social or labour Law is a failure by a Sub-contractors, QTS in its absolute discretion may (but shall not be obliged to) as an alternative to QTS terminating this Contract under this Clause 15.7.4, request the replacement of such Sub-contractor and the Supplier shall ensure that any such request is complied with.
  6. If QTS novates this Contract to any body that is not CNWL, another Contracting Authority or an entity directly or indirectly wholly owned by CNWL, then after the effective date of such novation, the Supplier may terminate this Contract by issuing a Termination Notice to the entity that has taken over the position of QTS (the “**QTS Replacement**”) if:
     1. the QTS Replacement ceases or threatens to cease carrying on its business; suspends making payments on any of its debts or announces an intention to do so; is, or is deemed for the purposes of any Law to be, unable to pay its debts as they fall due or insolvent; enters into or proposes any composition, assignment or arrangement with its creditors generally; takes any step or suffers any step to be taken in relation to its winding-up, dissolution, administration (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) otherwise than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation; has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed (in each case, whether out of court or otherwise) in respect of it or any of its assets; has any security over any of its assets enforced; or any analogous procedure or step is taken in any jurisdiction; or
     2. the QTS Replacement undergoes a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 (other than for an intra-group change of control) without the prior written consent of the Supplier and the Supplier shall be entitled to withhold such consent if, in the reasonable opinion of the Supplier, the proposed change of control will have a material impact on the performance of this Contract or the reputation of the Supplier; or
     3. the QTS Replacement purports to assign, Sub-contract, novate, create a trust in or otherwise transfer or dispose of this Contract in breach of Clause 28.8 of this Schedule 2.
  7. Within three (3) months of the Commencement Date the Supplier shall develop and agree an exit plan with QTS consistent with the Exit Requirements, which shall ensure continuity of the Services on expiry or earlier termination of this Contract. The Supplier shall provide QTS with the first draft of an exit plan within one (1) month of the Commencement Date. The Parties shall review and, as appropriate, update the exit plan on each anniversary of the Commencement Date of this Contract. At the notification of expiry or termination the Supplier shall provide a de-mobilisation plan in accordance with Schedule 5 section 2.3.2. If the Parties do not agree an exit plan in accordance with the timescales set out in this Clause 15.10 of this Schedule 2 (such agreement not to be unreasonably withheld or delayed), such failure to agree shall be deemed a Dispute, which shall be referred to and resolved in accordance with the Dispute Resolution Procedure.

1. Consequences of expiry or early termination of this Contract
   1. Upon expiry or earlier termination of this Contract, QTS agrees to pay the Supplier for the Services which have been completed by the Supplier in accordance with this Contract prior to expiry or earlier termination of this Contract.
   2. Immediately following expiry or earlier termination of this Contract and/or in accordance with any timescales as set out in the agreed exit plan:
      1. the Supplier shall comply with its obligations under any agreed exit plan; and
      2. all data (excluding Personal Data Processed by the Supplier on behalf of QTS), documents and records (whether stored electronically or otherwise) relating in whole or in part to the Services, including without limitation relating to patients or other service users, and all other items provided on loan or otherwise to the Supplier or any Sub-contractor by QTS shall be delivered by the Supplier to QTS provided that the Supplier shall be entitled to keep copies to the extent that: (a) the content does not relate solely to the Services; (b) the Supplier is required by Law and/or Guidance to keep copies; or (c) the Supplier was in possession of such data, documents and records prior to the Commencement Date; and
      3. any Personal Data Processed by the Supplier on behalf of QTS shall be returned to QTS or destroyed in accordance with the relevant provisions of the Data Protection Protocol.
   3. The Supplier shall retain all data relating to the provision of the Services that are not transferred or destroyed pursuant to Clause 16.2 of this Schedule 2 for the period set out in Clause 24.1 of this Schedule 2.
   4. The Supplier shall cooperate fully with QTS or, as the case may be, any replacement supplier during any re-procurement and handover period prior to and following the expiry or earlier termination of this Contract. This cooperation shall extend to providing access to all information relevant to the operation of this Contract, as reasonably required by QTS to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements.
   5. Immediately upon expiry or earlier termination of this Contract, any licence or lease in favour of the Supplier of any of the Premises and Locations or any other premises of CNWL or QTS entered into with CNWL or QTS in accordance with the Key Provisions or otherwise shall automatically terminate.
   6. The expiry or earlier termination of this Contract for whatever reason shall not affect any rights or obligations of either Party which accrued prior to such expiry or earlier termination.
   7. The expiry or earlier termination of this Contract shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.
   8. Clause 16 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.
2. Staff information and the application of TUPE at the end of the Contract
   1. Upon the day which is no greater than nine (9) months before the expiry of this Contract or as soon as the Supplier is aware of the proposed termination of the Contract, the Supplier shall, within twenty eight (28) days of receiving a written request from QTS and to the extent permitted by Law, supply to QTS and keep updated all information required by QTS as to the terms and conditions of employment and employment history of any Supplier Personnel (including all employee liability information identified in regulation 11 of TUPE) and the Supplier shall warrant such information is full, complete and accurate.
   2. No later than twenty eight (28) days prior to the Subsequent Transfer Date, the Supplier shall or shall procure that each Sub-contractor shall provide a final list to the Successor and/or QTS, as appropriate, containing the names of all the Subsequent Transferring Employees whom the Supplier or Sub-contractor expects will transfer to the Successor or QTS and all employee liability information identified in regulation 11 of TUPE in relation to the Subsequent Transferring Employees.
   3. If the Supplier shall, in the reasonable opinion of QTS, deliberately not comply with its obligations under Clauses 17.1 and 17.2 of this Schedule 2, QTS may withhold payment under Clause 9 of this Schedule 2.
   4. The Supplier shall be liable to QTS for, and shall indemnify and keep QTS indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any deficiency or inaccuracy in the information which the Supplier is required to provide under Clauses 17.1 and 17.2 of this Schedule 2.
   5. Subject to Clauses 17.6 and 17.7 of this Schedule 2:
      1. during the period of nine (9) months preceding the expiry of this Contract; or
      2. after notice of termination of this Contract has been served by either Party,

(as the case may be) the Supplier shall not, and shall procure that each Sub-contractor shall not, without the prior written consent of QTS (such consent not to be unreasonably withheld or delayed):

* + 1. make, propose or permit any material changes to the terms and conditions of employment or other arrangements of any of the Supplier Personnel;
    2. increase or seek to increase the emoluments (excluding cost of living increases awarded in the ordinary course of business) payable to any of the Supplier Personnel;
    3. replace any of the Supplier Personnel or increase the total number of employees (whether of the Supplier or any Sub-contractor) providing the Services;
    4. deploy any person other than the Supplier Personnel to perform the Services;
    5. terminate or give notice to terminate the employment or arrangements of any of the Supplier Personnel;
    6. increase the proportion of working time spent on the Services by any of the Supplier Personnel; or
    7. introduce any new contractual term or customary practice concerning the making of any lump sum payment on the termination of employment of any of the Supplier Personnel.
  1. Clause 17.5 of this Schedule 2 shall not prevent the Supplier or any Sub-contractor from taking any of the steps prohibited in that Clause in circumstances where the Supplier or Sub-contractor is required to take such a step pursuant to any changes in legislation or pursuant to a collective agreement in force at that time.
  2. Where the obligations on the Supplier under Clause 17 of this Schedule 2 are subject to the Data Protection Legislation, the Supplier shall, and shall procure that each Sub-contractor shall, use its best endeavours to seek the consent of the Supplier Personnel to disclose any information covered under the Data Protection Legislation and utilise any other exemption or provision within the Data Protection Legislation which would allow such disclosure.
  3. The Supplier hereby permits QTS to disclose information about the Supplier Personnel to any Interested Party provided that QTS informs the Interested Party in writing of the confidential nature of the information (and the Supplier hereby warrants and undertakes that it will have permission from each relevant Sub-contractor to enable the Supplier to give the permission to QTS in this Clause 17.8).
  4. The Parties agree that where a Successor or QTS provides the Services or services which are fundamentally the same as the Services in the immediate or subsequent succession to the Supplier or Sub-contractor (in whole or in part) on expiry or early termination of this Contract (howsoever arising) TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions may apply in respect of the subsequent provision of the Services or services which are fundamentally the same as the Services. If TUPE, the Cabinet Office Statement and/and/or Fair Deal for Staff Pensions apply then Clause 17.11 to Clause 17.14 of this Schedule 2 and (where relevant) the provisions of Clause 1.15 of Part D of Schedule 8 shall apply.
  5. If on the termination or at the end of the Contract TUPE does not apply, then all Employment Liabilities and any other liabilities in relation to the Supplier Personnel shall remain with the Supplier or Sub-contractor as appropriate. The Supplier shall, and shall procure that each relevant Sub-contractor shall, indemnify and keep indemnified QTS in relation to any Employment Liabilities arising out of or in connection with any allegation or claim raised by any Supplier Personnel.
  6. In accordance with TUPE, and any other policy or arrangement applicable, the Supplier shall, and shall procure that each relevant Sub-contractor shall, comply with its obligations to inform and consult with the appropriate representatives of any of its employees affected by the subsequent transfer of the Services or services which are fundamentally the same as the Services.
  7. The Supplier shall, and shall procure that each Sub-contractor shall, on or before any Subsequent Transfer Date:
     1. pay all wages, salaries and other benefits of the Subsequent Transferring Employees and discharge all other financial obligations (including reimbursement of any expenses and any contributions to retirement benefit schemes) in respect of the period between the Transfer Date and the Subsequent Transfer Date;
     2. account to the proper authority for all PAYE, tax deductions and national insurance contributions payable in respect of the Subsequent Transferring Employees in the period between the Transfer Date and the Subsequent Transfer Date;
     3. pay any Successor or QTS, as appropriate, the amount which would be payable to each of the Subsequent Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Subsequent Transfer Date;
     4. pay any Successor or QTS, as appropriate, the amount which fairly reflects the progress of each of the Subsequent Transferring Employees towards achieving any commission, bonus, profit share or other incentive payment payable after the Subsequent Transfer Date wholly or partly in respect of a period prior to the Subsequent Transfer Date; and
     5. subject to any legal requirement, provide to the Successor or QTS, as appropriate, all personnel records relating to the Subsequent Transferring Employees including, without prejudice to the generality of the foregoing, all records relating to national insurance, PAYE and income tax. The Supplier warrants and undertakes that all such records (whether provided by the Supplier or by a Sub-contractor) shall be accurate and up to date.
  8. The Supplier shall, and shall procure that each Sub-contractor shall, indemnify and keep indemnified QTS and any Successor in relation to any Employment Liabilities arising out of or in connection with any claim arising from:
     1. the Supplier’s or such Sub-contractor’s failure to perform and discharge its obligations under Clause 17.12 of this Schedule 2;
     2. any act or omission by the Supplier or such Sub-contractor in respect of the Subsequent Transferring Employees occurring on or before the Subsequent Transfer Date;
     3. any allegation or claim by any person who is not a Subsequent Transferring Employee but who alleges that their employment should transfer or has transferred to the Successor or QTS, as appropriate;
     4. any emoluments payable to a person employed or engaged by the Supplier or such Sub-contractor (including without limitation all wages, accrued holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and other contributions) payable in respect of any period on or before the Subsequent Transfer Date;
     5. any allegation or claim by any of the Subsequent Transferring Employees on the grounds that the Successor or QTS, as appropriate, has failed to continue a benefit provided by the Supplier or such Sub-contractor as a term of such Subsequent Transferring Employee’s contract as at the Subsequent Transfer Date where it was not reasonably practicable for the Successor or QTS, as appropriate, to provide an identical benefit but where the Successor or QTS, as appropriate, has provided (or offered to provide where such benefit is not accepted by the Subsequent Transferring Employee) an alternative benefit which, taken as a whole, is no less favourable to such Subsequent Transferring Employee; and
     6. any act or omission of the Supplier or such Sub-contractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the Successor’s or QTS’s failure to comply with regulation 13(4) of TUPE.
  9. The Supplier shall, and shall procure that each relevant Sub-contractor shall, on request by QTS provide a written and legally binding indemnity in the same terms as set out in Clause 17.13 of this Schedule 2 to any Successor in relation to any Employment Liabilities arising up to and including the Subsequent Transfer Date.
  10. The Supplier shall indemnify and keep indemnified QTS and any Successor in respect of any Employment Liabilities arising from any act or omission of the Supplier or any Sub-contractor in relation to any other Supplier Personnel who is not a Subsequent Transferring Employee arising during any period whether before, on or after the Subsequent Transfer Date.
  11. If any person who is not a Subsequent Transferring Employee claims or it is determined that their contract of employment has been transferred from the Supplier or any Sub-contractor to QTS or Successor pursuant to TUPE or claims that their employment would have so transferred had they not resigned, then:
      1. QTS will, or shall use reasonable endeavours to procure that the Successor will, within seven (7) days of becoming aware of that fact, give notice in writing to the Supplier;
      2. the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within twenty eight (28) days of the notification by QTS or the Successor;
      3. if such offer of employment is accepted, QTS will, or shall use reasonable endeavours to procure that the Successor will, immediately release the person from their employment; and
      4. if after the period in Clause 17.16.2 of this Schedule 2 has elapsed, no such offer of employment has been made or such offer has been made but not accepted, QTS will, or shall use reasonable endeavours to procure that the Successor will (whichever is the provider of the Services or services of the same or similar nature to the Services), employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person after the Subsequent Transfer Date.
  12. Clause 17 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.

1. Complaints 
   1. To the extent relevant to the Services, the Supplier shall have in place and operate a complaints procedure which complies with the requirements of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.
   2. Each Party shall inform the other of all complaints from or on behalf of patients or other service users arising out of or in connection with the provision of the Services within twenty four (24) hours of receipt of each complaint and shall keep the other Party updated on the manner of resolution of any such complaints.
2. Sustainable development
   1. The Supplier shall comply in all material respects with applicable environmental and social and labour Law requirements in force from time to time in relation to the Services. Where the provisions of any such Law are implemented by the use of voluntary agreements, the Supplier shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Specification and Tender Response Document or the Policies. Without prejudice to the generality of the foregoing, the Supplier shall:
      1. comply with all Policies and/or procedures and requirements set out in the Specification and Tender Response Document in relation to any stated environmental and social and labour requirements, characteristics and impacts of the Services and the Supplier’s supply chain;
      2. maintain relevant policy statements documenting the Supplier’s significant labour, social and environmental aspects as relevant to the Services being provided and as proportionate to the nature and scale of the Supplier’s business operations; and
      3. maintain plans and procedures that support the commitments made as part of the Supplier’s significant labour, social and environmental policies, as referred to at Clause 19.1.2 of this Schedule 2.
   2. The Supplier shall meet reasonable requests by QTS for information evidencing the Supplier’s compliance with the provisions of Clause 19 of this Schedule 2.
3. Electronic services information
   1. Where requested by QTS, the Supplier shall provide QTS the Services Information in such manner and upon such media as agreed between the Supplier and QTS from time to time for the sole use by QTS.
   2. The Supplier warrants that the Services Information is complete and accurate as at the date upon which it is delivered to QTS and that the Services Information shall not contain any data or statement which gives rise to any liability on the part of QTS following publication of the same in accordance with Clause 20 of this Schedule 2.
   3. If the Services Information ceases to be complete and accurate, the Supplier shall promptly notify QTS in writing of any modification or addition to or any inaccuracy or omission in the Services Information.
   4. The Supplier grants QTS a perpetual, non-exclusive, royalty free licence to use and exploit the Services Information and any Intellectual Property Rights in the Services Information for the purpose of illustrating the range of goods and services (including, without limitation, the Services) available pursuant to QTS’s contracts from time to time. Subject to Clause 20.5 of this Schedule 2, no obligation to illustrate or advertise the Services Information is imposed on QTS, as a consequence of the licence conferred by this Clause 20.4 of this Schedule 2.
   5. QTS may reproduce for its sole use the Services Information provided by the Supplier in QTS's services catalogue from time to time which may be made available on any NHS communications networks in electronic format and/or made available on QTS's external website and/or made available on other digital media from time to time.
   6. Before any publication of the Services Information (electronic or otherwise) is made by QTS, QTS will submit a copy of the relevant sections of QTS's services catalogue to the Supplier for approval, such approval not to be unreasonably withheld or delayed. For the avoidance of doubt the Supplier shall have no right to compel QTS to exhibit the Services Information in any services catalogue as a result of the approval given by it pursuant to this Clause 20.6 of this Schedule 2 or otherwise under the terms of this Contract.
   7. If requested in writing by QTS, and to the extent not already agreed as part of the Specification and Tender Response Document, the Supplier and QTS shall discuss and seek to agree in good faith arrangements to use any Electronic Trading System.
4. Change management
   1. The Supplier acknowledges to QTS that QTS’s requirements for the Services may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification and Tender Response Document, as may be requested by QTS from time to time.
   2. Subject to Clause 21.3 of this Schedule 2, any change to the Services or other variation to this Contract shall only be binding once it has either:
      1. been agreed or determined in accordance with the Change Control Process; or
      2. otherwise been agreed in writing and signed by authorised representatives of both Parties.
   3. Any change to the Data Protection Protocol shall be made in accordance with the relevant provisions of that protocol.
5. Dispute resolution
   1. During any Dispute, including a Dispute as to the validity of this Contract, it is agreed that the Supplier shall continue its performance of the provisions of the Contract (unless QTS requests in writing that the Supplier does not do so).
   2. In the case of a Dispute arising out of or in connection with this Contract the Supplier and QTS shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the Dispute and follow the procedure set out in Clause 22.3 of this Schedule 2 as the first stage in the Dispute Resolution Procedure.
   3. If any Dispute arises out of the Contract either Party may serve a notice on the other Party to commence formal resolution of the Dispute. The Parties shall first seek to resolve the Dispute by escalation in accordance with the management levels as set out in Clause 5 of the Key Provisions. Respective representatives at each level, as set out in Clause 6 of the Key Provisions, shall have five (5) Business Days at each level during which they will use their reasonable endeavours to resolve the Dispute before escalating the matter to the next levels until all level have been exhausted. Level 1 will commence on the date of service of the Dispute Notice. The final level of the escalation process shall be deemed exhausted on the expiry of five (5) Business Days following escalation to that level unless otherwise agreed by the Parties in writing.
   4. If the procedure set out in Clause 22.3 of this Schedule 2 above has been exhausted and fails to resolve such Dispute, as part of the Dispute Resolution Procedure, the Parties will attempt to settle it by mediation. The Parties, shall acting reasonably, attempt to agree upon a mediator. In the event that the Parties fail to agree a mediator within five (5) Business Days following the exhaustion of all levels of the escalation procedure at Clause 22.3 of this Schedule 2, the mediator shall be nominated and confirmed by the Centre for Effective Dispute Resolution, London (“**CEDR**”).
   5. The mediation shall commence within twenty eight (28) days after the confirmation of the mediator in accordance with Clause 22.4 of this Schedule 2 or at such other time as may be agreed by the Parties in writing. Neither Party will terminate such mediation process until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour or one Party has failed to participate in the mediation process. After this time, either Party may terminate the mediation process by notification to the other Party (such notification may be verbal provided that it is followed up by written confirmation). QTS and the Supplier will cooperate with any person appointed as mediator, providing such mediator with such information and other assistance as such mediator shall require, and will pay such mediator’s costs as such mediator shall determine, but in the absence of such determination such costs will be shared equally.
   6. Nothing in this Contract shall prevent:
      1. QTS taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the provision of the Services; or
      2. either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party or that relates to the safety of patients or other service users or the security of Confidential Information, pending resolution of the relevant Dispute in accordance with the Dispute Resolution Procedure.
   7. Neither Party will commence legal proceedings against the other until thirty (30) days after such mediation of the dispute in question has failed to resolve the dispute.
   8. Clause 22 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.
6. Force Majeure
   1. Subject to Clause 23.2 of this Schedule 2 neither Party shall be liable to the other for any failure to perform all or any of its obligations under this Contract nor liable to the other Party for any loss or damage arising out of the failure to perform its obligations to the extent only that such performance is rendered impossible by a Force Majeure Event.
   2. The Supplier shall only be entitled to rely on a Force Majeure Event and the relief set out in Clause 23 of this Schedule 2 and will not be considered to be in default or liable for breach of any obligations under this Contract if:
      1. the Supplier has fulfilled its obligations pursuant to Clause 6 of this Schedule 2;
      2. the Force Majeure Event does not arise directly or indirectly as a result of any wilful or negligent act or default of the Supplier; and
      3. the Supplier has complied with the procedural requirements set out in Clause 23 of this Schedule 2.
   3. Where a Party is (or claims to be) affected by a Force Majeure Event it shall use reasonable endeavours to mitigate the consequences of such a Force Majeure Event upon the performance of its obligations under this Contract, and to resume the performance of its obligations affected by the Force Majeure Event as soon as practicable.
   4. Where the Force Majeure Event affects the Supplier’s ability to perform part of its obligations under the Contract the Supplier shall fulfil all such contractual obligations that are not so affected and shall not be relieved from its liability to do so.
   5. If either Party is prevented or delayed in the performance of its obligations under this Contract by a Force Majeure Event, that Party shall as soon as reasonably practicable serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.
   6. Subject to service of such notice, the Party affected by such circumstances shall have no liability for its failure to perform or for any delay in performance of its obligations affected by the Force Majeure Event only for so long as such circumstances continue and for such time after they cease as is necessary for that Party, using its best endeavours, to recommence its affected operations in order for it to perform its obligations.
   7. The Party claiming relief shall notify the other in writing as soon as the consequences of the Force Majeure Event have ceased and of when performance of its affected obligations can be resumed.
   8. If the Supplier is prevented from performance of its obligations as a result of a Force Majeure Event, QTS may at any time, if the Force Majeure Event subsists for thirty (30) days or more, terminate this Contract by issuing a Termination Notice to the Supplier.
   9. Following such termination in accordance with Clause 23.8 of this Schedule 2 and subject to Clause 23.10 of this Schedule 2, neither Party shall have any liability to the other.
   10. Any rights and liabilities of either Party which have accrued prior to such termination in accordance with Clause 23.8 of this Schedule 2 shall continue in full force and effect unless otherwise specified in this Contract.
7. Records retention and right of audit 
   1. Subject to any statutory requirement and Clause 24.2 of this Schedule 2, the Supplier shall keep secure and maintain for the Term and six (6) years afterwards, or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to this Contract.
   2. Where any records could be relevant to a claim for death or personal injury such records shall be kept secure and maintained for a period of twenty one (21) years from the date of expiry or earlier termination of this Contract.
   3. QTS shall have the right to audit the Supplier’s compliance with this Contract. The Supplier shall permit or procure permission for QTS or its authorised representative during normal business hours having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records reasonably required to audit the Supplier’s compliance with its obligations under this Contract.
   4. If the Supplier Sub-contracts any of its obligations under this Contract, QTS shall have the right to audit and inspect such third party. The Supplier shall procure permission for QTS or its authorised representative during normal business hours no more than once in any twelve (12) months, having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books, records and Staff used in or relevant to the performance of the Supplier’s obligations under this Contract that are Sub-contracted to such third party. The Supplier shall cooperate with such audit and inspection and accompany QTS or its authorised representative if requested.
   5. The Supplier shall, and shall procure that the Sub-contractors shall, grant to QTS or its authorised representative, such access to such records as QTS or its authorised representative may reasonably require in order to check the Supplier’s compliance with this Contract for the purposes of:
      1. the examination and certification of QTS’s accounts; or
      2. any examination pursuant to section 6(1) of the National Audit Act 1983 of the economic efficiency and effectiveness with which QTS has used its resources.
   6. The Comptroller and Auditor General may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Supplier and if they so require the Supplier shall provide, and shall procure that the Sub-contractors shall provide, such oral and/or written explanations as they consider necessary. Clause 24 of this Schedule 2 does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Supplier under sections 6(3)(d) and 6(5) of the National Audit Act 1983.
   7. The Supplier shall provide reasonable cooperation to QTS, its representatives and any regulatory body in relation to any audit, review, investigation or enquiry carried out in relation to the subject matter of this Contract.
   8. The Supplier shall provide all reasonable information as may be reasonably requested by QTS to evidence the Supplier’s compliance with the requirements of this Contract.
8. Conflicts of interest and the prevention of Fraud
   1. The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where, in the reasonable opinion of QTS, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or any of the Staff and the duties owed to QTS under the provisions of this Contract. The Supplier shall disclose to QTS full particulars of any such conflict of interest which may arise.
   2. QTS reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of QTS, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or any of the Staff and the duties owed to QTS under the provisions of this Contract. The actions of QTS pursuant to this Clause 25.2 of this Schedule 2 shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to QTS.
   3. The Supplier shall take all reasonable steps to prevent Fraud by Staff and the Supplier (including its owners, members and directors). The Supplier shall notify QTS immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
   4. If the Supplier or any of the Staff commits Fraud QTS may terminate this Contract by giving a Termination Notice to the Supplier and recover from the Supplier the amount of any direct loss suffered by QTS resulting from such termination.
9. Equality and human rights
   1. The Supplier shall:
      1. ensure that (a) it does not, whether as employer or as provider of the Services, engage in any act or omission that would contravene the Equality Legislation, and (b) it complies with all its obligations as an employer or provider of the Services as set out in the Equality Legislation and take reasonable endeavours to ensure the Staff do not unlawfully discriminate within the meaning of the Equality Legislation;
      2. in the management of its affairs and the development of its equality and diversity policies, cooperate with QTS in light of QTS’s obligations to comply with its statutory equality duties whether under the Equality Act 2010 or otherwise. The Supplier shall take such reasonable and proportionate steps as QTS considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age; and
      3. the Supplier shall impose on all Sub-contractors and suppliers, obligations substantially similar to those imposed on the Supplier by Clause 26 of this Schedule 2.
   2. The Supplier shall meet reasonable requests by QTS for information evidencing the Supplier’s compliance with the provisions of Clause 26 of this Schedule 2.
10. Notice
    1. Subject to Clause 22.5 of Schedule 2, any notice required to be given by either Party under this Contract shall be in writing quoting the date of the Contract and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the Key Provisions or such other person as one Party may inform the other Party in writing from time to time.
    2. A notice shall be treated as having been received:
       1. if delivered by hand within normal business hours when so delivered or, if delivered by hand outside normal business hours, at the next start of normal business hours; or
       2. if sent by first class recorded delivery mail on a normal Business Day, at 9.00 am on the second Business Day subsequent to the day of posting, or, if the notice was not posted on a Business Day, at 9.00 am on the third Business Day subsequent to the day of posting; or
       3. if sent by email, if sent within normal business hours when so sent or, if sent outside normal business hours, at the next start of normal business hours provided the sender has either received an electronic confirmation of delivery or has telephoned the recipient to inform the recipient that the email has been sent.
11. Assignment, novation and Sub-contracting
    1. The Supplier shall not, except where Clause 28.2 of this Schedule 2 applies, assign, Sub-contract, novate, create a trust in, or in any other way dispose of the whole or any part of this Contract without the prior consent in writing of the QTS Contract Manager such consent not to be unreasonably withheld or delayed. If the Supplier Sub-contracts any of its obligations under this Contract, every act or omission of the Sub-contractor shall for the purposes of this Contract be deemed to be the act or omission of the Supplier and the Supplier shall be liable to QTS as if such act or omission had been committed or omitted by the Supplier itself.
    2. Notwithstanding Clause 28.1 of this Schedule 2, the Supplier may assign to a third party (“**Assignee**”) the right to receive payment of any sums due and owing to the Supplier under this Contract for which an invoice has been issued. Any assignment under this Clause 28.2 of this Schedule 2 shall be subject to:
       1. the deduction of any sums in respect of which QTS exercises its right of recovery under Clause 9.8 of this Schedule 2;
       2. all related rights of QTS in relation to the recovery of sums due but unpaid;
       3. QTS receiving notification of the assignment and the date upon which the assignment becomes effective together with the Assignee’s contact information and bank account details to which QTS shall make payment;
       4. the provisions of Clause 9 of this Schedule 2 continuing to apply in all other respects after the assignment which shall not be amended without the prior written approval of QTS; and
       5. payment to the Assignee being full and complete satisfaction of QTS’s obligation to pay the relevant sums in accordance with this Contract.
    3. Any authority given by QTS for the Supplier to Sub-contract any of its obligations under this Contract shall not impose any duty on QTS to enquire as to the competency of any authorised Sub-contractor. The Supplier shall ensure that any authorised Sub-contractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such Sub-contractor are fully in accordance with this Contract.
    4. Where:
       1. the Supplier enters into a Sub-contract in respect of any of its obligations under this Contract relating to the provision of the Services; or
       2. a Sub-contractor enters into a Sub-contract in respect of any of its obligations under a Sub-contract relating to the provision of the Services,

the Supplier shall include provisions in any such Sub-contract referred to in Clause 28.4.1, and shall procure that the relevant Sub-contractor includes provisions in any such Sub-contract referred to in Clause 28.4.2, unless otherwise agreed with QTS in writing, which:

* + 1. contain at least equivalent obligations as set out in this Contract in relation to the performance of the Services to the extent relevant to such Sub-contracting;
    2. contain at least equivalent obligations as set out in this Contract in respect of confidentiality, information security, data protection, Intellectual Property Rights, compliance with Law and Guidance and record keeping;
    3. contain a prohibition on the Sub-contractor Sub-contracting, assigning or novating any of its rights or obligations under such Sub-contract without the prior written approval of QTS (such approval not to be unreasonably withheld or delayed);
    4. contain a right for QTS, CNWL or any entity directly or indirectly wholly owned by CNWL to take an assignment or novation of the Sub-contract (or part of it) upon expiry or earlier termination of this Contract;
    5. requires the Supplier or other party receiving services under the Sub-contract to consider and verify invoices under that Sub-contract in a timely fashion and in any event within 10 Business Days after receipt;
    6. provides that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 28.4.5 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purpose of Clause 28.4.7 after a reasonable time has passed;
    7. requires the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days after verifying that the invoice is valid and undisputed;
    8. permitting the Supplier to terminate, or procure the termination of, the relevant Sub-contract, in the event the Sub-contractor fails to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour Law where the Supplier is required to replace such Sub-contractor in accordance with Clause 15.7.4 of this Schedule 2;
    9. permitting the Supplier to terminate, or to procure the termination of, the relevant Sub-contract where the Supplier is required to replace such Sub-contractor in accordance with Clause 28.5 of this Schedule 2; and
    10. requires the Sub-contractor to include a clause to the same effect as this Clause 28.4 of this Schedule 2 in any Sub-contract which it awards.
  1. Where QTS considers that the grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015 apply to any Sub-contractor, then:
     1. if QTS finds there are compulsory grounds for exclusion, the Supplier shall ensure, or shall procure, that such Sub-contractor is replaced or not appointed; or
     2. if QTS finds there are non-compulsory grounds for exclusion, QTS may require the Supplier to ensure, or to procure, that such Sub-contractor is replaced or not appointed and the Supplier shall comply with such a requirement.
  2. The Supplier shall pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days after verifying that the invoice is valid and undisputed. Where QTS pays the Supplier’s valid and undisputed invoices earlier than thirty (30) days after verification in accordance with any applicable government prompt payment targets, the Supplier shall use its reasonable endeavours to pay invoices from its relevant Sub-contractors within a comparable timeframe from verifying that such invoices are valid and undisputed.
  3. QTS shall upon written request have the right to review any Sub-contract entered into by the Supplier in respect of the provision of the Services and the Supplier shall provide a certified copy of any Sub-contract within five (5) Business Days of the date of a written request from QTS. For the avoidance of doubt, the Supplier shall have the right to redact any confidential pricing information in relation to such copies of Sub-contracts.
  4. QTS may at any time transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract and the Supplier warrants and undertakes that it will carry out all such reasonable further acts required to effect such transfer, assignment, novation, sub-contracting or disposal. If QTS novates this Contract to any body that is not CNWL, another Contracting Authority or an entity directly or indirectly wholly owned by CNWL, then from the effective date of such novation, the party assuming the position of QTS shall not further transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed by the Supplier.

1. Prohibited Acts
   1. The Supplier warrants, represents and undertakes that:
      1. it has not committed any offence under the Bribery Act 2010 or done any of the following (“**Prohibited Acts**”):
         1. offered, given or agreed to give any officer, employee, agent or other contractor of QTS or CNWL (or any officer or employee of any such agent or other contractor) any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with QTS or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with QTS; or
         2. in connection with this Contract paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to QTS; and
      2. it has in place, and it will maintain in place throughout the Term, adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.
   2. If the Supplier or any of its officers, employees (whether or not Staff) or agents (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Supplier in relation to this or any other agreement with QTS:
      1. QTS shall be entitled:
         1. to terminate this Contract by giving to the Supplier notice in writing effective immediately, or at the end of such period (if any) as is specified in the relevant written notice of termination, and recover from the Supplier the amount of any loss resulting from such termination;
         2. to recover from the Supplier the amount or value of any gift, consideration or commission concerned; and
         3. to recover from the Supplier any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;
      2. any termination under Clause 29.2.1 of this Schedule 2 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to QTS; and
      3. notwithstanding Clause 22 and the Dispute Resolution Procedure, any Dispute relating to:
         1. the interpretation of Clause 29 of this Schedule 2; or
         2. the amount or value of any gift, consideration or commission,

shall be determined by QTS, acting reasonably, and the decision shall be final and conclusive.

1. General
   1. Each of the Parties is independent of the other and nothing contained in this Contract shall be construed to imply that there is any relationship between the Parties of partnership or of principal/agent or of employer/employee nor are the Parties hereby engaging in a joint venture and accordingly neither of the Parties shall have any right or authority to act on behalf of the other nor to bind the other by agreement or otherwise, unless expressly permitted by the terms of this Contract.
   2. Failure or delay by either Party to exercise an option or right conferred by this Contract shall not of itself constitute a waiver of such option or right.
   3. The delay or failure by either Party to insist upon the strict performance of any provision, term or condition of this Contract or to exercise any right or remedy consequent upon any breach shall not constitute a waiver of any such provision, term, condition, right, remedy or breach or any right or remedy in respect of any subsequent breach of such provision, term or condition.
   4. Any provision of this Contract which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Contract and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.
   5. Each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this Contract and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in this Contract or unless such representation, undertaking or warranty was made fraudulently.
   6. Each Party shall bear its own expenses in relation to the preparation and execution of this Contract including all costs, legal fees and other expenses so incurred.
   7. The rights and remedies provided in this Contract are independent, cumulative and not exclusive of any rights or remedies provided by general law, any rights or remedies provided elsewhere under this Contract or by any other contract or document. In this Clause 30.7 of this Schedule 2, right includes any power, privilege, remedy, or proprietary or security interest.
   8. Unless otherwise expressly stated in clause 30.9 or elsewhere in this Contract, a person who is not a party to this Contract shall have no right to enforce any terms of it which confer a benefit on such person except that a Successor and/or a Third Party may directly enforce any indemnities or other rights provided to it under this Contract.
   9. This Contract is also made for the benefit of CNWL and Clauses shall be enforceable by CNWL to the fullest extent permitted by law as if CNWL were a party to this Contract.
   10. The rights of the Parties to rescind or vary this Contract are not subject to the consent of any other person.
   11. This Contract, any variation in writing signed by an authorised representative of each Party and any document referred to (explicitly or by implication) in this Contract or any variation to this Contract, contain the entire understanding between the Supplier and QTS relating to the Services to the exclusion of all previous agreements, confirmations and understandings and there are no promises, terms, conditions or obligations whether oral or written, express or implied other than those contained or referred to in this Contract. Nothing in this Contract seeks to exclude either Party's liability for Fraud. Any tender conditions and/or disclaimers set out in QTS’s procurement documentation leading to the award of this Contract shall form part of this Contract.
   12. This Contract, and any Dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.
   13. Subject to Clause 22 of this Schedule 2, the Parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any Dispute or claim that arises out of or in connection with this Contract or its subject matter.
   14. All written and oral communications and all written material referred to under this Contract shall be in English.
   15. This Contract may be executed in any number of counterparts, each of which will be regarded as an original, but all of which together will constitute one agreement binding on both of the Parties, notwithstanding that both of the Parties are not signatories to the same counterpart.

**Information Governance and Data Provisions**

1. **Confidentiality**
   1. In respect of any Confidential Information it may receive directly or indirectly from the other Party (“**Discloser**”) and subject always to the remainder of Clause 1 of this Schedule 3, each Party (“**Recipient**”) undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser’s prior written consent provided that:
      1. the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date;
      2. the provisions of Clause 1 of this Schedule 3 shall not apply to any Confidential Information:
         1. which is in or enters the public domain other than by breach of this Contract or other act or omission of the Recipient;
         2. which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
         3. which is authorised for disclosure by the prior written consent of the Discloser;
         4. which the Recipient can demonstrate was in its possession without any obligation of confidentiality prior to receipt of the Confidential Information from the Discloser; or
         5. which the Recipient is required to disclose purely to the extent to comply with the requirements of any relevant stock exchange.
   2. Nothing in Clause 1 of this Schedule 3 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Freedom of Information Act 2000 (“**FOIA**”), Codes of Practice on Access to Government Information, on the Discharge of Public Authorities’ Functions or on the Management of Records (“**Codes of Practice**”) or the Environmental Information Regulations 2004 (“**Environmental Regulations**”).
   3. QTS may disclose the Supplier’s Confidential Information:
      1. on a confidential basis, to any Contracting Authority (the Parties agree that all Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority);
      2. on a confidential basis, to any consultant, contractor or other person engaged by QTS and/or the Contracting Authority receiving such information;
      3. to any relevant party for the purpose of the examination and certification of QTS’s accounts;
      4. to any relevant party for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which QTS has used its resources;
      5. to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirements; or
      6. on a confidential basis to a proposed successor body in connection with any proposed or actual, assignment, novation or other disposal of rights, obligations, liabilities or property in connection with this Contract;

and for the purposes of this Contract, references to disclosure "on a confidential basis" shall mean QTS making clear the confidential nature of such information and that it must not be further disclosed except in accordance with Law or this Clause 1.3 of this Schedule 3.

* 1. The Supplier may only disclose:
     1. QTS’s Confidential Information; and
     2. any other information provided to the Supplier by QTS in relation to the provision of the Services or otherwise in relation to this Contract,
  2. to the Staff who, or the Supplier’s professional advisors, who are directly involved in the performance of or advising on the Supplier’s obligations under this Contract. The Supplier shall ensure that such Staff and professional advisors are aware of and shall comply with the obligations in Clause 1 of this Schedule 3 as to confidentiality and that all information, including Confidential Information, is held securely, protected against unauthorised use or loss and, at QTS’s written discretion, destroyed securely or returned to QTS when it is no longer required. The Supplier shall not, and shall ensure that the Staff do not, use any of QTS’s Confidential Information received otherwise than for the purposes of performing the Supplier’s obligations in this Contract.
  3. For the avoidance of doubt, save as required by Law or as otherwise set out in this Schedule 3, the Supplier shall not, without the prior written consent of QTS (such consent not to be unreasonably withheld or delayed), announce that it has entered into this Contract and/or that it has been appointed as a Supplier to QTS and/or make any other announcements about this Contract.
  4. Clause 1 of this Schedule 3 shall remain in force:
     1. without limit in time in respect of Confidential Information which comprises Personal Data or which relates to national security; and
     2. for all other Confidential Information for a period of three (3) years after the expiry or earlier termination of this Contract unless otherwise agreed in writing by the Parties.

1. Data protection
   1. The Parties acknowledge their respective duties under Data Protection Legislation and shall give each other all reasonable assistance as appropriate or necessary to enable each other to comply with those duties. For the avoidance of doubt, the Supplier shall take reasonable steps to ensure it is familiar with the Data Protection Legislation and any obligations it may have under such Data Protection Legislation and shall comply with such obligations.
   2. Where the Supplier is Processing Personal Data under or in connection with this Contract, the Parties shall comply with the Data Protection Protocol.
   3. The Supplier and QTS shall ensure that Personal Data is safeguarded at all times in accordance with the Law, and this obligation will include (if transferred electronically) only transferring Personal Data (a) if essential, having regard to the purpose for which the transfer is conducted; and (b) that is encrypted in accordance with any international data encryption standards for healthcare, and as otherwise required by those standards applicable to QTS under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).
   4. Where, as a requirement of this Contract, the Supplier is Processing Personal Data relating to patients and/or service users as part of the Services, the Supplier shall:
      1. complete and publish an annual information governance assessment using the NHS information governance toolkit;
      2. achieve a minimum level 2 performance against all requirements in the relevant NHS information governance toolkit;
      3. nominate an information governance lead able to communicate with the Supplier’s board of directors or equivalent governance body, who will be responsible for information governance and from whom the Supplier’s board of directors or equivalent governance body will receive regular reports on information governance matters including, but not limited to, details of all incidents of data loss and breach of confidence;
      4. report all incidents of data loss and breach of confidence in accordance with Department of Health and/or the NHS England and/or Health and Social Care Information Centre guidelines;
      5. put in place and maintain policies that describe individual personal responsibilities for handling Personal Data and apply those policies vigorously;
      6. put in place and maintain a policy that supports its obligations under the NHS Care Records Guarantee ( as amended from time to time) (being the rules which govern information held in the NHS Care Records Service, which is the electronic patient/service user record management service providing authorised healthcare professionals access to a patient’s integrated electronic care record);
      7. put in place and maintain agreed protocols for the lawful sharing of Personal Data with other NHS organisations and (as appropriate) with non-NHS organisations in circumstances in which sharing of that data is required under this Contract;
      8. where appropriate, have a system in place and a policy for the recording of any telephone calls in relation to the Services, including the retention and disposal of those recordings;
      9. at all times comply with all information governance requirements and/or processes as are set out in the Specification and Tender Response Document; and
      10. comply with all new and/or updated requirements, Guidance and/or Policies notified to the Supplier by QTS from time to time (acting reasonably) relating to the Processing and/or protection of Personal Data.
   5. Where any Personal Data is Processed by any Sub-contractor in connection with this Contract, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 2 of this Schedule 3, as if such Sub-contractor were the Supplier.
   6. The Supplier shall indemnify and keep QTS indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings whatsoever or howsoever arising from the Supplier’s unlawful or unauthorised Processing, destruction and/or damage to Personal Data in connection with this Contract.
2. Freedom of Information and Transparency
   1. The Parties acknowledge the duties of Contracting Authorities under the FOIA, Codes of Practice and Environmental Regulations and shall give each other all reasonable assistance as appropriate or necessary to enable compliance with those duties.
   2. The Supplier shall assist and cooperate with QTS to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Supplier agrees:
      1. that this Contract and any recorded information held by the Supplier on QTS’s behalf for the purposes of this Contract are subject to the obligations and commitments of QTS under the FOIA, Codes of Practice and Environmental Regulations;
      2. that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA, Codes of Practice and Environmental Regulations is a decision solely for QTS;
      3. that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier itself is subject to the FOIA, Codes of Practice and Environmental Regulations it will liaise with QTS as to the contents of any response before a response to a request is issued and will promptly (and in any event within two (2) Business Days) provide a copy of the request and any response to QTS;
      4. that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier is not itself subject to the FOIA, Codes of Practice and Environmental Regulations, it will not respond to that request (unless directed to do so by QTS) and will promptly (and in any event within two (2) Business Days) transfer the request to QTS;
      5. that QTS, acting in accordance with the Codes of Practice issued and revised from time to time under both section 45 of FOIA, and regulation 16 of the Environmental Regulations, may disclose information concerning the Supplier and this Contract; and
      6. to assist QTS in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA and the Environmental Regulations) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of FOIA, and providing copies of all information requested by QTS within five (5) Business Days of that request and without charge.
   3. The Parties acknowledge that, except for any information which QTS decides under Clause 3.2.2 of this Schedule 3 is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations, the content of this Contract is not Confidential Information.
   4. Notwithstanding any other term of this Contract, the Supplier consents to the publication of this Contract in its entirety (including variations), subject only to the redaction of information that QTS decides under Clause 3.2.2 of this Schedule 3 is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations.
   5. In preparing a copy of this Contract for publication under Clause 3.4 of this Schedule 3, QTS may consult with the Supplier to inform decision making regarding any redactions but the final decision in relation to the redaction of information will be at QTS’s absolute discretion.
   6. The Supplier shall assist and cooperate with QTS to enable QTS to publish this Contract.
   7. Where any information is held by any Sub-contractor in connection with this Contract, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 3 of this Schedule 3, as if such Sub-contractor were the Supplier.
3. Information Security
   1. Without limitation to any other information governance requirements set out in this Schedule 3 or any other provisions of this Contract, the Supplier shall:
      1. notify QTS forthwith of any information security breaches or near misses (including without limitation any potential or actual breaches of confidentiality or actual information security breaches) in line with QTS’s information governance Policies; and
      2. fully cooperate with any audits or investigations relating to information security and any privacy impact assessments undertaken by QTS and shall provide full information as may be reasonably requested by QTS in relation to such audits, investigations and assessments.
   2. Where required in accordance with the Specification and Tender Response Document, the Supplier will ensure that it puts in place and maintains an information security management plan appropriate to this Contract, the type of Services being provided and the obligations placed on the Supplier. The Supplier shall ensure that such plan is consistent with Law and any relevant Policies, Guidance, Good Industry Practice and with any relevant quality standards as may be set out in the Key Provisions and/or the Specification and Tender Response Document.
   3. Where required in accordance with the Specification and Tender Response Document, the Supplier shall obtain and maintain certification under the HM Government Cyber Essentials Scheme at the level set out in the Specification and Tender Response Document.

Definitions and Interpretations

1. **Definitions**
   1. In this Contract the following words shall have the following meanings unless the context requires otherwise:

|  |  |
| --- | --- |
| **Actual Services Commencement Date”** | means the date the Supplier actually commences delivery of the Services; |
| **"Actuary”** | means a Fellow of the Institute and Faculty of Actuaries; |
| **“Authorised Officer”** | means for QTS the individual specified in such role in the Key Provisions, or such other person notified by QTS to the Supplier for that role from time to time in accordance with Clause 8.3 of Schedule 2; |
| **“Authority’s Actuary”** | means the Government Actuaries Department; |
| “Baseline Contract Price” | has the meaning in the Pricing Schedules |
| “Breach Notice” | means a written notice of breach given by one Party to the other, notifying the Party receiving the notice of its breach of this Contract; |
| **“Broadly Comparable”** | means certified by an Actuary as satisfying the condition that there are no identifiable Eligible Employees who would overall suffer material detriment in terms of their future accrual of Pension Benefits under the scheme compared with the NHS Pension Scheme assessed in accordance with Annex A of Fair Deal for Staff Pensions; |
| **“Business Continuity Event”** | means any event or issue that could impact on the operations of the Supplier and its ability to provide the Services including an influenza pandemic and any Force Majeure Event; |
| **“Business Continuity Plan”** | means the Supplier’s business continuity plan which includes its plans for continuity of the Services during a Business Continuity Event; |
| **“Business Day”** | means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales; |
| **“Cabinet Office Statement”** | the Cabinet Office Statement of Practice – Staff Transfers in the Public Sector 2000 (as revised 2013) as may be amended or replaced; |
| **“Change Control Process”** | means the change control process in the Specification and Tender Response Document from time to time; |
| **“CNWL”** | Central and North West London NHS Foundation Trust of 1st Floor, 350 Euston Road, London, NW1 3AX |
| **“Codes of Practice”** | shall have the meaning given to the term in Clause 1.2 of Schedule 3; |
| **“Commencement Date”** | means the date of this Contract; |
| “Confidential Information” | means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the Contract including any procurement process which is:   1. Personal Data including without limitation which relates to any patient or other service user or his or her treatment or clinical or care history; 2. designated as confidential by either party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored); and/or 3. Policies and such other documents which the Supplier may obtain or have access to through QTS’s intranet or CNWL’s intranet; |
| **“Contract”** | means the form of contract at the front of this document and all schedules attached to the form of contract; |
| **“Contracting Authority”** | means any contracting authority as defined in regulation 3 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than QTS; |
| **“Contract Manager”** | means for QTS and for the Supplier the individuals specified in the Key Provisions; or such other person notified by a Party to the other Party from time to time in accordance with Clause 8.2 or 8.3 of Schedule 2; |
| **“Contract Price”** | means the price exclusive of VAT that is payable to the Supplier by QTS under the Contract for the full and proper performance by the Supplier of its obligations under the Contract calculated in accordance with the provisions of the Pricing Schedules and the Performance Management Mechanism and the other provisions of this Contract; |
| “Controller” | shall have the same meaning as set out in the GDPR; |
| **“Convictions”** | means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 or any replacement or amendment to that Act); |
| **“Cost Increase”** | shall have the meaning given to the term in Clause 1.3.2 of Part D of Schedule 8; |
| **“Cost Saving”** | shall have the meaning given to the term in Clause 1.3.4 of Part D of Schedule 8; |
| “Data Protection Legislation” | means (i) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Law as amended from time to time; and (iii) all applicable Law about the processing of personal data and privacy; |
| **“Data Protection Protocol”** | means the data protection protocol set out in Schedule 13 (as amended from time to time in accordance with its terms and or this Contract); |
| **“Direction Letter”** | means an NHS Pensions Direction letter issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 and issued to the Supplier or a Sub-contractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Sub-contractor in the NHS Pension Scheme in respect of the Eligible Employees; |
| “Dispute(s)” | means any:   1. dispute, 2. difference; or 3. question of interpretation or construction   arising out of or in connection with this Contract, including (without limitation):   1. any dispute, difference or question of interpretation relating to the Services, any matters of contractual construction and interpretation relating to the Contract; or 2. any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure; |
| “Dispute Notice” | means a written notice served by one Party to the other stating that the Party serving the notice believes there is a Dispute; |
| **“Dispute Resolution Procedure”** | means the process for resolving Disputes as set out in Clause 22 of Schedule 2 or, where Clause 23 of Schedule 1 of the Contract applies, the process for resolving Disputes as set out in Schedule 9. For the avoidance of doubt, the Dispute Resolution Procedure is subject to Clause 29.2.3 of Schedule 2; |
| **“DOTAS”** | means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992; |
| **“Electronic Trading System(s)”** | means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as QTS may specify from time to time; |
| **“Eligible Employees”** | means each of the Transferred Staff who immediately before the Employee Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to become a member of, either the NHS Pension Scheme or a Broadly Comparable scheme as a result of their employment or former employment with an NHS Body (or other employer which participates automatically in the NHS Pension Scheme) and being continuously engaged for more than 50% of their employed time with QTS (in the case of Transferring Employees) or a Third Party (in the case of Third Party Employees) in the delivery of services the same as or similar to the Services.  For the avoidance of doubt a member of Staff who is or is entitled to become a member of the NHS Pension Scheme as a result of being engaged in the Services and being covered by an “open” Direction Letter or other NHS Pension Scheme “access” facility but who has never been employed directly by an NHS Body (or other body which participates automatically in the NHS Pension Scheme) is not an Eligible Employee entitled to Fair Deal for Staff Pensions protection under Part D of Schedule 8; |
| **“Employee Transfer Date”** | means the Transferred Staff’s first day of employment with the Supplier (or its Sub-contractor); |
| **“Employment Liabilities”** | means all claims, demands, actions, proceedings, damages, compensation, tribunal awards, fines, costs (including but not limited to reasonable legal costs), expenses and all other liabilities whatsoever; |
| **“Environmental Regulations”** | shall have the meaning given to the term in Clause 1.2 of Schedule 3; |
| **“eProcurement Guidance”** | means the NHS eProcurement Strategy available via:  <http://www.gov.uk/government/collections/nhs-procurement>  together with any further Guidance issued by the Department of Health in connection with it from time to time; |
| **“Equality Legislation”** | means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998; |
| “Exit Requirements” | means QTS’s exit requirements, as set out in the Specification and Tender Response Document and/or otherwise as part of this Contract, which the Supplier must comply with during the Term and/or in relation to any expiry or early termination of this Contract; |
| **“Fair Deal for Staff Pensions”** | means guidance issued by HM Treasury entitled “Fair Deal for staff pensions: staff transfer from central government” issued in October 2013 (as amended, supplemented or replaced); |
| **“FOIA”** | shall have the meaning given to the term in Clause 1.2 of Schedule 3; |
| “Force Majeure Event” | means any event beyond the reasonable control of the Party in question to include, without limitation:   1. war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict materially affecting either Party’s ability to perform its obligations under this Contract; 2. acts of terrorism; 3. flood, storm or other natural disasters; 4. fire; 5. unavailability of public utilities and/or access to transport networks to the extent no diligent supplier could reasonably have planned for such unavailability as part of its business continuity planning; 6. government requisition or impoundment to the extent such requisition or impoundment does not result from any failure by the Supplier to comply with any relevant regulations, laws or procedures (including such laws or regulations relating to the payment of any duties or taxes) and subject to the Supplier having used all reasonable legal means to resist such requisition or impoundment; 7. compliance with any local law or governmental order, rule, regulation or direction applicable outside of England and Wales that could not have been reasonably foreseen; 8. industrial action which affects the ability of the Supplier to provide the Services, but which is not confined to the workforce of the Supplier and/or the workforce of any Sub-contractor; and 9. a failure in the Supplier’s and/or QTS’s supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties;   but excluding, for the avoidance of doubt, the withdrawal of the United Kingdom from the European Union and any related circumstances, events, changes or requirements; |
| **“Fraud”** | means any offence under any law in respect of fraud in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the government, parliament or any Contracting Authority; |
| GDPR | means the General Data Protection Regulation (Regulation (EU) 2016/679); |
| **“General Anti-Abuse Rule”** | means  (a)the legislation in Part 5 of the Finance Act 2013; and  (b)any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions; |
| **“Good Industry Practice”** | means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider engaged in the provision of services similar to the Services under the same or similar circumstances as those applicable to this Contract, including in accordance with any codes of practice published by relevant trade associations; |
| **“Guidance”** | means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Services, to the extent that the same are published and publicly available now or hereafter or the existence or contents of them have been, or are hereafter, notified to the Supplier by QTS and/or have been, or are hereafter, published and/or notified to the Supplier by the Department of Health, Monitor, NHS England, the Medicines and Healthcare Products Regulatory Agency, the European Medicine Agency, the European Commission, the Care Quality Commission and/or any other regulator or competent body; |
| **“Halifax Abuse Principle”** | means the principle explained in the CJEU Case C-255/02 Halifax and others; |
| **"HM Government Cyber Essentials Scheme"** | means the HM Government Cyber Essentials Scheme as further defined in the documents relating to this scheme published at: https://www.gov.uk/government/publications/cyber-essentials-scheme-overview; |
| **“Intellectual Property Rights”** | means all patents, copyright, design rights, registered designs, trade marks, know-how, database rights, confidential formulae and any other intellectual property rights, in each case anywhere in the world and whether registered or not, and the rights to apply for patents and trade marks and registered designs anywhere in the world; |
| **“Interested Party”** | means any organisation which has a legitimate interest in providing services of the same or similar nature to the Services in immediate or proximate succession to the Supplier or any Sub-contractor and who had confirmed such interest in writing to QTS; |
| **“Key Provisions”** | means the key provisions set out in Schedule 1; |
| **“KPI”** | means the key performance indicators as set out in the Performance Management Mechanism from time to time; |
| “Law” | means any applicable legal requirements including, without limitation,:   1. any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument as applicable in England and Wales; 2. any applicable European Union obligation, directive, regulation, decision, law or right (including any such obligations, directives, regulations, decisions, laws or rights that are incorporated into the law of England and Wales or given effect in England and Wales by any applicable statute, proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument); 3. any enforceable community right within the meaning of section 2(1) European Communities Act 1972; 4. any applicable judgment of a relevant court of law which is a binding precedent in England and Wales; 5. requirements set by any regulatory body as applicable in England and Wales; 6. any relevant code of practice in each case as applicable in England and Wales; and 7. in each case as applicable in England and Wales from time to time, any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above); |
| **“Long Stop Date”** | means the date, if any, specified in the Key Provisions; |
| **“Losses”** | means all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law; |
| **“Maximum Term”** | has the meaning given to it in the Key Provisions |
| **“Measures”** | means any measures proposed by the Supplier or any Sub-contractor within the meaning of regulation 13(2)(d) of TUPE; |
| **“Minimum Standard”** | means each “Minimum Standard” identified in the tables in Sections in Sections 2.1, 2.2 and 2.3 of the Performance Management Mechanism (Schedule 7) and each “Respond and Make Safe” and “Rectification Period” identified in the table in Section 2.4 of the Performance Management Mechanism (Schedule 7); |
| **“Mobilisation Plan”** | means the implementation and mobilisation plan, if any, referred to in the Key Provisions; |
| “Mobilisation Requirements” | means QTS’s implementation and mobilisation requirements, as may be set out in the Specification and Tender Response Document and/or otherwise as part of this Contract, which the Supplier must comply with as part of implementing the Services; |
| **“NHS”** | means the National Health Service; |
| **“NHS Body”** | has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012; |
| **“NHS Business Services Authority”** | means the Special Health Authority established under the NHS Business Services Authority (Establishment and Constitution Order) 2005 SI 2005/2414 and any body which is a successor thereto; |
| **“NHS Pensions”** | means NHS Pensions (being a division of the NHS Business Services Authority) acting on behalf of the Secretary of State as the administrators of the NHS Pension Scheme or such other body as may from time to time be responsible for relevant administrative functions of the NHS Pension Scheme, including the Pensions Division of the NHS Business Services Authority; |
| “NHS Pension Scheme” | means the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and governed by subsequent regulations under that Act including the NHS Pension Scheme Regulations; |
| **“NHS Pension Scheme Arrears”** | means any failure on the part of the Supplier or any Sub-contractor to pay employer’s contributions or deduct and pay across employee’s contributions to the NHS Pension Scheme or meet any other financial obligations under the NHS Pension Scheme or any Direction Letter in respect of the Eligible Employees; |
| **"NHS Pension Scheme Regulations"** | means, as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653) and any subsequent regulations made in respect of the NHS Pension Scheme, each as amended from time to time; |
| **“Occasion of Tax Non-Compliance”** | means:  (a)any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:  (i)a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;  (ii)the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or  (b)any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the date of this Contract or to a civil penalty for fraud or evasion; |
| **“Party”** | means QTS or the Supplier as appropriate and Parties means both QTS and the Supplier; |
| **“Payment Date”** | means twenty (20) Business Days after the last of the conditions in Clause 1.7 of Part D of Schedule 8 has been satisfied; |
| **“Pension Benefits”** | any benefits (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor’s benefits provided under an occupational pension scheme; |
| **“Performance Management Mechanism”** | means the Performance Management Mechanism in Schedule 7 as amended and/or updated from time to time in accordance with this Contract; |
| “Personal Data” | shall have the same meaning as set out in the GDPR; |
| **“Policies”** | means the policies, rules and procedures of QTS and/or CNWL, including any amendments thereto from time to time, in each case as notified to the Supplier from time to time; |
| **“Premature Retirement Rights”** | rights to which any Transferred Staff (had they remained in the employment of an NHS Body or other employer which participates automatically in the NHS Pension Scheme) would have been or is entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time; |
| **“Premises and Locations”** | means the buildings, and locations within buildings, as are occupied by CNWL and/or QTS from time to time, the current ones at the date of this Contract being as set out in Schedule 12 (Services by Site Matrix); |
| **“Pricing Schedules”** | means the document set out at Schedule 6 as amended and/or updated from time to time in accordance with this Contract; |
| “Process” | shall have the same meaning as set out in the GDPR. “**Processing**” and “**Processed**” shall be construed accordingly; |
| “Processor” | shall have the same meaning as set out in the GDPR; |
| **“Purchase Order”** | means the purchase order required by QTS’s financial systems, if a purchase order is referred to in the Key Provisions; |
| **“QTS”** | means the customer under this Contract named on the form of Contract on the first page; |
| **“QTS’s Obligations”** | means QTS’s obligations under this Contract; |
| **“Relevant Tax Authority”** | means HM Revenue and Customs, and, if applicable, any other tax authority in the jurisdiction in which the Supplier is established; |
| **“Remedial Proposal”** | has the meaning given under Clause 15.3 of Schedule 2; |
| **“Services”** | means the services to be performed under this Contract, including, without limitation, those described from time to time in Schedule 5 (Specification and Tender Response Document) which sets out the requirements of QTS and the Supplier’s response to those requirements; |
| **“Services Commencement Date”** | means the date delivery of the Services shall commence as specified in the Key Provisions. If no date is specified in the Key Provisions this date shall be the Commencement Date; |
| **“Services Information”** | means information concerning the Services as may be reasonably requested by QTS and supplied by the Supplier to QTS in accordance with Clause 20 of Schedule 2 for inclusion in QTS's services catalogue from time to time; |
| **“Specification and Tender Response Document”** | means the document set out in Schedule 5 as amended and/or updated from time to time in accordance with this Contract; |
| **“Staff”** | means all persons employed or engaged by the Supplier to perform its obligations under this Contract including any Sub-contractors and person employed or engaged by such Sub-contractors; |
| **“Step In Rights”** | means the step in rights in the Performance Management Mechanism in Schedule 7; |
| **“Sub-contract”** | means a contract which is:  between the Supplier and a supplier to it; or  between two or more suppliers, at any stage of remoteness from the Supplier in a sub-contracting chain,  made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract; |
| **“Sub-contractor”** | means a party to a Sub-contract other than the Supplier; |
| **“Subsequent Transfer Date”** | means the point in time, if any, at which services which are fundamentally the same as the Services (either in whole or in part are first provided by a Successor or QTS, as appropriate, giving rise to a relevant transfer under TUPE; |
| **“Subsequent Transferring Employees”** | means any employee, agent, consultant and/or contractor who, immediately prior to the Subsequent Transfer Date, is wholly or mainly engaged in the performance of services fundamentally the same as the Services (either in whole or in part) which are to be undertaken by the Successor or QTS, as appropriate; |
| **“Successor”** | means any third party who provides services fundamentally the same as the Services (either in whole or in part) in immediate or subsequent succession to the Supplier upon the expiry or earlier termination of this Contract; |
| **“Supplier”** | means the supplier named on the form of Contract as “The Supplier”; |
| “Supplier Code of Conduct” | means the code of that name published by the Government Commercial Function originally dated September 2017, as may be amended, restated, updated, re-issued or re-named from time to time; |
| **“Supplier Personnel”** | means any employee, agent, consultant and/or contractor of the Supplier or any Sub-contractor, or any other direct or indirect supplier to the Supplier, who is either partially or fully engaged in the performance of the Services; |
| **“Term”** | means the term of this Contract as set out in the Key Provisions; |
| “Termination Notice” | means a written notice of termination given by one Party to the other notifying the Party receiving the notice that the Party is giving the notice to terminate this Contract on a specified date and setting out the grounds for termination; |
| **“Third Party”** | means any supplier of services fundamentally the same as the Services (either in whole or in part) immediately before the Transfer Date; |
| **“Third Party Body”** | has the meaning given under Clause 8.9 of Schedule 2; |
| **“Third Party Employees”** | means all those employees, if any, assigned by a Third Party to the provision of a service that is fundamentally the same as the Services immediately before the Transfer Date; |
| **“Transfer Amount”** | means an amount paid in accordance with Clause 1.7 of Part D of Schedule 8 and calculated in accordance with the assumptions, principles and timing adjustment referred to in Clause 1.6 of Part D of Schedule 8 in relation to those Eligible Employees who have accrued defined benefit rights in the NHS Pension Scheme or a Third Party’s Broadly Comparable scheme and elected to transfer them to the Supplier’s Broadly Comparable scheme or the NHS Pension Scheme under the Transfer Option; |
| **“Transfer Date”** | means the Actual Services Commencement Date; |
| **“Transfer Option”** | means an option given to each Eligible Employee with either:  (a) accrued rights in the NHS Pension Scheme; or  (b) accrued rights in a Broadly Comparable scheme,  as at the Employee Transfer Date, to transfer those rights to the Supplier’s (or its Sub-contractor’s) Broadly Comparable scheme or back into the NHS Pension Scheme (as appropriate), to be exercised by the Transfer Option Deadline, to secure year-for-year day-for-day service credits in the relevant scheme (or actuarial equivalent, where there are benefit differences between the two schemes); |
| **“Transfer Option Deadline”** | means the first Business Day to fall at least three (3) months after the notice detailing the Transfer Option has been sent to each Eligible Employee; |
| **“Transferred Staff”** | means those employees (including Transferring Employees and any Third Party Employees) whose employment compulsorily transfers to the Supplier or to a Sub-contractor by operation of TUPE, the Cabinet Office Statement or for any other reasons, as a result of the award of this Contract; |
| **“Transferring Employees”** | means all those employees, if any, assigned by QTS to the provision of a service that is fundamentally the same as the Services immediately before the Transfer Date; |
| "TUPE" | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006/246) and/or any other regulations or other legislation enacted for the purpose of implementing or transposing the Acquired Rights Directive (77/187/EEC, as amended by Directive 98/50 EC and consolidated in 2001/23/EC) into English law; and |
| **“VAT”** | means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax. |

* 1. References to any Law shall be deemed to include a reference to that Law as amended, extended, consolidated, re-enacted, restated, implemented or transposed from time to time.
  2. References to any legal entity shall include any body that takes over responsibility for the functions of such entity.
  3. References in this Contract to a “Schedule”, “Appendix”, “Paragraph” or to a “Clause” are to schedules, appendices, paragraphs and clauses of this Contract.
  4. References in this Contract to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.
  5. Unless set out in the Pricing Schedules as a chargeable item and subject to Clause 30.6 of Schedule 2, the Supplier shall bear the cost of complying with its obligations under this Contract.
  6. The headings are for convenience only and shall not affect the interpretation of this Contract.
  7. Words denoting the singular shall include the plural and vice versa.
  8. Where a term of this Contract provides for a list of one or more items following the word or letters “including”, “include”, “includes”, “for example” or “e.g.” then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.
  9. Save as provided in Clause 7.2 in Schedule 1, where there is a conflict or inconsistency between the Supplier’s Responses, as clarified by the Supplier’s Clarifications and any other part of this Contract, such other part of this Contract shall prevail. (In this Clause 1.10, “Supplier’s Responses” and “Supplier’s Clarifications” shall have the meanings given to them in in Clause 7.2 in Schedule 1.)
  10. Where a document is required under this Contract, the Parties may agree in writing that this shall be in electronic format only.
  11. Any communication (whether or not a “notice”) sent by one Party to the other by one of the means set out in Clause 27.1 of Schedule 2 shall be deemed to be “**written**” and “**in writing**”.
  12. Where there is an obligation on QTS to procure any course of action from any third party, this shall mean that QTS shall use its reasonable endeavours to procure such course of action from that third party.
  13. Any guidance notes in grey text do not form part of this Contract.
  14. Any Breach Notice issued by a Party in connection with this Contract shall not be invalid due to it containing insufficient information. A Party receiving a Breach Notice (the “**Receiving Party**”) may ask the Party that issued the Breach Notice (the “**Issuing Party**”) to provide any further information in relation to the subject matter of the Breach Notice that it may reasonably require to enable it to understand the Breach Notice and/or to remedy the breach. The Issuing Party shall not unreasonably withhold or delay the provision of such further information requested by the Receiving Party as referred to above, but no such withholding or delay shall invalidate the Breach Notice.
  15. Any terms defined as part of a Schedule or other document forming part of this Contract shall have the meaning as defined in such Schedule or document.



**Specification and Tender Response Document**

***To be inserted as part of the final Contract***



**Pricing Schedules**

***To be inserted as part of the final Contract***



**Performance Management Mechanism**

***To be inserted as part of the final Contract***



**Staff Transfer and Pensions**

**NB: Parts A and B of this Schedule 8 have been deleted because they do not apply**

**Part** **C Staff transfer from a current provider under TUPE**

* 1. The Parties agree that the commencement of the provision of Services under this Contract shall give rise to a relevant transfer as defined in TUPE. Accordingly the contracts of employment of the Third Party Employees will transfer on the Transfer Date to the Supplier or a Sub-contractor pursuant to TUPE, the Cabinet Office Statement and (where relevant) Fair Deal for Staff Pensions.
  2. The Supplier agrees, or shall ensure by written agreement that any relevant Sub-contractor shall agree, to accept the Third Party Employees into its employment on the Transfer Date upon their then current terms and conditions of employment (and including (where relevant) the right to secure access or continued access to the NHS Pension Scheme or access or continued access to a Broadly Comparable pension scheme in accordance with Fair Deal for Staff Pensions (which shall be dealt with in accordance with Part D of this Schedule 8) and with full continuity of employment.
  3. The Supplier’s agreement in Clause [1.2](#_Ref351140895) of Part C of this Schedule 8 (and any agreement at any time by any Sub-contractor), is subject to the right of any Third Party Employee to object to being transferred to the Supplier or any Sub-contractor.
  4. The Supplier will, or shall ensure by written agreement that each relevant Sub-contractor will:
     1. not later than twenty eight (28) days after issue of a written notice in writing to it from QTS, provide the Third Party with the information required under regulation 13(4) of TUPE. The Supplier shall be liable to QTS for, and shall indemnify and keep QTS and any Third Party indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any breach of this obligation;
     2. provide such assistance and information to the Third Party as it may reasonably request to facilitate a smooth and efficient handover of the Third Party Employees to the Supplier or any Sub-contractor (including attendance at any meetings with Third Party Employees, trade unions and employee representatives);
     3. comply with its obligations to inform and, if necessary, consult with the appropriate representatives of any employees who are affected by the relevant transfer in accordance with regulation 13 of TUPE; and
     4. immediately following the Transfer Date comply with its obligation to consult with the appropriate representatives of the Third Party Employees about any Measures in accordance with regulation 13(6) of TUPE.
  5. The Supplier shall be responsible for, or shall procure that any relevant Sub-contractor shall be responsible from the Transfer Date, for all remuneration, benefits, entitlements and outgoings in respect of the Third Party Employees and other Staff.
  6. The Supplier shall indemnify and will keep indemnified QTS and any Third Party in relation to any Employment Liabilities arising out of or in connection with:
     1. any act or omission of the Supplier or any Sub-contractor on or after the Transfer Date (or any other event or occurrence after the Transfer Date) in respect of any Third Party Employee or Staff (including but not limited to any liability which arises because a Third Party Employee’s employment with the Supplier or any Sub-contractor is deemed to include their previous continuous employment with the Third Party);
     2. any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the Third Party’s failure to comply with regulation 13 of TUPE;
     3. any claim or allegation by a Third Party Employee or any other employee of QTS or Third Party that in consequence of the transfer of Services to the Supplier or any Sub-contractor there has or will be a substantial change in their working conditions to their detriment within regulation 4(9) of TUPE; and
     4. any claim or allegation that the termination of employment of any of the Third Party Employees or any other employee of the Third Party whether on or before the Transfer Date or not which arise as a result of any act or omission by the Supplier or any Sub-contractor save for where such act or omission results from complying with the instructions of QTS.
  7. QTS shall use reasonable endeavours to transfer to the Supplier or any relevant Sub-contractor the benefit of any indemnity it has from the Third Party.

1. **Pension protection for Eligible Employees** 
   1. General
      1. The Supplier shall procure that, if relevant, each Sub-contractor shall comply with the provisions in this Schedule 8 as if references to the Supplier were to such Sub-contractor.
   2. Membership of the NHS Pension Scheme
      1. In accordance with Fair Deal for Staff Pensions, the Supplier to which the employment of any Eligible Employee compulsorily transfers as a result of the award of this Contract, if not an NHS Body or other employer which participates automatically in the NHS Pension Scheme, shall on or before the Employee Transfer Date, each secure a Direction Letter to enable the Eligible Employees to retain either continuous active membership of or eligibility for, the NHS Pension Scheme, or as appropriate rejoin or secure eligibility for the NHS Pension Scheme for so long as they remain employed in connection with the delivery of the Services under this Contract.
      2. The Supplier must supply to QTS a complete copy of the Direction Letter as soon as reasonably practicable after the Employee Transfer Date.
      3. The Supplier shall comply with the terms of the Direction Letter (including any terms which change as a result of changes in Law) for so long as it remains bound by the terms of the Direction Letter.
      4. Where any Staff (including any Transferred Staff) omitted from the Direction Letter supplied in accordance with Part D of this Schedule 8 is subsequently found to be an Eligible Employee, the Supplier (or a Sub-contractor if relevant) will ensure that that person is treated as an Eligible Employee from the Employee Transfer Date so that their Pension Benefits and Premature Retirement Rights are not adversely affected.
      5. The Supplier shall ensure that all data relating to the Eligible Employees and the NHS Pension Scheme is up to date and is provided to QTS as requested from time to time.
   3. Contributions payable
      1. The Supplier shall pay to the NHS Pension Scheme all such amounts as are due under the Direction Letter and shall deduct and pay to the NHS Pension Scheme such employee contributions as are required by the NHS Pension Scheme.
      2. Where during the Term the standard employer contribution rate which the Supplier is required to pay into the NHS Pension Scheme pursuant to the terms of its Direction Letter is increased to a rate which is over and above the rate which was applicable to the Supplier as at the date of this Contract and such rate increase results in an increased cost to the Supplier overall in relation to the provision of the Services (“**Cost Increase**”), the Supplier shall (subject to Clause 1.3.3 of Part D of this Schedule 8 and the provision of supporting information) be entitled to recharge a sum equal to the Cost Increase to QTS. The Supplier shall only be entitled to recharge any Cost Increase to QTS pursuant to this Clause 1.3.2 of Part D of this Schedule 8 in circumstances where the Cost Increase arises solely as a direct result of a general increase in the employer contribution rate applicable to all employers participating in the NHS Pension Scheme and not in circumstances where the employer contribution rate applicable to the Supplier is increased for any other reason, including as a result of any acts or omissions of the Supplier which give rise to any costs or additional charges (including interest) being charged to the Supplier which are over and above the minimum employer contributions payable by an employer in the NHS Pension Scheme (including as a result of a failure by the Supplier to comply with the terms of its Direction Letter or to meet its obligations to the NHS Pension Scheme).
      3. The Supplier must supply all such information as QTS may reasonably request from time to time in order to support any claim made by the Supplier pursuant to Clause 1.3.2 of Part D of this Schedule 8 in relation to a Cost Increase.
      4. Where during the Term the standard employer contribution rate which the Supplier is required to pay in relation to the NHS Pension Scheme pursuant to the terms of its Direction Letter is decreased as part of a general reduction in the standard employer contribution rate applicable to all employers participating in the NHS Pension Scheme to a rate which is lower than that which was applicable as at the date of this Contract and such decrease results in a cost saving for the Supplier (a “**Cost Saving**”), QTS shall be entitled to reduce the amounts payable to the Supplier under this Contract by an amount equal to the Cost Saving. QTS shall be entitled to deduct any Cost Saving from sums otherwise payable by QTS to the Supplier under this Contract.
   4. Broadly Comparable Pension Benefits
      1. If QTS in its sole discretion agrees that the Supplier or the relevant Sub-contractor need not provide the Eligible Employees with access to the NHS Pension Scheme, the Supplier must ensure that, with effect from the Employee Transfer Date until the day before the Subsequent Transfer Date, the Eligible Employees are offered access to a scheme under which the Pension Benefits are Broadly Comparable to those provided under the NHS Pension Scheme.
      2. The Supplier must supply to QTS details of its Broadly Comparable scheme and provide a full copy of the valid certificate of Broad Comparability covering all Eligible Employees, as soon as it is able to do so and in any event no later than twenty eight (28) days before the Employee Transfer Date.
   5. Transfer Option where Broadly Comparable Pension Benefits are provided
      1. As soon as reasonably practicable and in any event no later than twenty (20) Business Days after the Employee Transfer Date, the Supplier must provide the Eligible Employees with the Transfer Option, where a Third Party offered, or the Supplier offers, a Broadly Comparable scheme.
   6. Calculation of Transfer Amount
      1. QTS shall use reasonable endeavours to procure that twenty (20) Business Days after the Transfer Option Deadline, the Transfer Amount is calculated by the Third Party’s Actuary or QTS’s Actuary (as appropriate) on the following basis and notified to the Supplier along with any appropriate underlying methodology.
      2. If the Third Party offers a Broadly Comparable scheme to Eligible Employees:
         1. the part of the Transfer Amount which relates to benefits accrued in that Broadly Comparable scheme other than those in Clause 1.6.2(ii) of Part D of this Schedule 8 below must be aligned to the funding requirements of that scheme; and
         2. the part of the Transfer Amount which relates to benefits accrued in the NHS Pension Scheme (having been previously bulk transferred into the Third Party’s Broadly Comparable scheme), must be aligned to whichever of:
            1. the funding requirements of the Third Party’s Broadly Comparable scheme; or
            2. the principles under which the Third Party’s Broadly Comparable scheme received a bulk transfer payment from the NHS Pension Scheme (together with any shortfall payment),

gives the higher figure, provided that where the principles require the assumptions to be determined as at a particular date, that date shall be the Employee Transfer Date.

* + 1. In the case of Transferring Employees or any Third Party Employees who have access to the NHS Pension Scheme (and who are classed as Eligible Employees), the Transfer Amount shall be calculated by the NHS Pension Scheme’s Actuary on the basis applicable for bulk transfer terms from the NHS Pension Scheme set by the Department of Health from time to time.
    2. Each Party shall promptly provide to the Actuary calculating or verifying the Transfer Amount any documentation and information which that Actuary may reasonably require.
  1. Payment of Transfer Amount

Subject to:

* + 1. the period for acceptance of the Transfer Option having expired; and
    2. the Supplier having provided the trustees or managers of the Third Party’s pension scheme (or NHS Pensions, as appropriate) with completed and signed forms of consent in a form acceptable to the Third Party’s pension scheme (or NHS Pensions) from each Eligible Employee in respect of the Transfer Option; and
    3. the calculation of the Transfer Amount in accordance with Clause 1.6 of Part D of this Schedule 8; and
    4. the trustees or managers of the Supplier’s (or any Sub-contractor’s) Broadly Comparable scheme (or NHS Pensions, as appropriate) having confirmed in writing to the trustees or managers of the Third Party’s pension scheme (or NHS Pensions, as appropriate) that they are ready, willing and able to receive the Transfer Amount and the bank details of where the Transfer Amount should be sent, and not having revoked that confirmation,

QTS will use reasonable endeavours to procure that the Third Party’s pension scheme (or the NHS Pension Scheme, as appropriate) shall, on or before the Payment Date, transfer to the Supplier’s Broadly Comparable scheme (or NHS Pension Scheme) the Transfer Amount in cash, together with any cash or other assets which are referable to additional voluntary contributions (if any) paid by the Eligible Employees which do not give rise to salary-related benefits.

* 1. Credit for Transfer Amount
     1. Subject to prior receipt of the Transfer Amount, by the trustees or managers of the Supplier’s Broadly Comparable scheme (or NHS Pensions, as appropriate), the Supplier must procure that year-for-year day-for-day service credits are granted in the Supplier’s (Broadly Comparable scheme (or NHS Pension Scheme), or an actuarial equivalent agreed by QTS’s Actuary (and NHS Pension Scheme Actuary) in accordance with Fair Deal for Staff Pensions as a suitable reflection of the differences in benefit structure between the NHS Pension Scheme and the Supplier’s pension scheme.
     2. To the extent that the Transfer Amount is or shall be insufficient to provide benefits in the receiving scheme on the basis set out in Clause 1.8.1 above, the Supplier shall be liable to make a top-up payment into the receiving scheme such that benefits shall be provided by the receiving scheme on the basis set out in Clause 1.8.1. above.
  2. Premature Retirement Rights
     1. From the Employee Transfer Date until the day before the Subsequent Transfer Date, the Supplier must provide Premature Retirement Rights in respect of the Eligible Employees that are identical to the benefits they would have received had they remained employees of an NHS Body or other employer which participates automatically in the NHS Pension Scheme.
  3. Breach and Cancellation of any Direction Letter(s) and Right of Set-Off
     1. The Supplier agrees that it shall notify QTS if it breaches the terms of the Direction Letter. The Supplier also agrees that QTS is entitled to make arrangements with NHS Pensions for QTS to be notified if the Supplier breaches the terms of this Direction Letter.
     2. If QTS is entitled to terminate this Contract pursuant to Clause [15.5.5](#_Ref410397654) of [Schedule 2](#_Ref330459256), QTS may in its sole discretion instead of exercising its right under Clause [15.5.5](#_Ref410397654) of [Schedule 2](#_Ref330459256) permit the Supplier to offer Broadly Comparable Pension Benefits, on such terms as decided by QTS.
     3. If QTS is notified by NHS Pensions of any NHS Pension Scheme Arrears, QTS shall be entitled to deduct all or part of those arrears from any amount due to be paid by QTS to the Supplier having given the Supplier five (5) Business Days’ notice of its intention to do so, and to pay any sum deducted to NHS Pensions in full or partial settlement of the NHS Pension Scheme Arrears. This set-off right is in addition to and not instead of QTS’s right to terminate the Contract under Clause [15.5.5](#_Ref410397654) of [Schedule 2](#_Ref330459256).
  4. Compensation
     1. If the Supplier is unable to provide the Eligible Employees with either:
        1. membership of the NHS Pension Scheme (having used its best endeavours to secure a Direction Letter); or
        2. a Broadly Comparable scheme,

QTS may in its sole discretion permit the Supplier to compensate the Eligible Employees in a manner that is Broadly Comparable or equivalent in cash terms, the Supplier having consulted with a view to reaching agreement any recognised trade union or, in the absence of such body, the Eligible Employees. The Supplier must meet the costs of QTS in determining whether the level of compensation offered is reasonable in the circumstances.

* + 1. This flexibility for QTS to allow compensation in place of Pension Benefits is in addition to and not instead of QTS’s right to terminate the Contract under Clause [15.5.5](#_Ref410397654) of [Schedule 2](#_Ref330459256).
  1. Supplier Indemnities Regarding Pension Benefits and Premature Retirement Rights
     1. The Supplier must indemnify and keep indemnified QTS and any Successor against all Losses arising out of any claim by any Eligible Employee that the provision of (or failure to provide) Pension Benefits and Premature Retirement Rights from the Employee Transfer Date, or the level of such benefit provided, constitutes a breach of his or her employment rights.
     2. The Supplier must indemnify and keep indemnified QTS, NHS Pensions and any Successor against all Losses arising out of the Supplier (or any Sub-contractor) allowing anyone who is not an Eligible Employee to join or claim membership of the NHS Pension Scheme at any time during the Term.
     3. The Supplier must indemnify QTS, NHS Pensions and any Successor against all Losses arising out of its breach of this Part D of this Schedule 8 or the terms of the Direction Letter.
  2. Sub-contractors
     1. If the Supplier enters or has at the Commencement Date entered into a Sub-contract for delivery of all or part of the Services it shall impose obligations on its Sub-contractor in the same terms as those imposed on the Supplier in relation to Pension Benefits and Premature Retirement Benefits by this Part D of this Schedule 8, including requiring that:
        1. if the Supplier has secured a Direction Letter, the Sub-contractor also secures a Direction Letter in respect of the Eligible Employees for their future service with the Sub-contractor as a condition of being awarded the Sub-contract; or
        2. if the Supplier has offered the Eligible Employees access to a pension scheme under which the benefits are Broadly Comparable to those provided under the NHS Pension Scheme, the Sub-contractor either secures a Direction Letter in respect of the Eligible Employees or provides Eligible Employees with access to a scheme with Pension Benefits which are Broadly Comparable to those provided under the NHS Pension Scheme and in either case the option for Eligible Employees to transfer their accrued rights in the Supplier’s pension scheme into the Sub-contractor’s Broadly Comparable scheme (or where a Direction Letter is secured by the Sub-contractor, the NHS Pension Scheme) on the basis set out in Clause 1.8 of Part D of this Schedule 8, except that the Supplier or the Sub-contractor as agreed between them, must make up any shortfall in the transfer amount received from the Supplier’s pension scheme.
  3. Direct Enforceability by the Eligible Employees
     1. Notwithstanding Clause [30.8](#_Ref410397814) of [Schedule 2](#_Ref330459256), the provisions of this Part D of this Schedule 8 may be directly enforced by an Eligible Employee against the Supplier and the Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any Eligible Employee shall have the right to enforce any obligation owed to him or her by the Supplier under this Part D of this Schedule 8 in his or her own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
     2. Further, the Supplier must ensure that the Contracts (Rights of Third Parties) Act 1999 shall apply to any Sub-contract to the extent necessary to ensure that any Eligible Employee shall have the right to enforce any obligation owed to them by the Sub-contractor in his or her own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
  4. Pensions on Transfer of Employment on Exit
     1. In the event of any termination or expiry or partial termination or expiry of this Contract which results in a transfer of the Eligible Employees, the Supplier must (and if offering a Broadly Comparable scheme, must use all reasonable efforts to procure that the trustees or managers of that pension scheme must):
        1. not adversely affect pension rights accrued by the Eligible Employees in the period ending on the Subsequent Transfer Date;
        2. within thirty (30) Business Days of being requested to do so by QTS or Successor, (or if the Successor is offering Eligible Employees access to the NHS Pension Scheme, by NHS Pensions), provide a transfer amount calculated in accordance with Clause 1.6 of this Part D of this Schedule 8; and
        3. do all acts and things, and provide all information and access to the Eligible Employees, as may in the reasonable opinion of QTS be necessary or desirable and to enable QTS and/or the Successor to achieve the objectives of Fair Deal for Staff Pensions.



**Expert Determination**

1. **Dispute Process**
   1. During any Dispute, including a Dispute as to the validity of the Contract, it is agreed that the Supplier shall continue its performance of the provisions of the Contract (unless QTS requests in writing that the Supplier does not do so).
   2. In the case of a Dispute the Supplier and QTS shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the Dispute and shall follow the procedure set out in this Schedule 9.
   3. In the event of a Dispute either Party may serve a Dispute Notice on the other Party to commence formal resolution of the Dispute. The Dispute Notice shall set out:
      1. the material particulars of the Dispute; and
      2. the reasons why the Party serving the Dispute Notice believes the Dispute has arisen.
   4. Following the service of a Dispute Notice the Parties shall first seek to resolve the Dispute by convening a meeting between QTS’s Contract Manager and the Supplier’s Contract Manager (together the “**Contract Managers**”).
      1. The meeting of the Contract Managers must take place within five (5) Business Days of the date of the Dispute Notice (the “**Dispute Meeting**”).
      2. The Contract Managers shall be given ten (10) Business Days following the date of the Dispute Meeting to resolve the Dispute.
      3. The Contract Managers can agree to further meetings at levels 2 and/or 3, as referred to at clause 5.1 of the Key Provisions in Schedule 1, in addition to the Dispute Meeting, but such meetings must be held within the ten (10) Business Day timetable set out in paragraph 1.4.2 of this Schedule 9.
      4. If at any point it becomes clear that the timetable set out cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the timetable. Any agreed extension to the timetable shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.
   5. If the procedure set out in paragraph 1.4 of this Schedule 9 has been exhausted and fails to resolve the Dispute either Party may request the Dispute be resolved by way of a binding expert determination (pursuant to paragraph 1.6 of this Schedule 9). For the avoidance of doubt, the Expert shall determine all matters (including, without limitation, matters of contractual construction and interpretation) in connection with any Dispute referred to binding expert determination pursuant to paragraph 1.6 of this Schedule 9.
   6. Where the Dispute is referred to binding expert determination the following process will apply:
      1. The Party wishing to refer the Dispute to expert determination shall give notice in writing to the other Party informing it of its wish to refer the Dispute to expert determination and giving brief details of its position in the Dispute.
      2. The Parties shall attempt to agree upon a single expert (who must have no connection with the Dispute unless both Parties have consented in writing) (an “**Expert**”). For the avoidance of doubt, where the Dispute relates to contractual interpretation and construction, the Expert may be Queen’s Counsel. In the event that the Parties fail to agree upon an Expert within five (5) Business Days following the date of the notice referred to in paragraph 1.6.1 of this Schedule 9 (or if the person agreed upon is unable or unwilling to act), the Parties agree that the Expert will be nominated and confirmed to be appointed by the Centre for Effective Dispute Resolution.
      3. The Expert must be willing and able to complete the expert determination process within thirty (30) Business Days of the Date of Final Representations (as defined in paragraph 1.6.5 of this Schedule 9).
      4. The Expert shall act as an expert not as an arbitrator or legal advisor. There will be no formal hearing and the Expert shall regulate the procedure as he sees fit.
      5. The Parties shall each have the right to make written representations to the Expert and will, with reasonable promptness, provide the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision. Such representations must be made within twenty eight (28) Business Days of the Expert being appointed, or fourteen (14) Business Days after the last documents requested by the Expert have been provided to the Expert, whichever is the later (“**Date of Final Representations**”). Any documents provided to the Expert and any correspondence to or from the Expert, including email exchanges, shall be copied to the other Party simultaneously.
      6. The Expert shall have the power to open up, review and revise any certificate, opinion, requisition or notice and to determine all matters in Dispute (including his jurisdiction to determine matters that have been referred to him).
      7. The Expert may take such advice and assistance from professional advisers or other third parties as he reasonably considers appropriate to enable him to reach a determination of the Dispute and may issue orders that one or both of the Parties are to pay such third party costs, stating the proportion. For the avoidance of doubt, where the Expert is not Queen’s Counsel, and the Expert requires advice or assistance on matters of contractual interpretation and construction, the expert may take such advice and assistance from a third party Queen’s Counsel of their choosing under this paragraph 1.6.7 of this Schedule 9. The Parties will pay any such third party costs incurred pursuant to this paragraph 1.6.7 of this Schedule 9 in such proportions as the Expert shall order. In the absence of such order such third party costs will be paid equally.
      8. The Expert shall provide the Parties with a written determination of the Dispute (the “**Expert’s Decision**”) within thirty (30) Business Days of the Date of Final Representations, which shall, in the absence of fraud or manifest error, be final and binding on the Parties.
      9. The Expert’s Decision shall include reasons.
      10. The Parties agree to implement the Expert’s Decision within five (5) Business Days of the Expert’s Decision being provided to them or as otherwise specified as part of the Expert’s Decision.
      11. The Parties agree that the Expert shall be entitled to proceed to give his binding determination if one or both Parties fails to act in accordance with the procedural timetable set out above.
      12. The Parties will pay the Expert’s costs in such proportions as the Expert shall determine. In the absence of such determination such costs will be shared equally.
      13. The Parties agree to keep confidential all information arising out of or in connection with the expert determination, including details of the underlying Dispute, except where disclosure is required by Law.
   7. Nothing in this Contract shall prevent:
      1. QTS taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the provision of the Services; or
      2. either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party (including Intellectual Property Rights) or which relates to the safety of patients and other service users or the security of Confidential Information, pending the resolution of the relevant Dispute in accordance with the Dispute Resolution Procedure.
   8. Subject to paragraph 1.7 of this Schedule 9 neither Party may commence legal proceedings in relation to a Dispute until the dispute resolution procedures set out in this Schedule 9 have been exhausted. For the avoidance of doubt, either Party may commence legal proceedings to enforce the Expert’s Decision.
   9. This Schedule 9 shall survive the expiry of or earlier termination of this Contract for any reason.

**Form of Guarantee**

**Dated 2021**

**Between**

(1) **QUALITY TRUSTED SOLUTIONS LLP**, a limited liability partnership registered in England and Wales with registered number OC419167, of 1st Floor, 350 Euston Road, London, NW1 3AX (“**QTS**"); and

(2) ⚫ (company registration number INSERT) whose registered office is at ⚫} (the "**Guarantor**")

**Recitals**

A INSERT SUPPLIER’S NAME (the **“Supplier”**)has entered into a contract with QTS for the provision of services (the **“Services”**)as described and defined in the XXX services agreement dated the date hereof/ and made between (1) the Supplier and (2) QTS (as amended from time to time, the **“**XXX **Contract”**).

B The Guarantor is the ultimate beneficial owner of one hundred per cent (100%) of the issued share capital of the Supplier.

C The Guarantor has agreed to guarantee all the obligations of the Supplier under the XXX Contract on the terms set out below (the **“Guarantee”**).

**NOW THIS DEED WITNESSES AS FOLLOWS:**

1. In consideration of QTS entering into the XXX Contract, the Guarantor, for itself, its successors and assigns, hereby:
   1. absolutely, irrevocably and unconditionally guarantees on demand to QTS as a continuing guarantee the due, proper and punctual performance by the Supplier of all the terms, conditions, obligations, warranties, liabilities, duties, undertakings and agreements on the part of the Supplier contained in the XXX Contract (including without limitation, the due and punctual payment of any monies) when and if such obligations, duties and undertakings shall become due and performable according to the terms of the XXX Contract; and
   2. agrees that if the Supplier shall in any respect fail to perform any of the terms, conditions, obligations and agreements on the part of the Supplier arising under or in connection with the XXX Contract (including, without limitation, the payment of monies arising under the XXX Contract) or shall commit any breach of or fail to fulfil any warranty as set out in the XXX Contract, then the Guarantor will forthwith perform and fulfil in place of the Supplier each and every obligation or warranty in respect of which the Supplier has defaulted or as may be unfulfilled by the Supplier. The Guarantor shall be liable to QTS for any and all losses, damages, expenses, liabilities, claims, costs or proceedings which QTS may suffer or incur by reason of any such failure or breach,

provided always that the Guarantor's liability under this Guarantee shall not, save to the extent of any costs reasonably and properly incurred (including legal fees) by QTS in connection with the enforcement or preservation of any of its rights under this Guarantee, exceed that of the Supplier under the XXX Contract determined on the basis that the XXX Contract is valid, enforceable and has full force and effect.

1. The Guarantor hereby confirms that it is aware of all the terms and conditions of the XXX Contract.
2. The Guarantor covenants and agrees with QTS that any act, event, circumstance or omission which but for the provisions of this Clause 3 may affect, change, reduce, prejudice or release the Guarantor from its obligations under this Guarantee, including without limitation and whether or not known to the Guarantor:
   1. waiver by QTS of any terms, provisions, conditions, obligations and agreements of or under the XXX Contract or any failure to make demand upon or take action against the Supplier;
   2. any modification or changes, however fundamental, to the XXX Contract or referred to in the XXX Contract (including, without limitation, any change to the Services) so that any such modification or change of whatsoever nature shall be binding upon the Guarantor in all circumstances notwithstanding that it may increase or otherwise affect the liability or obligations of the Guarantor under this Guarantee;
   3. the giving by QTS or the Supplier of any consent to an assignment or any transfer or novation or the making of any assignment, transfer or novation of the XXX Contract (or any part thereof) or this Guarantee (or any part thereof);
   4. the granting of any time, concession, arrangement or other indulgence to the Supplier under the XXX Contract;
   5. any dealings between QTS and/or the Supplier; or
   6. the taking of any action by QTS,

may be made or done without notice to or the consent of the Guarantor and no such act, event, circumstance or omission shall in any way affect or change, or release the Guarantor from, its obligations under this Guarantee and the liability of the Guarantor hereunder shall not be in any way affected thereby.

1. This Guarantee shall remain in full force and effect until the expiry of the limitation period applicable to claims under the XXX Contract including without limitation any claims which remain vested in QTS as contemplated by Clause 6 of this Guarantee (save to the extent that any claim has been made under this Guarantee prior to the expiry of such period by way of claim or other legal process in which case this Guarantee shall remain in full force and effect in relation to any such claim until the withdrawal, satisfaction or dismissal by a final and binding non-appealable order of a court of competent jurisdiction) (the limitation period applicable to claims under the XXX Contract together with any such additional period being hereinafter referred to as the "**Limitation Period**") after which time the Guarantor's obligations hereunder shall be null and void whether or not this Guarantee be returned to the Guarantor. This Guarantee shall so remain in full force and effect until the expiry of the Limitation Period notwithstanding any act, event, circumstance or omission which but for the provisions of this Clause 4 may affect or change, or release the Guarantor from, its obligations under this Guarantee, including, without limitation:
   1. the insolvency, winding up, liquidation, receivership, dissolution, administration, reorganisation, amalgamation, reconstruction or any analogous event of the Supplier, the Guarantor or any other person;
   2. any disclaimer of the XXX Contract by a liquidator of the Supplier, the Guarantor or any other person;
   3. any change in the status, function, control or ownership of the Supplier;
   4. the extent to which it may be or become illegal, frustrated, invalid or unenforceable for the Supplier to carry out an obligation under the XXX Contract but only insofar as it would not at such time be similarly illegal for the Guarantor or any other person to carry out the same obligation and provided that it is expressly agreed that the Guarantor shall be under no obligation to carry out such obligation where to do so would be illegal if performed by the Guarantor or any such person;
   5. the existence or validity of any other guarantee or security in relation to the obligations and liabilities of the Supplier or any enforcement or any failure to enforce any such guarantee or security; and/or
   6. the taking, variation, compromise, renewal or release of or refusal or neglect to effect, take up or enforce any rights against or security over assets of the Supplier or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security.
2. Until the expiry of the Limitation Period (or, to the extent that any claim has been made under this Guarantee prior to the expiry of such period by way of claim or other legal process, until the withdrawal, satisfaction or dismissal by a final and binding non-appealable order of a court of competent jurisdiction of such claim) the Guarantor shall not by virtue of or as a result of any payment or performance under this Guarantee:
   1. be subrogated to, benefit from, succeed to or share in any rights, security or moneys held or received or receivable by QTS; or
   2. be entitled to exercise any right of contribution in respect of such payment or performance under any other guarantee, security or agreement from the Supplier under the XXX Contract; or
   3. receive, claim or have the benefit of any payment, distribution, security or indemnity from the Supplier; or
   4. in respect of any breach of, or default under, the XXX Contract unless so directed by QTS (when the Guarantor will prove in accordance with such directions) claim as a creditor of the Supplier in competition with QTS to the extent that it has a claim against the Supplier.
3. The Guarantor shall hold in trust for QTS and forthwith pay or transfer (as appropriate) to QTS any payment (including an amount equal to any such set-off), distribution or benefit of such security, indemnity or claim in fact received by it in breach of Clause 5.
4. No delay by, or omission of, QTS in exercising any right, power or privilege hereunder shall impair such or any other right, power or privilege or be construed as a waiver of such or any other right, power or privilege, nor shall any single or partial exercise of or any other right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies of QTS herein provided are cumulative and not exclusive of any rights or remedies provided by law.
5. Any discharge or release of this Guarantee, and any composition or arrangement which the Guarantor may effect with QTS, shall be deemed to be made subject to the condition that it will be void if any payment or security which QTS has received or may receive from any person in respect of the obligations of the Supplier is set aside or reduced under any applicable law.
6. A waiver or release given or consent granted by QTS under this Guarantee will be effective only if given in writing and then only in the instance and for the purpose for which it is given.
7. If at any time one or more of the provisions of this Guarantee is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions hereof shall not be in any way affected or impaired thereby.
8. As a separate and alternative, continuing, primary obligation the Guarantor unconditionally and irrevocably agrees that any sum expressed to be payable by it or obligation to be performed by it under this Guarantee but which is for any reason (whether or not now existing and whether or not now known or becoming known to the Guarantor) not recoverable from or enforceable against the Guarantor on the basis of a guarantee shall nevertheless be recoverable from or enforceable against the Guarantor as if the Guarantor were the sole principal debtor or obligor (where relevant).
9. Any notice, demand or other communication to be served under this Guarantee may be served upon a party hereto only by posting by first class post or delivering the same by hand or sending the same by facsimile transmission to the party to be served at its address or facsimile number shown immediately after its name on the signature page of this Guarantee or at such other address or number as it may from time to time notify in writing to the other party.
10. A notice or demand served by first class post shall be deemed duly served on the second business day after the date of posting and a notice or demand sent by hand or facsimile transmission shall be deemed to have been served at the time of delivery or transmission unless served after 5.00pm in the place of intended receipt in which case it will be deemed served at 9.00am on the following business day. For the purposes of this Clause 13, business day means a day on which commercial banks are open for business in London.
11. In proving service of any notice it will be sufficient to prove, in the case of the letter, that such letter was properly stamped or franked first class, addressed and placed in the post and, in the case of facsimile transmission, that such facsimile was duly transmitted on a business day to a current facsimile number of the addressee at the address referred to below.
12. The Guarantor shall not assign or transfer any of its obligations under this Guarantee without the prior written consent of QTS.
13. This Guarantee shall be governed by and construed in accordance with the laws of England and the parties hereto hereby submit to the non-exclusive jurisdiction of the English Courts.
14. The Guarantor represents and warrants to QTS that:
    1. the execution, delivery and performance of this Guarantee does not violate its constitution or any other document, agreement, law or rules by which it is bound; and
    2. it has taken all action required to enter into this Guarantee and to authorise the execution and delivery of this Deed and the performance of its obligations under this Guarantee.
15. Words and expressions used in this Guarantee shall bear the meanings given to such terms in the XXX Contract, unless the context indicates otherwise.

In Witness whereof the Guarantor and QTS have duly executed this Guarantee the day and year first before written.

|  |  |
| --- | --- |
| Executed and delivered as a deed by **QUALITY TRUSTED SOLUTIONS LLP** acting by **INSERT NAME OF MEMBER** an LLP member, in the presence of:  Witness Signature ......................………………  Witness Name ...........................………………  Witness Address ........................………………  ......................................................................... | .  ......................................  LLP Member |

**Details of signatory duly authorised by Member of QTS**

Address:

Email:

Attention:

|  |  |
| --- | --- |
| Executed and delivered as a deed by  **INSERT NAME OF GUARANTOR)** acting by **INSERT NAME OF DIRECTOR WHO SIGNS** a director, in the presence of:  Witness Signature ......................………………  Witness Name ...........................………………  Witness Address ........................………………  ......................................................................... | .  ......................................  Director |

**Details of the Director duly authorised by the Guarantor**

Address:

Email:

Attention:



**Mobilisation Plan**

***To be inserted as part of the final Contract***



**Services by Site Matrix**

***To be inserted as part of the final Contract***

1. 1. **Data Protection Protocol**
      1. **Table A – Processing, Personal Data and Data Subjects**

|  |  |
| --- | --- |
| **Description** | **Details** |
| Subject matter of the Processing | *This should be a high level, short description of what the processing is about i.e. its subject matter* |
| Duration of the  Processing | *Clearly set out the duration of the processing including dates* |
| Nature and purposes of the Processing | *Please be as specific as possible, but make sure that you cover all intended purposes.*  *The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.*  *The purpose might include: employment processing, statutory obligation, recruitment assessment etc.* |
| Type of Personal Data | *Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.* |
| Categories of Data Subject | *Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc.* |
| Plan for return and destruction of the data once the Processing is complete UNLESS requirement under union or member state law to preserve that type of data | *Describe how long the data will be retained for, how it be returned or destroyed* |

* 1. **Definitions**

The definitions and interpretative provisions at Schedule 4 (Definitions and Interpretations) of the Contract shall also apply to this Protocol. Additionally, in this Protocol the following words shall have the following meanings unless the context requires otherwise:

|  |  |
| --- | --- |
| “Data Loss Event” | means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach; |
| “**Data Protection Impact Assessment**” | means an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data; |
| “**Data Protection Officer**” and **“Data Subject**” | shall have the same meanings as set out in the GDPR; |
| “Data Subject Access Request” | means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data. |
| “**Personal Data Breach**” | shall have the same meaning as set out in the GDPR; |
| “Protective Measures” | means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it; |
| “Protocol” or “Data Protection Protocol” | means this Data Protection Protocol; |
| “Sub-processor” | means any third party appointed to Process Personal Data on behalf of the Supplier related to this Contract. |

**DATA PROTECTION**

1. The Parties acknowledge that for the purposes of the Data Protection Legislation, QTS is the Controller and the Supplier is the Processor. The only Processing that the Supplier is authorised to do is listed in Table A of this Protocol by QTS and may not be determined by the Supplier.
2. The Supplier shall notify QTS immediately if it considers that any of QTS's instructions infringe the Data Protection Legislation.
3. The Supplier shall provide all reasonable assistance to QTS in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of QTS, include:
   1. a systematic description of the envisaged Processing operations and the purpose of the Processing;
   2. an assessment of the necessity and proportionality of the Processing operations in relation to the Services;
   3. an assessment of the risks to the rights and freedoms of Data Subjects; and
   4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
4. The Supplier shall, in relation to any Personal Data Processed in connection with its obligations under this Contract:
   1. process that Personal Data only in accordance with Table A of this Protocol, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify QTS before Processing the Personal Data unless prohibited by Law;
   2. ensure that it has in place Protective Measures, which have been reviewed and approved by QTS as appropriate to protect against a Data Loss Event having taken account of the:
      1. nature of the data to be protected;
      2. harm that might result from a Data Loss Event;
      3. state of technological development; and
      4. cost of implementing any measures;
   3. ensure that :
      1. the Supplier Personnel do not Process Personal Data except in accordance with this Contract (and in particular Table A of this Protocol);
      2. it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:
         * 1. are aware of and comply with the Supplier’s duties under this Protocol;
           2. are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
           3. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by QTS or as otherwise permitted by this Contract; and
           4. have undergone adequate training in the use, care, protection and handling of Personal Data;
   4. not transfer Personal Data outside of the EU unless the prior written consent of QTS has been obtained and the following conditions are fulfilled:
      1. QTS or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the GDPR or Article 37 of the Law Enforcement Directive (Directive (EU) 2016/680)) as determined by QTS;
      2. the Data Subject has enforceable rights and effective legal remedies;
      3. the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist QTS in meeting its obligations); and
      4. the Supplier complies with any reasonable instructions notified to it in advance by QTS with respect to the Processing of the Personal Data;
   5. at the written direction of QTS, delete or return Personal Data (and any copies of it) to QTS on termination or expiry of the Contract unless the Supplier is required by Law to retain the Personal Data.
5. Subject to Clause 1.6 of this Protocol, the Supplier shall notify QTS immediately if it:
   1. receives a Data Subject Access Request (or purported Data Subject Access Request);
   2. receives a request to rectify, block or erase any Personal Data;
   3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
   4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this Contract;
   5. receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
   6. becomes aware of a Data Loss Event.
6. The Supplier’s obligation to notify under Clause 1.5 of this Protocol shall include the provision of further information to QTS in phases, as details become available.
7. Taking into account the nature of the Processing, the Supplier shall provide QTS with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 1.5 of this Protocol (and insofar as possible within the timescales reasonably required by QTS) including by promptly providing:
   1. QTS with full details and copies of the complaint, communication or request;
   2. such assistance as is reasonably requested by QTS to enable QTS to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
   3. QTS, at its request, with any Personal Data it holds in relation to a Data Subject;
   4. assistance as requested by QTS following any Data Loss Event;
   5. assistance as requested by QTS with respect to any request from the Information Commissioner’s Office, or any consultation by QTS with the Information Commissioner's Office.
8. The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Protocol. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
   1. QTS determines that the Processing is not occasional;
   2. QTS determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
   3. QTS determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
9. The Supplier shall allow for audits of its Processing activity by QTS or QTS’s designated auditor.
10. The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.
11. Before allowing any Sub-processor to Process any Personal Data related to this Contract, the Supplier must:
    1. notify QTS in writing of the intended Sub-processor and Processing;
    2. obtain the written consent of QTS;
    3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this Protocol such that they apply to the Sub-processor; and
    4. provide QTS with such information regarding the Sub-processor as QTS may reasonably require.
12. The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
13. QTS may, at any time on not less than 30 Business Days’ notice, revise this Protocol by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
14. The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. QTS may on not less than 30 Business Days’ notice to the Supplier amend this Protocol to ensure that it complies with any guidance issued by the Information Commissioner’s Office.
15. The Supplier shall comply with any further instructions with respect to Processing issued by QTS by written notice. Any such further written instructions shall be deemed to be incorporated into Table A above from the date at which such notice is treated as having been received by the Supplier in accordance with Clause 27.2 of Schedule 2 of the Contract.
16. Subject to Clauses 13, 14, and 15 of this Protocol, any change or other variation to this Protocol shall only be binding once it has been agreed in writing and signed by an authorised representative of both Parties.

## Licence

***Form of Licence to be inserted here in the version issued with the tender documentation if QTS considers a Lease or Licence may be used***



## Delete at final contract stage if not required. Insert extra schedules in following pages if required