



Department
of Health &
Social Care

Master Indemnity Agreement Terms and Conditions

November 2018

Published 11/12/2018

Recitals

- (A) The Supplier wishes to make the Equipment available directly to the NHS in England on either a loan or a transfer basis.
- (B) The Equipment shall be specified in an MIA Call-Off Agreement completed by the Supplier and the Authority. Where the Equipment is to be provided by the Supplier to the Authority on a loan basis, the loan period shall be as specified in the MIA Call-Off Agreement.

1 Definitions

1.1 The following words shall have the following meanings:

1.1.1 “**Authority**” means “the Authority” signatory to an MIA Call-Off Agreement;

1.1.2 “**Business Day**” means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales;

1.1.3 “**Cybersecurity Requirements**”: all applicable laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), the Data Security and Protection Toolkit, international and national standards, and sanctions relating to security of network and information systems and security breach and incident reporting requirements, including Data Protection Legislation, the NIS Regulations, and to the extent they remain applicable in the UK the Cybersecurity Directive (EU) 2016/1148), Commission Implementing Regulation (EU) 2018/151), all as amended or updated from time to time;

1.1.4 “**Equipment**” means any products, goods (including, without limitation, disposable goods) and equipment specified in an MIA Call-Off Agreement (to include, without limitation, all parts, consumables and/or replacement Equipment and the **Integral Software** provided by the Supplier to the Authority in connection with such Equipment);

1.1.5 “**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 supplier and/or service provider engaged in the supply of equipment and/or the provision of services similar to the Equipment and services provided to the Authority under the same or similar circumstances as those applicable to the relevant MIA Call-Off Agreement;

1.1.6 “**Guidance**” means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Equipment or any associated services provided by the Supplier, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Authority and/or have been published and/or notified to the Supplier by the Department of Health and Social Care, NHS England, NHS Improvement, NHS Digital, the Medicines and Healthcare Products Regulatory Agency (MHRA), the European Medicine Agency, the European Commission, the Care Quality Commission (CQC), the National Cyber Security Centre (NCSC), the Information Commissioner and/or any relevant Regulatory or Supervisory Body;

1.1.7 “**Information Commissioner**” means the UK’ independent authority established to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals (whose website is: www.ico.org.uk) and any other relevant data protection or supervisory authority recognised pursuant to the Data Protection Legislation;

1.1.8 “**Integral Software**” means the computer software embedded in or forming an integral part of the Equipment (as specified in the MIA Call-Off Agreement) and which is not available separately from the Supplier;

- “Law”** means: (1) any applicable statute or proclamation or any delegated or subordinate legislation or regulation; (2) any applicable European Union directive, regulation, decision or law; (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; (6) any applicable code of practice, and in each case as applicable in England and Wales;
- 1.1.10 **“MIA Call-Off Agreement”** means a document of that title signed by both the Authority and the Supplier in connection with a piece of Equipment incorporating these Master Indemnity Agreement Terms and Conditions (November 2018) established by the Department of Health and Social Care together with the relevant Equipment and delivery details, which shall form a legally binding agreement between the relevant Authority and the relevant Supplier as set out in Clause 3 below;
- 1.1.11 **“MIA Register”** means the register of companies that can supply Equipment for the purposes of the Overarching Master Indemnity Agreement and MIA Call-Off Agreement as published by Department of Health and Social Care periodically at [Master Indemnity Agreement](#);
- 1.1.12 **“NIS Regulations”** means the Network and Information Systems Regulations 2018 (SI 2018/506);
- 1.1.13 **“Overarching Master Indemnity Agreement”** means a document of that title signed by both the Supplier and the Department of Health and Social Care;

- 1.1.14 “**Policies**” means the policies, rules and procedures of the Authority and/or the Department of Health and Social Care as notified to the Supplier from time to time;
- 1.1.15 “**Premises and Locations**” means any premises and locations where the Equipment is to be located, as specified in the relevant MIA Call-Off Agreement;
- 1.1.16 “**Regulatory or Supervisory Body**” means any statutory or other body having authority to issue guidance, standards or recommendations with which the Authority and/or the Supplier must comply or to which it or they must have regard, including and not limited to:
- (i) CQC;
 - (ii) NHS Improvement;
 - (iii) NHS England;
 - (iv) Department of Health and Social Care
 - (v) Information Commissioner; and
 - (xi) European Data Protection Board (to the extent this remain applicable under Law).
- 1.1.17 “**NIS Incident**” means an incident as defined by the NIS Regulations as any event having an actual adverse effect on the Security of IT Systems;
- 1.1.18 “**Security of IT Systems**” means the ability of the IT Systems to resist, at a given level of confidence, any action that compromises the availability, authenticity, integrity or confidentiality of stored or transmitted or processed data or

the related services offered by, or accessible via, those IT Systems;

1.1.19 “**Security Risk**” means any reasonably identifiable circumstance or event having potential adverse effect on the Security of IT Systems; and

1.1.20 “**Supplier**” means “the Supplier” signatory to an MIA Call-Off Agreement.

1.2 Further definitions set out in **Schedule 1 (Information Governance & System Security Provisions)** shall also apply to these Master Indemnity Agreement Terms and Conditions.

1.3 A reference to the Department of Health and Social Care shall be deemed to include a reference to the Secretary of State for Health and Social Care.

1.4 All of the schedules (and any annexes referred to and attached) to these MIA Terms and Conditions constitute an integral part of these MIA Terms and Conditions. The schedules and annexes form part of and shall be deemed to be incorporated in these MIA Terms and Conditions.

2 Duration

- 2.1 An MIA Call-Off Agreement shall continue in full force unless otherwise terminated in accordance with Clause 9 below.

3 MIA Call-Off Agreements

- 3.1 A legally binding agreement incorporating these Master Indemnity Agreement Terms and Conditions shall be formed between the Authority and the Supplier at the point an MIA Call-Off Agreement relating to any Equipment is signed by both parties. The effective date of such MIA Call-Off Agreement shall be the date of delivery of the Equipment specified in the relevant MIA Call-Off Agreement, as signed by both parties.

4 Supply

Supply on a loan basis

4.1 If the Supplier shall supply any Equipment to any Authority on a loan basis (for example, for the purposes of the evaluation, testing, research or trialling of the Equipment or other benefit to the Supplier), the following conditions shall apply:

4.1.1 The Equipment shall be provided on loan free of any monetary charges for the loan period and until collection by the Supplier, as set out in the MIA Call-Off Agreement relating to that Equipment;

4.1.2 Title to the Equipment shall remain for all purposes fully vested in the Supplier;

4.1.3 Unless otherwise agreed by the Authority in writing, the Supplier shall be responsible for the delivery of the Equipment to the Premises and Locations;

4.1.4 Unless otherwise agreed by the Authority in writing, the Supplier shall be responsible for the installation and commissioning of the Equipment at the Premises and Locations such that it is in safe working order for use by the Authority;

4.1.5 Unless otherwise agreed by the Authority in writing, the Equipment shall at all times after its delivery to the Authority be at the sole risk of the Supplier as regards damage, loss or destruction and the Authority shall not be under any obligation to keep the Equipment insured. For the avoidance of doubt, the Equipment shall not be modified or repaired by the Authority without the prior written agreement of the Supplier;

- 4.1.6 The Authority shall be entitled to use the Equipment at the Premises and Locations;
- 4.1.7 Where, during the period of the loan, the Authority stores Personal Data on the Equipment, the Authority shall take on the responsibilities of Data Controller, and, to the extent that the Supplier Processes any Personal Data, the Supplier shall take on the role of Data Processor and shall comply with obligations set out in **Schedule 1 (Information Governance & System Security Provisions)** including the Data Processing Protocol (all terms used in this Clause 4.1.7 that begin with a capital letter shall be as defined in **Schedule 1**);
- 4.1.8 Where, during the period of the loan, the Equipment is used in any way to access or is connected with the Authority's IT Systems or to any public network (including the internet, mobile networks or un-protected enterprise network) or to a mobile device, containing or allowing access to the Authority's IT Systems the Supplier shall comply with obligations set out in Schedule 1 (Information Governance & System Security Provisions) (all terms used in this Clause 4.1.8 that begin with a capital letter shall be as defined in **Schedule 1**);
- 4.1.9 Before removal of the Equipment by the Supplier, the Supplier shall ensure that all Personal Data and connection or access to the Authority's IT Systems is securely removed from the Equipment in accordance with any instructions provided by the Authority;
- 4.1.10 Unless otherwise agreed by the Authority and the Supplier in writing, the Supplier shall be responsible for all maintenance of whatever nature to be carried out in respect of the Equipment during the period of loan. Such maintenance by

the Supplier shall be in conformance with the Equipment manufacturer's recommendations relating to the Equipment and Good Industry Practice. The Supplier will provide copies of all maintenance service reports to the Authority;

4.1.10 Unless otherwise agreed by the Authority in writing in the form of the issue of an official purchase order, the Authority shall not be liable for any charges for carriage, delivery, installation, commissioning, maintenance, repair, consumable materials, accessories or any other goods or services required for the operation of the Equipment; and

4.1.11 Any damage to the Equipment occurring at the Premises and Locations, to the extent this is caused by: (i) the Authority failing to use or operate such Equipment in accordance with the express written instructions of the Supplier; (ii) a negligent act or omission of the Authority; or (iii) any modifications made to the Equipment not expressly authorised by the Supplier in writing shall be made good by the Supplier at the Authority's reasonable cost and expense.

Supply on a transfer basis

4.2 If the Supplier shall supply any Equipment to any Authority on a transfer basis the following conditions shall apply:

4.2.1 The Supplier agrees that the transfer of the Equipment is with full title guarantee;

4.2.2 The transfer shall be free of any monetary charges;

4.2.3 Unless otherwise agreed by the Authority in writing, the Supplier shall, at the Supplier's cost and expense, be responsible for:

(i) delivery, installation and commissioning of the Equipment at the Premises and Locations such that it is in safe working order for use by the Authority; and

(ii) unless the Equipment is new, supplying the Authority with full historical maintenance records for such Equipment; and

4.2.4 Ownership and insurance risk in the Equipment shall pass to the Authority once the Authority has signed the MIA Call-Off Agreement relating to the Equipment to be transferred and any required delivery, installation and commissioning has been completed by the Supplier in accordance with Clause 4.2.3 above.

4.2.5 The Supplier shall be solely liable for any damage to the Premises and Locations as a result of the delivery or installation of the Equipment by the Supplier. Accordingly, the Supplier shall be liable to the Authority for the cost of making good any such damage and reinstating the Premises and Locations to the reasonable satisfaction of the Authority.

4.3 In consideration of the Supplier providing the Equipment to the Authority on either a loan or transfer basis, the Authority shall:

4.3.1 provide reasonable cooperation to the Supplier in connection with the purposes for which the Equipment is provided to the Authority;

- 4.3.2 provide any reasonable and proportionate feedback as may be requested by the Supplier from time to time in connection with the Authority's use of the Equipment; and
- 4.3.3 comply with any other obligations or requirements on the Authority set out as part of any MIA Call-Off Agreement.

5 Indemnity

5.1 The Supplier shall be liable to the Authority and the Department of Health and Social Care for, and shall indemnify and keep the Authority and the Department of Health and Social Care indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings in respect of:

5.1.1 any injury or allegation of injury to any person, including injury resulting in death;

5.1.2 any loss of or damage to property (whether real or personal);

5.1.3 any defect in the design or manufacture of the Equipment;

5.1.4 the provision to the Authority by the Supplier of negligent training or instruction in the use, or preparation for use, of the Equipment;

5.1.5 use of the Equipment by the Authority; and/or

5.1.6 installation, presence, use, removal of the Equipment on or from the Premises and Locations,

that arise or result from the Supplier's negligent acts or omissions, breach by the Supplier of the warranties set out at Clause 10 below and any other breach of an MIA Call-Off Agreement by the Supplier, 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 act or omission by, or on behalf of, or in accordance with the instructions of, the Authority.

- 5.2 Nothing in an MIA Call-Off Agreement shall exclude or limit the Supplier's or the Authority's liability for death or personal injury caused by its negligence, for fraud or fraudulent misrepresentation, or for any other liability that may not be limited or excluded under any applicable law.
- 5.3 Liability under Clause 5.1.1 above shall be unlimited.
- 5.4 Subject to Clause 5.2, Clause 5.3, Clause 5.5 and Clause 3.11 of Schedule 1 (Information Governance & System Security Provisions) below, the total liability of each of the Supplier and the Authority under or in connection with each individual MIA Call-Off Agreement, whether arising in contract, tort, negligence, breach of statutory duty or otherwise, shall be limited in aggregate to five million pounds (GBP) (£5,000,000) for that individual MIA Call-Off Agreement.
- 5.5 There shall be no right to claim losses, damages and/or other costs and expenses under or in connection with any MIA Call-Off Agreement 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.

6 Insurance

- 6.1 As a minimum level of protection, the Supplier shall put in place and/or maintain in force at its own cost with a reputable commercial insurer, insurance arrangements in respect of public liability and product liability covering the Equipment with the minimum cover per claim of five million pounds (GBP) (£5,000,000).
- 6.2 The amount of any indemnity cover shall not relieve the Supplier of any liabilities under any MIA Call-Off Agreements. It shall be the responsibility of the Supplier to determine the amount of indemnity that will be adequate to enable it to satisfy its potential liabilities under such MIA Call-Off Agreements. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover is insufficient to cover the settlement of any claim.
- 6.3 The Supplier warrants to the Authority and the Department of Health and Social Care 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.
- 6.4 The Supplier shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to the Authority and/or the Department of Health and Social Care that insurance arrangements taken out by the Supplier pursuant to Clause 6.1 above are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
- 6.5 Upon the expiry or earlier termination of any MIA Call-Off Agreement, the Supplier shall ensure that any ongoing liability it has or may have

arising out of such MIA Call-Off Agreement shall continue to be the subject of appropriate indemnity arrangements until such date as that liability may reasonably be considered to have ceased to exist.

- 6.6 In the event that the Supplier shall default in maintaining the insurance under Clause 6.1, the Department of Health and Social Care may remove the Supplier from the MIA Register and this Agreement can be terminated for material breach in accordance with Clause 9.1.2. and the Supplier shall promptly inform the Authority that it has been removed from the MIA Register.

7 Instructions for Use

- 7.1 The Supplier shall provide to the Authority express written instructions for use relating to the Equipment and detailed instructional manuals (where available) for the intended purpose stated by the Supplier, including any information and documents required by Law and Guidance. The instruction manuals (where available) shall accompany the Equipment and shall be in the English language and contain appropriate directions as to the operation of the Equipment (to include, without limitation and where appropriate, in relation to any sterilisation, reprocessing and decontamination processes or protocols to be followed in relation to the Equipment). The Supplier shall also provide any necessary training relating to the use of the Equipment.
- 7.2 The Supplier shall provide a telephone number to the Authority which shall be manned during normal working hours by those of the Supplier's personnel who are trained and qualified to deal properly with any enquiries the Authority may have in relation to the use and operation of the Equipment. The Authority will use its reasonable endeavours to notify Supplier promptly of any fault or safety issue arising with or damage to the Equipment that the Authority becomes aware of and will use its reasonable endeavours to ensure that the Equipment is not used until such fault or damage has been repaired or the safety issue resolved by the Supplier.

8 Removal of Equipment (for Equipment on loan only)

- 8.1 Upon (i) receipt of a written request at any time from the Authority; (ii) three (3) months written notice from the Supplier, (iii) at the end of the loan period specified in the relevant MIA Call-Off Agreement relating to the Equipment (as may be extended from time to time upon the written agreement of the Authority and the Supplier); or (iv) upon termination of an MIA Call-Off Agreement for any other reason, the Supplier shall remove the Equipment from the Premises and Locations within 28 days of a written request or date of termination, free of charge, and at that time before actual removal shall first check to ensure the Equipment is free of any decontamination and any Personal Data, and once these checks are complete shall sign, along with the Authority, the “**Collection Confirmation Receipt**” section of the MIA Call-Off Agreement for the Equipment accordingly to confirm collection. For the avoidance of doubt, subject to the Supplier providing reasonable advance notice to the Authority, the Authority shall grant to the Supplier the right to enter the Premises and Locations to exercise such removal in accordance with this Clause 8.1.
- 8.2 The Supplier shall be solely liable for any damage to the Premises and Locations as a result of the removal of the Equipment by the Supplier. Accordingly, the Supplier shall be liable to the Authority for the cost of making good any such damage and reinstating the Premises and Locations to the reasonable satisfaction of the Authority.
- 8.3 To the extent that it is aware of any such contamination or other hazard, the Authority shall forthwith provide the Supplier with reasonable written particulars of any contamination or other hazard including any safety hazard that has arisen in respect of the Equipment during the period in which the Equipment was on loan to the Authority sufficient to facilitate compliance by the Supplier with any requirements under Law and

Guidance to make safe the Equipment, which shall be the Supplier's responsibility at the Supplier's cost and expense (except that the Authority shall be responsible for reimbursing the Supplier for any reasonable costs and expenses to the extent that such reasonable costs or expenses are incurred by the Supplier directly as a result of: (i) the Authority failing to use or operate such Equipment in accordance with the express written instructions of the Supplier; or (ii) a negligent act or omission of the Authority).

- 8.4 In the event that any Equipment is not removed by the Supplier in accordance with Clause 8.1, the Authority may return or dispose of the Equipment at the Supplier's risk and expense and charge the Supplier for the cost of storage or disposal from the expiry date of the written request or date of termination in accordance with Clause 8.1.

9 Termination or Expiry

- 9.1 Where the Equipment is provided to the Authority on a loan basis:
- 9.1.1 Subject to Clause 9.1.2 below, the relevant MIA Call-Off Agreement shall continue in force until the Equipment is removed by the Supplier from the Premises and Locations in accordance Clause 8.1 above and any reinstatement work has been completed in accordance with Clause 8.2 above;
- 9.1.2 The Authority or the Supplier may terminate an MIA Call-Off Agreement upon written notice in the event that the other party is in material breach of any of its obligations under such MIA Call-Off Agreement and fails to remedy such breach within 30 days of the receipt from the non-breaching party of notice of such material breach; or
- 9.1.3 The Authority may terminate a MIA Call-Off Agreement by giving fourteen (14) days notice of termination to the Supplier if the Authority becomes aware from the Department of Health and Social Care that the MIA Overarching Agreement between the Department of Health and Social and Care and the Supplier has been terminated.
- 9.2 The expiry or earlier termination of any MIA Call-Off Agreement shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination. For the avoidance of doubt, Clauses 4.1.11, 4.2.1, 5, 6.5, 8.2, 9, 10.1.5, 10.1.8, 10.1.13, 11 (No Purchase or Paid Hire Obligation), 12 (Information Governance & System Security Provisions), 13 (Third Party Rights), 14 (General), and 15 (Law and Jurisdiction) of these Master Indemnity Agreement Terms and Conditions shall survive termination or expiry in relation to any MIA Call-Off Agreement.

10 Warranties

10.1 The Supplier warrants, represents and undertakes to the Authority and the Department of Health and Social Care that:

10.1.1 The Equipment shall be suitable for the purposes as referred to in the MIA Call-Off Agreement, be of satisfactory quality, fit for its intended purpose and shall comply with the standards and requirements set out in any user manuals or other information provided to the Authority by the Supplier relating to the Equipment;

10.1.2 At the point of delivery to the Authority, the Equipment shall be:

(i) free of any form of contamination;

(ii) free of any Personal Data; and

it has ensured that the transport and delivery of the Equipment means that it is delivered in good and useable condition;

10.1.3 Where there is any instruction information, including without limitation user information, that accompanies the Equipment, these must be in the English language (or a full English language translation shall be made available), and has provided this to the Authority and the Supplier shall also will provide updated copies should the instruction information change at any time during the period of any loan of the Equipment by the Authority;

10.1.4 Any equipment it uses for the purposes of the delivery, installation, commissioning, maintenance, repair or removal of the Equipment shall comply with all relevant requirements

- under 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;
- 10.1.5 Without prejudice to the requirements of Clause 6 above, it has and will maintain appropriate insurance relating to the Equipment in order to ensure that any ongoing public and/or product liability it has or may have arising out of any MIA Call-Off Agreements shall continue to be the subject of appropriate indemnity arrangements until such date as that liability may reasonably be considered to have ceased to exist and shall provide the Authority and/or the Department of Health and Social Care with details of such insurance together with confirmation of any policy changes and/or renewals upon request;
- 10.1.6 It has and shall as relevant maintain all rights, consents, authorisations, licences and accreditations required to supply (in the form of a loan or transfer as specified in the relevant MIA Call-Off Agreement) the Equipment to the Authority and for the Authority to use such Equipment for its intended purpose as set out in the relevant MIA Call-Off Agreement;
- 10.1.7 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;
- 10.1.8 Receipt of the Equipment by or on behalf of the Authority and use of the Equipment and/or of any other item or information supplied or made available to the Authority will not infringe

- any third party rights, to include without limitation any intellectual property rights;
- 10.1.9 It will comply with all Law, Guidance and Policies in so far as is relevant to the supply of the Equipment and/or the provision of any related services and/or the removal of the Equipment;
 - 10.1.10 It will provide any services using reasonable skill and care and in accordance with Good Industry Practice;
 - 10.1.11 It will promptly notify the Authority of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the Equipment and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;

IT warranties

- 10.1.12 It shall use Good Industry Practice to ensure that any information and communications technology, hardware and/or software forming part of the Equipment shall be free from corrupt data, viruses, worms and other computer programs or code which might cause harm or disruption to the Authority's information and communications technology systems;
- 10.1.13 It will keep full and detailed records in relation to all matters relating to an MIA Call-Off Agreement (to include, without limitation, the Equipment supplied (including serial numbers) and the purpose of the Equipment and the reason for the loan or transfer) and shall promptly respond to all requests by the Authority or the Department of Health and Social Care for further information regarding an MIA Call-Off Agreement

and/or any Equipment, its purpose and the reason for the loan or transfer;

10.1.14 It will comply in full with any terms set out in any Overarching Master Indemnity Agreement;

10.1.15 It has the right and authority to enter into any MIA Call-Off Agreement and that it has the capability and capacity to fulfil its obligations under such MIA Call-Off Agreement;

10.1.16 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 any MIA Call-Off Agreement and the documents referred to in these Master Indemnity Agreement Terms and Conditions;

10.1.17 It shall comply fully with these Master Indemnity Agreement Terms and Conditions in relation to such supply (in the form of a loan or transfer as specified in the relevant MIA Call-Off Agreement) of Equipment to an Authority;

10.1.19 it has not been in breach of any Cybersecurity Requirements or has been the subject of any NIS Incident which should have been notified to the Authority.

10.2 Unless otherwise agreed with the Authority in writing, where the importation, supply, delivery, installation, maintenance and/or removal of the Equipment under an MIA Call-Off Agreement relates to medical devices (as defined under any relevant Law and Guidance), the Supplier warrants and undertakes that it will comply with any such Law and Guidance relating to such activities in relation to such medical devices. In particular, but without limitation, the Supplier warrants that at the point such Equipment is supplied to the Authority, all such Equipment which

are medical devices shall have valid **CE marking** as required by Law and Guidance and that all relevant marking, authorisation, registration, approval and documentation requirements as required under Law and Guidance relating to the sale, manufacture, assembly, importation, storage, distribution, supply, delivery or installation of such Equipment shall have been complied with. Without limitation to the foregoing provisions of this Clause 10.2, the Supplier shall, upon written request from the Authority, make available to the Authority evidence of the grant of such valid CE marking, and evidence of any other authorisations, registrations, approvals or documentation required.

- 10.3 The Supplier shall provide the Authority with written evidence of the safety of the Equipment, drawing attention to any failures to comply with relevant European or British Standard Specifications or Department of Health and Social Care specifications or aspects of safety that have not been fully tested. In these circumstances, any restrictions on the use of the Equipment necessary to ensure the safety of patients or others shall be confirmed by the Supplier to the Authority as part of the usage instructions for that item of Equipment.
- 10.4 The Supplier further warrants and undertakes to the Authority and the Department of Health that it will inform the Authority and the Department of Health and Social Care in writing immediately upon becoming aware that any of the warranties set out in this Clause 10 and/or elsewhere as part of any MIA Call-Off Agreement have been breached or there is a risk that any such warranties may be breached.
- 10.5 Any warranties provided under this Clause 10 are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing party.

11 No Purchase or Paid Hire Obligations

11.1 Subject to Clause 5.2 above, nothing in any MIA Call-Off Agreement shall create any obligation on the Authority to purchase or take on paid hire, either during the period of the MIA Call-Off Agreement or at any time following its termination or expiry, any quantity of the Equipment and the Supplier warrants that it has not relied on any representation on behalf of the Authority as to any such business between the Supplier and the Authority.

12 Information Governance & System Security Provisions

12.1 The Authority and the Supplier shall comply with the information governance provisions set out at **Schedule 1 (Information Governance & System Security Provisions)** to this Agreement.

13 Third Party Rights

13.1 Unless otherwise expressly stated as part of any MIA Call-Off Agreement, a person who is not a party to the MIA Call-Off Agreement shall have no right to enforce any terms of it which confer a benefit on such person except that the Department of Health and Social Care may directly enforce any indemnities or other rights provided to it under any MIA Call-Off Agreement.

14 General

- 14.1 Each of the parties is independent of the other and nothing contained in an MIA Call-Off Agreement shall be construed to imply that there is any relationship between the parties of partnership or of principal/agent or of employer/employee nor are the parties 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 MIA Call-Off Agreement.
- 14.2 Failure or delay by either party to an MIA Call-Off Agreement to exercise an option or right conferred by the MIA Call-Off Agreement shall not of itself constitute a waiver of such option or right.
- 14.3 The delay or failure by either party to an MIA Call-Off Agreement to insist upon the strict performance of any provision, term or condition of the to an MIA Call-Off Agreement or to exercise any right or remedy consequent upon such breach shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.
- 14.4 Any provision of an MIA Call-Off Agreement which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of the MIA Call-Off Agreement and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.
- 14.5 Each party to an MIA Call-Off Agreement 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 the MIA Call-Off Agreement and therefore irrevocably and unconditionally waives any

rights it may have to claim damages against the other party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out as part of an MIA Call-Off Agreement or unless such representation, undertaking or warranty was made fraudulently.

- 14.6 Each party to an MIA Call-Off Agreement shall bear its own expenses in relation to the preparation and execution of the MIA Call-Off Agreement including all costs, legal fees and other expenses so incurred. Unless otherwise: (i) set out in an MIA Call-Off Agreement; and/or (ii) approved by the Authority in writing in advance of such activities taking place, any activities carried out by the Supplier under and/or in connection with an MIA Call-Off Agreement shall be at the Supplier's cost and expense.
- 14.7 The rights and remedies provided in an MIA Call-Off Agreement are cumulative and not exclusive of any rights or remedies provided by general law, or by any other contract or document. In this Clause 14.7, right includes any power, privilege, remedy, or proprietary or security interest.
- 14.8 All written and oral communications and all written material referred to under an MIA Call-Off Agreement shall be in English.
- 14.9 Any notice or communication required to be given by either party under an MIA Call-Off Agreement shall be in writing quoting the date of delivery of the Equipment and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the respective contact details sections of the MIA Call-Off Agreement or such other person as one party to such MIA Call-Off Agreement may inform the other party in writing from time to time. A notice shall be treated as having been received:

- 14.9.1 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
- 14.9.2 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
- 14.9.3 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.

15 Law and Jurisdiction

15.1 An MIA Call-Off Agreement, 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. 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 an MIA Call-Off Agreement or its subject matter.

Schedule 1

Information Governance & System Security Provisions

1 Definitions

1.1 The following words shall have the following meanings unless the context requires otherwise:

<p>“Confidential Information”</p>	<p>means information, data and material of any nature, which either party to any MIA Call-Off Agreement may receive or obtain in connection with the conclusion and/or operation of an MIA Call-Off Agreement including information which is:</p> <ul style="list-style-type: none"> (a) Personal Data (including any Special Categories of Data) including without limitation which relates to any patient or other service user or his or her treatment or clinical or care history; (b) 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 (c) Policies and such other documents which the Supplier may obtain or have access to through the Authority’s intranet;
<p>“Contracting Authority”</p>	<p>means any contracting authority as defined in regulation 2 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than the Authority;</p>

<p>“Controller”; “Processor”; “Data Subject”; “Personal Data”; “Personal Data Breach”; “Data Protection Officer”; and “Special Categories of Data”</p> <p>“Data Controller”</p>	<p><u>take the meaning given in the GDPR;</u></p>
<p>“Processor”</p>	<p>shall have the same meaning as set out in the GDPR</p>
<p>“Data Loss”</p>	<p>any event that results, or may result, in unauthorised access to Personal Data held by the Supplier as a Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;</p>
<p>“Data Protection Legislation”</p>	<p>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</p>
<p>“Data Protection Protocol”</p>	<p>means any document of that name as provided to the Supplier by the Authority (as amended from time to time in accordance with its terms), which shall include, without limitation, any such document appended to Schedule 1 (Information & System Security Provisions) of these MIA Terms and Conditions;</p>

<p>“Data Security and Protection Toolkit”</p>	<p>means an online system which allows NHS organisations and partners to assess themselves against the Department of Health and Social Care’s information governance and systems security policies and standards, and which can be accessed at: https://www.dsptoolkit.nhs.uk/.</p>
<p>“IT Systems”</p>	<p>all network and information systems, falling within the definition of "network and information systems" in Regulation 1(3) of the NIS Regulations, including:</p> <ul style="list-style-type: none"> (i) all computer hardware (including network and telecommunications equipment) and mobile devices; (ii) software (including associated user manuals, object code and source code and other materials sufficient to enable a reasonably skilled programmer to maintain and modify the software and firmware; and (iii) databases, <p>owned, used, leased or licensed by the Authority or in relation to the Authority’s services.</p>
<p>“Process”</p>	<p>has the meaning given to it under the Data Protection Legislation and, for the purposes of any MIA Call-Off Agreement, it shall include both manual and automatic processing. “Processing” and “Processed” shall be construed accordingly;</p>

“Staff”	means all persons employed or engaged by the Supplier to perform its obligations under an MIA Call-Off Agreement including any subcontractors and person employed or engaged by such subcontractors;
----------------	--

2 Confidentiality

2.1 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 2 of this Schedule 1, 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:

2.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the effective date of any MIA Call-Off Agreement;

2.1.2 the provisions of Clause 2 of this Schedule 1 shall not apply to any Confidential Information:

(i) which is in or enters the public domain other than by breach of an MIA Call-Off Agreement or other act or omissions of the Recipient;

(ii) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;

(iii) which is authorised for disclosure by the prior written consent of the Discloser;

(iv) 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

- (v) which the Recipient is required to disclose purely to the extent to comply with the requirements of any relevant stock exchange.

2.2 Nothing in Clause 2 of this Schedule 1 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**”).

2.3 The Authority may disclose the Supplier’s Confidential Information:

2.3.1 on a confidential basis, to any Contracting Authority (the Parties agree that all Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority);

2.3.2 on a confidential basis, to any consultant, contractor or other person engaged by the Authority and/or the Contracting Authority receiving such information;

2.3.3 to any relevant party for the purpose of the examination and certification of the Authority’s accounts;

2.3.4 to any relevant party for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency

and effectiveness with which the Authority has used its resources;

2.3.5 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirements; or

2.3.6 on a confidential basis to a proposed successor body in connection with any proposed or actual, assignment, novation or other disposal of rights, obligations, liabilities or property in connection with an MIA Call-Off Agreement;

and for the purposes of an MIA Call-Off Agreement, references to disclosure “on a confidential basis” shall mean the Authority making clear the confidential nature of such information and that it must not be further disclosed except in accordance with Law or this Clause 2.3 of this Schedule 1.

2.4 The Supplier may only disclose the Authority’s Confidential Information, and any other information provided to the Supplier by the Authority in relation to an MIA Call-Off Agreement, to the Supplier’s Staff or professional advisors who are directly involved in the performance of or advising on the Supplier’s obligations under that MIA Call-Off Agreement. The Supplier shall ensure that such Staff or professional advisors are aware of and shall comply with the obligations in Clause 2 of this Schedule 1 as to confidentiality and that all information, including Confidential Information, is held securely, protected against unauthorised use or loss and, at the Authority’s written discretion, destroyed securely or returned to the Authority when it is no longer required. The Supplier shall not, and shall ensure that the Staff do not, use any of the Authority’s Confidential Information received otherwise than for the purposes of performing the Supplier’s obligations under an MIA Call-Off Agreement.

2.5 For the avoidance of doubt, save as required by Law or as otherwise set out in this Schedule 1, the Supplier shall not, without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed), announce that it has entered into an MIA Call-Off Agreement and/or make any other announcements about an MIA Call-Off Agreement.

2.6 Clause 2 of this Schedule 1 shall remain in force:

2.6.1 without limit in time in respect of Confidential Information which comprises Personal Data, Sensitive Personal Data or which relates to national security; and

2.6.2 for all other Confidential Information for a period of three (3) years after the expiry or earlier termination of the relevant MIA Call-Off Agreement unless otherwise agreed in writing by the parties to such MIA Call-Off Agreement.

3 Data Protection and Information Systems Security

3.1 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.

- 3.2 Where the Supplier is Processing Personal Data under or in connection with any MIA Call-Off Agreement, the Supplier must comply with the Data Protection Protocol, in particular, but without limitation:
- 3.2.1 only Process such Personal Data as is necessary to perform its obligations under the MIA Call-Off Agreement, and only in accordance with any instructions given by the Authority under the MIA Call-Off Agreement;
 - 3.2.2 put in place appropriate technical and organisational measures against any unauthorised or unlawful Processing of that Personal Data, and against the accidental loss or destruction of or damage to such Personal Data having regard to the specific requirements of Clause 3 of this Schedule 1, the state of technical development and the level of harm that may be suffered by a Data Subject whose Personal Data is affected by unauthorised or unlawful Processing or by its loss, damage or destruction;
 - 3.2.3 take reasonable steps to ensure the reliability of Staff who will have access to Personal Data, and ensure that those Staff are aware of and trained in the policies and procedures identified in Clause 3 of this Schedule 1; and
 - 3.2.4 not cause or allow Personal Data to be transferred outside the European Economic Area without the prior consent of the Authority.
- 3.3 The Supplier and the Authority 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 the Authority under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).

Data Security and Protection Toolkit Compliance

3.4 Where, as a requirement of the MIA Call-Off Agreement, the Supplier is:

3.4.1 Processing Personal Data (to include, without limitation, Special Categories of Data), relating to patients and/or service users; and/or

3.4.2 providing Equipment that will be used in anyway with, or is connected to the Authority's IT systems or to any public network (including the internet, mobile networks or un-protected enterprise network) or to a mobile device, containing or allowing access to Personal Data or to the Authority's IT Systems,

the Supplier shall comply with the following additional provisions upon the written request of the Authority:

Compliance

3.4.3 demonstrate satisfactory compliance with the Data Security and Protection Toolkit, including and not limited to:

- (i) completion of an annual assessment (first-time, second or subsequent) and providing written evidence as required

under the Data Security and Protection toolkit, as applicable due to the supply (whether on a transfer or loan basis) of the Equipment and use by the Authority;

- (ii) ensure it has taken appropriate and proportionate technical and organisational measures to manage the risks posed to the security of the IT Systems on which the Authority's essential services relies and to the confidentiality and integrity of the Authority's data processed by it; and
- (iii) ensure it has taken appropriate and proportionate measures to prevent and minimise the impact of NIS Incidents affecting the security of the IT Systems used for the provision of the Authority's essential services, with a view to ensuring the continuity of those services;

3.4.4 ensure that its registration and evidence provided under the Data Protection and Security Toolkit (or any successor framework) submission can be audited by the Authority or otherwise in accordance with Guidance where applicable and the Supplier must inform the Authority of the results of each audit and publish the audit report both within the Data Security and Protection Toolkit (or any successor framework) as required;

3.4.5 demonstrate Good Industry Practice, including the Government's 10 Steps to Cyber Security, currently available at:

<https://www.ncsc.gov.uk/guidance/10-steps-cyber-security;>

Information Governance and System Security Lead

3.4.6 nominate an information governance and system security lead able to communicate with the Supplier's board of directors or equivalent governance body, who will be responsible for information governance and system security from whom the Supplier's board of directors or equivalent governance body will receive regular reports on information governance and system security matters including, but not limited to, details of all incidents of data loss, GDPR breaches, NIS incidents and breach of confidence;

Notices, Inspections and Incident Reporting

3.4.7 provide full assistance to the Authority in order to respond to any Information Notice and/or any inspection by the Department of Health and Social Care or other Regulatory or Supervisory Body, such assistance may, at the discretion of the Authority, include promptly:

- (a) providing information on the security of IT Systems, including information that the Supplier is aware of or is in possession of (in whatever format); and
- (b) providing information on the implementation of the Authority's policies and/or relevant Guidance, including on any assessments, tests or inspections conducted in relation to fulfilling obligations under clause 3.4.2 and incident reporting requirements under clause 3.4.7;
- (c) co-operating with any person appointed by the Department of Health and Social Care or other Regulatory or Supervisory Body to conduct an inspection;

(d) providing such person appointed to conduct an inspection with access to the Supplier's premises;

(e) providing such person appointed to conduct an inspection to inspect, copy, remove, such documents and information, including information that is held electronically, as such person considers to be relevant to the inspection; and

(f) allowing such person appointed to conduct an inspection access to any person whom they seek relevant information for the purposes of the inspection; and

the Supplier's obligation to notify under this clause 3.4.6 shall include the provision of further information to the Authority in phases, as details become available;

3.4.7 provide all reasonable assistance to the Authority in order to respond to any Enforcement Notice issued by the Department of Health and Social Care, such assistance may, at the discretion of the Authority, include:

(a) on what steps, if any, must be taken to rectify the alleged failure and the time period during which such steps must be taken; and

(b) how and when representations may be made about the content of the notice and any related matters;

3.4.9 report all incidents of any data loss, network or information system incident affecting the delivery of the Authority's services (including and not limited to a Data Loss Event, NIS Incident, Personal Data Breach, unauthorised access and breach of confidence) in

accordance with the incident reporting tool within the Data Security and Protection Toolkit and any Department of Health and Social Care, NHS England and/or NHS Digital guidelines (including and not limited to the NHS Digital Guide to the Notification of Data Security and Protection Incidents (September 2018)); for the avoidance of doubt the incident reporting tool within the Data Security and Protection Toolkit replaces the previous SIRI reporting tool which was part of the previous NHS Information Governance Toolkit;

3.4.10 put in place and maintain policies that describe individual personal responsibilities for:

- (i) handling Personal Data;
- (ii) taking appropriate technical and organisation measures to manage risks and to prevent and minimise impact of incidents affecting the IT Systems; and
- (iii) incident management, including for maintaining local files containing particulars of any breach and subsequent investigation and action, if any.

and apply those policies vigorously;

3.4.11 put in place and maintain a policy that supports its obligations under the NHS Care Records Guarantee (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);

3.4.12 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 the relevant MIA Call-Off Agreement; and

- 3.4.13 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.

Use of Sub-Contractors

- 3.5 Where any Personal Data is Processed by any Sub-contractor of the Supplier in connection with an MIA Call-Off Agreement, the Supplier shall procure that such sub-contractor shall comply with the relevant obligations set out in Clause 3 of this Schedule 1, as if such subcontractor were the Supplier.
- 3.6 Where any element of the Equipment (including and not limited to parts, consumables or software) is provided by a Sub-contractor of the Supplier in connection with this MIA Agreement, the Supplier shall procure that such sub-contracts with such Sub-contractor contain equivalent provisions in relation to security requirements and are no less onerous than those imposed on the Supplier under Clause 3 of this Schedule 1, as if such Sub-Contractor were the Supplier.

Notification and Compliance

- 3.8 The Supplier shall ensure that it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under the Data Protection Legislation and/or the NIS Regulations.
- 3.9 If the Supplier becomes aware of any inconsistency in the provisions of the guidance and policies notified to the Supplier from time to time, the

Supplier shall immediately notify the Authority of such inconsistency and the Authority shall, as soon as practicable, notify the Supplier of the provision that takes precedence.

Monitoring and Audit

- 3.10 The Supplier shall provide the Authority with such information as the Authority may reasonably request within four (4) weeks of such request or unless agreed otherwise and stated in the MIA Call-off Agreement to satisfy itself that the Supplier is complying with its obligations under this clause 3;
- 3.11 Notwithstanding clause 3.9 the Supplier shall for the purposes of any audit by, or on behalf of, the Authority and/or Department of Health and Social Care:
- 3.12 co-operate with the person who is conducting the inspection (“the inspector”);
- 3.13 provide the inspector with reasonable access to their premises;
- 3.14 allow the inspector to inspect, copy or remove such documents and information, including information that is held electronically, as the inspector considers to be relevant to the inspection; and
- 3.15 allow the inspector access to any person from whom the inspector seeks relevant information for the purposes of the inspection.

Indemnity

- 3.16 Notwithstanding clause 5.4 above, the Supplier shall indemnify and keep the Authority indemnified against, any fines, penalties (including without limitation any fines and penalties issued and imposed on the Authority by a Regulatory or Supervisory Body), 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, failure by the Supplier to comply with any applicable Data Protection Legislation, use of the Equipment causing an event having an adverse effect on the Security of IT Systems and/or as a result of the Supplier's failure of any of its obligations under this Schedule 1 (Information Governance & System Security Provisions) in connection with an MIA Call-Off Agreement.

4 Freedom of Information and Transparency

4.1 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.

4.2 The Supplier shall assist and cooperate with the Authority to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Supplier agrees:

4.2.1 that an MIA Call-Off Agreement and any recorded information held by the Supplier on the Authority's behalf for the purposes of the MIA Call-Off Agreement are subject to the obligations and commitments of the Authority under the FOIA, Codes of Practice and Environmental Regulations;

4.2.2 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 the Authority;

4.2.3 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 the Authority 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 the Authority;

- 4.2.4 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 the Authority) and will promptly (and in any event within two (2) Business Days) transfer the request to the Authority;
- 4.2.5 that the Authority, acting in accordance with the Codes of Practice issued and revised from time to time under both section 45 of FOIA, and regulation 16 of the Environmental Regulations, may disclose information concerning the Supplier and the MIA Call-Off Agreement; and
- 4.2.6 to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA 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 the Authority within five (5) Business Days of that request and without charge.
- 4.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations, the content of an MIA Call-Off Agreement is not Confidential Information.
- 4.4 Notwithstanding any other term of an MIA Call-Off Agreement, the Supplier consents to the publication of the MIA Call-Off Agreement in its entirety (including variations), subject only to the redaction of information

that is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations.

- 4.5 In preparing a copy of the MIA Call-Off Agreement for publication under Clause 4.4 of this Schedule 1, the Authority 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 the Authority's absolute discretion.
- 4.6 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish an MIA Call-Off Agreement.
- 4.7 Where any information is held by any subcontractor of the Supplier in connection with an MIA Call-Off Agreement, the Supplier shall procure that such subcontractor shall comply with the relevant obligations set out in Clause 4 of this Schedule 1, as if such subcontractor were the Supplier.

5 Information Security

5.1 Without limitation to any other information governance requirements set out in this Schedule 1, the Supplier shall:

5.1.1 notify the Authority 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 the Authority’s information governance Policies; and

5.1.2 fully cooperate with any audits or investigations relating to information security and any privacy impact assessments undertaken by the Authority and shall provide full information as may be reasonably requested by the Authority in relation to such audits, investigations and assessments.

SIGNED on behalf of [insert name of SUPPLIER] :	
Name and position:	
SIGNED on behalf of the Department of Health and Social Care:	
Name and position:	

© Crown copyright 2018

Published to GOV.UK in pdf format only.

Commercial Division, Procurement

www.gov.uk/dhsc

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

