Workforce deployment systems

Contract guidance: a toolkit for trusts

July 2019

NHS England and NHS Improvement

The NHS Long Term Plan says that when organisations work together they provide better care for the public. That is why on 1 April 2019 NHS Improvement and NHS England united as one – our aim, to provide leadership and support to the wider NHS. Nationally, regionally and locally, we champion frontline staff who provide a world-class service and constantly work to improve the care given to the people of England.

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Summary

The NHS Long term plan committed that “by 2021, NHS Improvement will support NHS trusts and foundation trusts to deploy electronic rosters or e-job plans”. The Carter review into clinical workforce productivity identified significant variation in the use of workforce deployment systems (WDS) such as e-rostering and e-job planning for the deployment of the clinical workforce.

The clinical workforce programme at NHS Improvement has consulted NHS trusts[1] regarding the issues experienced when they enter into contracts with suppliers of workforce deployment software. The review identified significant variation in commercial arrangements and some consistent key issues:

- contracts of varying length (2-5 years) without a break clause
- no transparency of costs
- no training offered
- data not backed up
- no arrangement for integration with other systems
- software not meeting all requirements of the trust
- no flexibility in licencing – tied to specific staff numbers, no allowance for mergers
- charges for return of trust data
- no clearly defined exit arrangements or costs on exit.

This ‘Contract guidance’ identifies potential contractual issues, compares them with the standard terms and conditions within the Public Sector Contract framework and includes examples of draft supplementary terms that can be adapted for use by trusts. Use it only as a tool, under advice from local procurement and legal specialists, and adapted to address the specifics of the local project.

The following people may wish to use it:

- procurement managers/commercial teams/legal support resources
- anyone who intends to specify functionality as part of a tender or bid

[1] NHS trusts refers to both NHS trusts and NHS foundation trusts

- HR directors
- IT leads.

Disclaimer

- The material in this document is for general information purposes only; it is not to be used as a substitute for specific legal/commercial advice and should not be used as such.
- Any reliance placed on the content of this ‘Contract guidance’ document is done so at the recipient’s own risk. NHS Digital and NHS Improvement do not accept any liability to any person or organisation for loss or damage, which may arise from any reliance placed upon the contents of this document.
- No central guidance can cover the specific details of a local project. The local procurement/legal team should use this ‘Contract guidance’ as a tool to be adapted to reflect your local requirements.

Background

The Department for Health and Social Care, NHS England and NHS Digital are currently developing “Commercial standards” for IT related contracting across the NHS. The Commercial and Behavioural Principles are the first step in the development of these Commercial standards.

It is intended that all NHS organisations, along with their suppliers, will adopt and adhere to these principles and behaviours when procuring, managing and delivering IT services and products.

In conjunction with and to support the wider NHS Commercial standards initiative the NHS Digital Commercial team has consulted NHS trusts on difficulties they have experienced in the delivery or the ongoing management of WDS contracts.

These reviews, conducted with trust input, identified significant variance in the contractual terms adopted by suppliers/trusts and discovered some terms that could be considered onerous from a customer/NHS perspective (eg automatic/excessive inflationary increases, limited warranty cover, excessive late payment terms, no rights to withhold or set-off payments, etc).

The gap analysis details the issues identified and assesses these against the terms and conditions available in Public Sector Contract which has been developed by the Crown Commercial Service (CCS), the Government Digital Service (GDS) and the Government Legal Department (GLD). The Public Sector Contract terms and template Schedules are now incorporated as part of future CCS Framework contracts.

Gap analysis

The CCS finalised the award of the Data and Applications Solutions Framework contract in February 2019.

This framework includes a lot (ie Lot 3) specifically targeted at the health and social care sector with lot 3a including access to WDS solutions/suppliers.

The table below details the issues found with existing trust contract terms, cross references relevant terms and schedules in the Public Sector Contract, includes guidance notes for trusts when developing their statement of requirements/contract schedules and includes details of any supplementary/special terms that could be adapted and incorporated into tender documentation and contract schedules.

The table below provides trusts with a contract guidance – toolkit that can be used as a point of reference during the procurement, negotiation and completion of a contract for the provision of a WDS solution.

Gap Analysis – Issues identified, guidance notes, supplementary and special terms:

Issues identified by trusts	Provisions in 'The Public Sector Contract'	Guidance to trusts	Supplementary /special terms
Duration of term • No longer than 24 months with voluntary termination option at no cost. • Cost of voluntary termination pre-24 months to be set out in tender and incorporated as a contract term. • Flexible extension rights required. • Voluntary/partial termination charges should also be included – to be captured in the tender and in the contract. • Include a scalable pricing structure for increase/decrease in user numbers – details to be included in the tender/contract.	Duration covered in the Call-off Order Form: • Include voluntary termination (and associated costs) and flexible extension rights (on basis of pro rata against existing charges) as supplementary terms on the Order Form. • Termination rights (including partial) are included in the clause 10 of the Core Terms. • Exit covered by Call-off Schedule 10. • Ensure order of precedence is clearly set out (framework terms/supplementary terms and then any supplier terms that are accepted).	• The agreed contract term/duration should align with any approved trust business case. • The agreed contract should include fixed implementation/roll-out dates. • The agreed contract term should include contract extension periods to incentivise good supplier behaviours/performance (eg initial 2 years term + 1 year + 1 year). Other points to factor into contract term:	Voluntary termination at no cost sample clause. Supplier termination sample clause.

• Link to clear exit obligations and a sufficient transition support period.		• The solution roll-out, implementation and training timeframes. • Duration to ensure a reasonable return on investment (but needs to avoid supplier tie-in/over-dependency). • Timescales for replacement solution procurement. • Timescales for transition to an alternative supplier. • Timescales for exit activities and data repatriation (also see exit provisions below). • Consider 'meaningful use standards' and the levels of attainment that	

		can be achieved during the contract term. • Ensure inclusion of appropriate "termination" provisions for the customer (eg voluntary termination at no cost). • Include appropriate supplier "termination" provisions (eg in the event of non-payment). • If using a framework agreement, ensure the contract/duration is clearly set out in the Call-Off Order Form.	
Charging structure • Full disclosure of all related charges. • Licence charges to be based on all required licences (including	Requirements in relation to licencing structure should be set out in Call-off Schedule 20, the Call-off Specification and Call-off Schedule 4, the Call-off Tender; Charges should be detailed in Call-off Schedule 5 – Pricing Details;	• Ensure the trust statement of requirements (ie specification) requires full disclosure of all	Indexation sample clause. Late payment sample clause(s).

technical, clinical, admin, end user licences) with transparent pricing structure). • Licence banding structure to be provided (including an ‘all you can eat’ option). • Additional user charges to show volume price breaks. • Any inflation costs increase should be set out and linked to RPI and factored into the tender evaluation process (ie whole life costs assessment). • Provision for NHS re-organisation, trust mergers to ensure NHS benefits from licence banding charges. • Provisions to novate/assign contract to new/merged NHS organisation.	Also see clause 4 in Core Terms, Pricing and payments.	related charges (including those related to licences, infrastructure, hosting, implementation, training, integration, exit activities, data repatriation, etc). • Pricing schedule to include a licence banding structure that facilitates flexing of licence numbers with details of any volume breaks/discounts. • Pricing schedule to include a day rate table for the provision of additional supplier resources. • Trust to consider whether an ‘all you can eat licence option’	Disputed payment sample clause.

		would be more cost effective. • Terms should set out any inflationary cost increase provisions (linked to RPI) and make clear which elements of the charges they are applicable to. • Trust to assess the whole life costs (including all potential charges) of the solution as part of the tender evaluation process. • Link implementation dates/milestones to appropriate to payment milestones (with pre-agreed success criteria). • Link integration milestones to

		appropriate to payment milestones (with pre-agreed success criteria). • Include delay deduction provisions in the event that the supplier delays the implementation of the solution. • If using a framework agreement, ensure that all trust requirements are set out in the call-off specification and that all suppliers respond using the agreed pricing schedule (this will allow a like for like comparison). • Licence and wider contract terms should be sufficiently flexible to allow for trust

		merger/re-organisation or the novation/assignment of any contract. • Ensure the inclusion of reasonable ‘late payment’ provisions. • Ensure inclusion of rights to withhold and/or off-set payments for charges that are disputed.	
Interoperability • Focus on data output. • Obligation to provide reporting feeds on pre-defined data structures. • Obligation to provide co-operation with other suppliers. • Configuration of any interfaces to be predefined by supplier.		• Include an obligation that requires the supplier to adopt interoperability standards and frameworks as part of the procurement and ongoing solution implementation.	Any tender/contract documentation should reference compulsory technology standards (including interoperability) which are mandated by the Secretary of State. These are currently being developed as part of the standards and commercial principles workstream.

• Supplier to adhere to all NHS and Interoperability standards at the supplier's costs. • No proprietary data structures/restrictions that prevent sharing of data between systems. • Obligations to be clearly captured in the specification in relation to live-feed, data structure, system integration (including clinical systems), etc.		• Include an obligation that requires the supplier to use open APIs where available as per the Open API Policy. • Where open APIs are not currently available, a clear roadmap for when they will be available will be required for the proposed solution. • Include a roadmap for all the other systems that the WDS system will integrate with (eg HR, Payroll, ePR, PAS, departmental systems, etc) – unless these are clearly set out upfront this is likely to lead to implementation delay and additional cost.	

		Ensure that the trust statement of requirements (ie specification) covers the following: • Obligations for WDS solution supplier to cooperate with other system suppliers. • Obligation for supplier to integrate the WDS solution with other systems/solutions identified by the trust. • Obliges the supplier to use open standards that do not restrict or prevent sharing of data between trust systems.	
Data rights	Covered in by clause 14 of the Core Terms and Joint Schedule 11 – Processing Data;	• Ensure the trust statement of	Protection of personal data and security of data sample clause.

• Clarification on data ownership and compliance with GDPR obligation during contract life and exit. • All data collected/generated (including reports, etc) belongs to the authority and is subject to GDPR. • Consider data hosting and consider data processing role. • Consider hosting arrangement and whether cloud hosting is used – consider national boundaries for storage of personal data.	Covered by Call-off Schedule 9 – Security which offers 2 options depending on level of risk to personal or sensitive data.	requirements (ie specification) clearly identify the data controller and data processor and associated responsibilities. • Include provisions relating to GDPR and other data protection legislation. • Include terms that confirm ownership of a “data” used in the provision of the WDS solution. • Include provisions that require the supplier to assist with the completion of a data protection impact assessment.

		• Consider where personal data can be stored/hosted geographically and include related terms.	
Exit • Costed and pre-defined exit support and data repatriation to be captured in the specification and the tender document. • Clear obligation to provide data in non-proprietary format as defined by uniform NHS requirements, on pre-agreed medium. • Format of data to be returned on contract expiry should be detailed in the specification/tender. • Data to be returned by supplier prior to data deletion – in accordance with GDPR provisions (may include two or more drops of data)	Exit covered by Call-off Schedule 10.	• Ensure the trust statement of requirements (ie specification) set out exit support and data repatriation obligations. • Include an obligation that requires the supplier to return 'data' in a non-proprietary format using an agreed medium. • Include obligations that require the supplier to provide reasonable assistance in the transition to an	

		alternative solution provider (including data transfer). • Include obligations for the supplier to develop an exit plan within x months of contract signature – also include ongoing provisions for the regular review and update of this plan. • Ensure that exit support and data repatriation are provided by the supplier on expiry or in the event of early termination. • Ensure all charges associated with exit support or data repatriation are included as part of the ongoing service charges or are	

		clearly identified in the pricing schedule.	
Training: • Clarity on reasonable training requirements and cost should be set out in the specification. • Is training environment and associated costs included in tender price? • Various levels of deployment/training support should be offered and costed in the tender.	• Requirements in relation to training should be set out in Call-off Schedule 20 - the Call-off Specification and Call-off Schedule 4 - the Call-off Tender. • Related charges should be detailed in Call-off Schedule 5 – Pricing Details.	• Ensure the trust statement of requirements (ie specification) requires the supplier to detail all types of training required for the successful implementation of their WDS solution. • Ensure training charges and any associated costs (eg training environment, course materials, tutor expenses, etc) are included in the pricing schedule.	

		• Ensure pre-agreed charges for additional training courses and cancellation of courses are set out in the pricing schedule.	
Data storage: • Clarity on cost and obligation in scope of service. • Clarity of hosting provision (ie central, local, cloud). • Consideration of geographical location of personal data. • GDPR provisions to be considered (ie data ownership and processing, etc).	• Requirements in relation to data storage should be set out in Call-off Schedule 20, the Call-off Specification and Call-off Schedule 4, the Call-off Tender. • Related charges should be detailed in Call-off Schedule 5 – Pricing Details.	Covered by previous guidance – see sections 2 and 4.	
• Security/disaster recovery. • Encryption keys/data loss should be covered in specification if data is business critical.	• Covered by Call-off Schedule 9 – Security which offers 2 options depending on level of risk to personal or sensitive data.	• Ensure the trust statement of requirements (ie specification) include	

• Testing, sandpit environment not covered (suggests use of live data for testing) – if required ensure detailed in the specification. • Ensure sufficient protection and provision around business continuity and disaster recovery.	• Call-off Schedule 8 covers Business Continuity and Disaster Recovery.	the following obligations. • Supplier to produce a security management plan which will be based upon the trust security policy. • The security management plan is to be reviewed and updated by the supplier at least annually. • The supplier is responsible for the performance of the solution, the confidentiality, security and integrity of data. • The security management plan should detail the process to be followed

		in the event of a security breach. • Ensure the trust statement of requirements (ie specification) includes a supplier obligation to produce a business continuity plan. • Content/complexity of the plan to be determined by criticality of the solution to the operation of the trust. • Supplier responsible for the review, update and testing of the plan (as deemed appropriate). • Ensure the trust statement of requirements (ie specification) include a supplier obligation to

		produce a disaster recovery plan. • Content/complexity of the plan to be determined by criticality of the solution to the operation of the trust. • Supplier responsible for the review, update and testing of the plan (as deemed appropriate).	
Service availability and associated Service Level Agreements (SLAs) • Sensible SLAs and service deductions based upon business-critical nature of solution. • Consider affordability (number of SLAs – eg Availability, Fix Times, Response Times, etc).	Covered by Call-off Schedule 14 – Service Levels	• Ensure the trust statement of requirements (ie specification) include provision of reasonable service levels and a related service credit regime based on the business criticality of the WDS solution.	

• Costed options to cover variable nature of business criticality – bronze, silver or gold. • Clear definition of SLA and Service resilience built into scope. • Service Credits/Deductions for poor performance against agreed Service Levels. • Termination provisions in the event of consistent poor performance against SLAs. • Severity Level guidance and prioritisation of issues. • Service Desk and ongoing support provision – are these required 24/7, 365 days a year (may depend on level of integration with other Clinical Systems).		• Consider a phased approach (eg as solution is more widely adopted across the trust more stringent SLAs become applicable). • Consider the suppliers standard service offering and supplement as required (this could be a more cost-effective option). • Ensure any service deductions/credits are sufficient to incentivise appropriate supplier performance and behaviours. • Include critical service level failure provisions and termination rights in the event of continuous poor performance or	

		frequent failure to achieve agreed service levels. • Ensure the supplier service desk adequately supports the trust and its end users – consider service desk hours and availability (eg 24/7 x 365 days per year).	
• Most favoured government pricing clause. • Full transparency of costs, with provision for the sharing of those costs across other public sector organisations.	See clauses 4.8 and 4.9 of the Core terms	• Ensure terms and conditions include a 'most favourable commercial terms' clause which requires the supplier to match more favourable terms	More favourable sample clause.

• Failure of supplier to adhere to the above should allow termination rights at no cost to the NHS.		that are offered by the supplier (or sub-contractors) for any element of the solution/service. • Failure to adhere to 'most favourable commercial terms' provisions should constitute material breach of contract and facilitate termination rights at no cost to the trust.	
Pricing transparency within with NHS and government (see above). Costs included in tender must include all: • licence costs • hardware/software costs • exit costs • termination costs • partial termination costs		Covered by previous guidance – see section 2. Ensure trust statement of requirements (ie specification) include a documented change control procedure/process.	

• data repatriation costs • training costs • hosting costs. All Contract Change Notices to include full cost transparency (including third party supplier costs). Inclusion of a day rate for supplementary services. Details of any inflationary cost increases (eg RPI).			
• Licence/audit provisions. • Supplier rights to audit customer to ensure adherence to procured licence numbers – no more than one audit per year; with a minimum of two months' notice; only during the contract term; supplier only entitled to increased licence costs from point of audit. • Licence utilisation to be assessed as part of the monthly service management process to be		• Ensure terms and conditions include a limitation on the suppliers rights to audit licence numbers/users (eg no more than once per annum). • Terms should include a minimum notice period before a supplier audit can take place.	

provide cost/revenue certainty to the NHS/supplier.		• Terms should restrict that any supplier audit can only take place during the contractual term. • Include provisions that limit any licence charge increases to the point at which the audit findings have been agreed by both parties. • To ensure cost certainty both parties to assess licence utilisation as part of the ongoing service management activities.

Appendix A: Supplementary/special terms

Voluntary Termination at no Cost – sample clause:

The Customer may terminate the Agreement at any time by providing notice in writing to the Supplier to take effect on any date falling at least 30 days later than the date of service of the relevant notice. No termination costs will accrue to the Customer where termination rights are applied under this Clause [X].

Indexation

References to amounts or sums expressed to be “subject to indexation” are references to amounts or sums which are required to be adjusted whenever the provision containing the amount or sum is given effect in accordance with this Agreement to reflect the effects of inflation after that date. The adjustment shall be measured by changes in the relevant index published for that Contract Year, as calculated in accordance with the following formula:

$$\text{Amount or sum} \times \frac{RPId}{RPIo}$$

Where RPId is the value of the Retail Prices Index published or determined with respect to the month most recently preceding the date when the provision in question is to be given effect and RPIo is the value of the Retail Prices Index [on 1 April [year of award] or date of Contract Award].

More Favourable Commercial Terms

Should the Authority obtain from any Sub-Contractor or any other third party more favourable commercial terms, either for itself or on behalf of the Contractor, with respect to the provision of any goods, software or services used by the Contractor in the provision of the Services or any replacement goods, software or services

(**Third Party Item**) then the Authority shall (provided that it shall have provided prior notice to the Contractor) be entitled to (i) require the Contractor to replace its existing commercial terms with that person with the more favourable commercial terms procured on its behalf by the Authority with respect to the provision of the Third Party Item, or (ii) enter into a direct agreement with that person with respect to the provision of the Third Party Item to the Authority. If the Authority exercises either option under this subclause with respect to the provision of any Third Party Item, the Charges shall be reduced by such amount as is fair and equitable in the circumstances having regard to any appropriate provisions of the Financial Model. The Authority's right pursuant to this subclause X to enter into any direct agreement with any person with respect to the provision of any Third Party Item is subject to:

- the Authority continuing to make available to the Contractor the Third Party Item where this is necessary to enable the Contractor to provide the Services; and
- any reduction in the Charges taking into account any continuing obligation of the Contractor to make payment with respect to any such Third Party Item that was sold to it or licensed to it for use in the provision of the Services and which has now been substituted for use in relation to the Services by the item purchased by or licensed to the Authority direct.

Supplier Termination – sample clause:

The Supplier may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.

Protection of Personal Data and Security of Data

1.1. When handling Customer data (whether or not Personal Data), the Supplier shall ensure the security of the data is maintained in line with the security requirements of the Customer as notified to the Supplier from time to time.

1.2. Where any Personal Data are Processed in connection with the exercise of the Parties' rights and obligations under this Agreement, the Parties acknowledge that the Supplier shall be acting as a Processor on behalf of the Customer as the Controller. The only Processing that the Supplier is authorised to do is listed in the Award Letter and may not be determined by the Supplier.

1.3. The Supplier shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Customer, include:

1.3.1. a systematic description of the envisaged Processing operations and the purpose of the Processing;

1.3.2. an assessment of the necessity and proportionality of the Processing operations in relation to the Services;

1.3.3. an assessment of the risks to the rights and freedoms of Data Subjects; and

1.3.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

1.4. The Supplier shall, and shall procure that its agents, Sub-Processors and employees shall:

1.4.1. Process the Personal Data only in accordance with instructions from the Customer (which may be specific instructions or instructions of a general nature as set out in this Agreement, or as otherwise notified by the Customer to the Supplier in writing from time to time) and the table set out in section X of the Award Letter, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Customer before Processing the Personal Data unless prohibited by Law;

1.4.2. notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Laws;

1.4.3. ensure that at all times it has in place appropriate technical and organisational measures (which are consistent with Article 32 of the GDPR) which the Customer may reasonably reject (but failure to reject shall not amount to approval by the Customer of the adequacy of the technical and organisational measures), to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data, such measures to ensure a level of security commensurate with the risks associated with the Processing having taken account of the:

a) nature of the data to be protected;
b) harm that might result from a Personal Data Breach;
c) state of technological development; and
d) cost of implementing any measures;

1.4.4. notify the Customer immediately upon becoming aware of a Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the Customer with sufficient information to meet any obligations to report a Personal Data Breach under the Data Protection Laws. Such notification shall as a minimum:

a) describe the nature of the Personal Data Breach, the categories and numbers of Data Subjects concerned, and the categories and numbers of Personal Data records concerned;
b) communicate the name and contact details of the data protection officer or other relevant contact from whom more information may be obtained;
c) describe the likely consequences of the Personal Data Breach; and
d) describe the measures taken or proposed to be taken to address the Personal Data Breach;

1.4.5. co-operate with the Customer and take such reasonable steps as are directed by the Customer to assist in the investigation, mitigation and remediation of a Personal Data Breach;

1.4.6. not disclose the Personal Data to any Supplier Staff unless necessary for the provision of the Services;

1.4.7. other than where specifically authorised under this Agreement, not appoint any third party sub-contractor to Process the Personal Data ("**Sub-Processor**") without the prior written consent of the Customer. In all cases where a Sub-Processor is appointed:

a) the contract between the Supplier and the Sub-Processor shall include terms which are substantially the same as those set out in this clause **Error! Reference source not found.**;
b) the Supplier shall provide the Customer with such information regarding the Sub-Processor as the Customer may reasonably require;
c) the Supplier shall remain fully liable to the Customer for any failure by a Sub-Processor to fulfil its obligations in relation to the Processing of any Personal Data; and
d) the use of the Sub-Processor shall be otherwise in accordance with clause **Error! Reference source not found.**;

1.4.8. take reasonable steps to ensure the reliability and integrity of any Supplier Staff who have access to the Personal Data, ensuring in each case that access is strictly limited to those individuals who need to access the relevant Personal Data, as strictly necessary to perform the Services in the context of that individual's duties to the Supplier, and ensure that the Supplier Staff:

a) are aware of and comply with the Supplier's obligations under this clause 1 together with any obligations pertaining to confidentiality or data protection which are set out in this Agreement;
b) are subject to confidentiality undertakings or other contractual or professional or statutory obligations of confidentiality;
c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
d) have undergone adequate training in the use, care, protection and handling of Personal Data;

1.4.9. notify the Customer immediately if it receives:

a) from a Data Subject (or third party on their behalf):
b) a Data Subject Access Request (or purported Data Subject Access Request);
c) a request to rectify any inaccurate Personal Data;
d) a request to have any Personal Data erased or blocked;
e) a request to restrict the Processing of any Personal Data;
f) a request to obtain a portable copy of Personal Data, or to transfer such a copy to any third party; or

g) an objection to any Processing of Personal Data;
h) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data under this Agreement;
i) 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
j) any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;

(i) (each a "**Relevant Communication**").

1.4.10. taking into account the nature of the Processing, provide the Customer with full cooperation and assistance (within the timescales reasonably required by the Customer, and in any case within sufficient time for the Customer to comply with any relevant timescales prescribed by the Data Protection Laws) in relation to any Relevant Communications (whether received by the Supplier or by the Customer directly) including by implementing such technical and organisational measures as may be reasonably required by the Customer and by promptly providing:
a) the Customer with full details and copies of the Relevant Communication (where received by the Supplier);
b) the Customer, on request by the Customer, with any Personal Data it holds in relation to a Data Subject; and
c) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office;

1.4.11. allow for audits (including inspections) of its data Processing activity by the Customer or the Customer's mandated Auditor, and if requested by the Customer, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this clause 1 and provide to the Customer copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

1.4.12. cease Processing the Personal Data immediately upon the earlier of the (i) termination or expiry of this Agreement, or (ii) the cessation of the Services, and as soon as reasonably practicable thereafter, at the Customer's option, either return, or securely and irrevocably delete from its systems (so that such Personal Data cannot be recovered or reconstructed), the Personal Data and any copies of it or of the information it contains; and

1.4.13. designate a data protection officer if required by the Data Protection Laws.

1.5. The Supplier shall not Process or otherwise transfer, or permit the transfer, of any Personal Data in or to any Restricted Country without obtaining the

prior written consent of the Customer (unless the transfer is required by EU or member state law to which the Supplier is subject, and if this is the case then the Supplier shall inform the Customer of that requirement before Processing the Personal Data, unless a Law prohibits such information being provided on important grounds of public interest).

1.6. In respect of any Processing in, or transfer of Personal Data to, any Restricted Country permitted in accordance with clause **Error! Reference source not found.**, the Supplier shall, when requested by the Customer, promptly enter into an agreement with the Customer including or on such provisions as the Standard Contractual Clauses and/or such variation as a regulator or the Customer might require which terms shall, in the event of any conflict, take precedence over those in this clause 1.5**Error! Reference source not found.**, and the Supplier shall comply with any reasonable instructions notified to it in advance by the Customer with respect to the transfer of the Personal Data;

1.7. Subject to the Customer providing the Supplier with all information reasonably required by the Supplier to comply with this clause **Error! Reference source not found.**, the Supplier shall create and maintain a register setting out:

1.7.1. the types of Personal Data and categories of Data Subject whose Personal Data are Processed during the provision of the Services; and

1.7.2. a general description of the technical and organisational security measures adopted by the Supplier to protect the Personal Data in accordance with clause **Error! Reference source not found.**.

1.8. The Supplier shall use its reasonable endeavours to assist the Customer to comply with any obligations under the Data Protection Laws and shall not perform its obligations under this Agreement in such a way as to cause the Customer to breach any of the Customer's obligations under the Data Protection Laws to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

1.9. Both the Customer and the Supplier shall comply with their respective obligations under the GDPR in relation to this Agreement, including by adhering to any relevant codes of conduct published pursuant to Article 40 of the GDPR.

1.10. Notwithstanding clause **Error! Reference source not found.** the Customer may, at anytime on not less than 30 Working Days' notice, revise this clause 1 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 Agreement).

1.11. Both the Customer and the Supplier shall comply with their respective obligations under any relevant law implementing or otherwise giving effect to the Network and Information System Regulations. In response to the obligations created by any law implementing or otherwise giving effect to the NIS Regulations, the Customer may elect to produce a report setting out the steps to be reasonably followed by both parties in relation to their compliance

with the NIS Regulations in the context of the Services, and the Supplier shall comply with the terms of any such report.

1.12. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Supplier amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

1.13. If following the date of this Agreement:

1.13.1. any codes of practice, codes of conduct, regulatory guidance, standard clauses and any other related laws arising from the GDPR or from the NIS Regulations are published; or

1.13.2. the UK ceases to be a Member State of the European Union, then the Customer may require the Supplier to take such further reasonable actions, or enter into such further contractual terms, in each case as necessary to take account of these developments.

1.14 The Supplier shall at all times during and after the expiry of the Agreement, Indemnify the Customer and keep the Customer indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Customer arising from any breach of the Supplier's obligations under this clause 1

Late Payment:

Option A:

Each party shall be entitled, without prejudice to any other right or remedy, to receive interest on any payment not made when properly due pursuant to the terms of this Agreement on the due date calculated from day to day at a rate per annum equal to the Default Interest Rate from the day after the date on which payment was due up to and including the date of payment.

Default Interest Rate means two per cent (2%) over London inter-bank offered rate (LIBOR):

At 26.02.2019: The current 1-year LIBOR rate = 3.07%

Total Interest = 3.07% + 2% = 5.07%

Option B:

If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.

Note: Under this provision interest can be claimed at 8% over the BoE base rate together with compensation at a rate of £40 - £100 per invoice.

At 26.02.2019: The current Bank of England interest rate = 0.75%

Total Interest = 0.75% + 8% = 8.75% plus compensation

Disputed Payment – sample clause

If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of the Goods and Services unless the Supplier is entitled to terminate this Agreement in accordance with clause X. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause X.

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