



(1) HEALTH AND SOCIAL CARE INFORMATION CENTRE

- and -

(2) THE SECRETARY OF STATE FOR HEALTH

2015

**PROVISION OF SERVICES
AGREEMENT**

V0.17

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This Agreement is made on

2015

BETWEEN:

- (1) **HEALTH AND SOCIAL CARE INFORMATION CENTRE** of 1 Trevelyan Square, Boar Lane, Leeds LS1 6AE ("**HSCIC**"); and
- (2) **THE SECRETARY OF STATE FOR HEALTH** of Richmond House, 79 Whitehall, London SW1A 2NS ("**the Authority**")

together the "**Parties**".

BACKGROUND:

- A The Health and Social Care Information Service is an executive, non-departmental public body established under Chapter 2 of the Health and Social Care Act 2012. During its formation, it was identified that numerous services, including the delivery of Informatics Services, Systems, Data and expertise would be provided by HSCIC to Government Departments and Arms Length Bodies.
- B This Agreement sets out the framework terms for the provision of such services, and codifies the roles, responsibilities, key deliverables and other arrangements of the Parties in relation to the projects and/or services to be agreed by the Parties in agreed work packages.

IT IS AGREED:

1 INTERPRETATION

- 1.1 For the purposes of this Agreement, the following definitions shall apply unless the context requires otherwise:

"**Agreed Work Package**" means a description of a Project and/or Services using the templates included at schedule 1 (*Work Packages*), that has been agreed in accordance with the process set out at Paragraph 3;

"**Agreement**" means this agreement and its schedules as varied in accordance with the process set out in Paragraph 15 from time to time;

"**Asset Register**" means the register maintained by HSCIC listing the executed Work Packages and any agreed CCNs;

"**the Authority Background Intellectual Property Rights**" means (unless otherwise explicitly specified in an Agreed Work Package), the Intellectual Property Rights owned by the Authority or its licensors prior to the commencement of the Agreed Work Package, that will be used on the Agreed Work Package, and includes but is not limited to those rights listed under the heading "the Authority Background IPR" in an Agreed Work Package;

"**the Authority Responsibilities**" means the responsibilities of the Authority in respect of the Project and/or Services, as set out in an Agreed Work Package;

“Background Intellectual Property Rights” means the Authority Background Intellectual Property Rights or HSCIC Background Intellectual Property Rights as applicable;

"Change Control Note" or "CCN" is the form, to be completed in relation to changes to this Agreement or a Work Package, as set out at schedule 3;

“Charge(s)” means the charge(s) for a Project and/or the Services set out in the Agreed Work Package;

"Commencement Date" means the date of this Agreement set out on page 2;

"Confidential Information" means all Personal Data and Sensitive Personal Data (as defined in the Data Protection Act 1998), including without limitation information which relates to any patient or other service user or his or her treatment or clinical or care history, any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Parties, including all Intellectual Property Rights, together with all information derived from any of the above, any other information clearly designated as being confidential (whether or not it is marked confidential) or which ought reasonably be considered to be confidential, and policies and such other documents which either Party may obtain or have access to through the other Party's intranet;

"Data Controller" means as defined by Data Protection Law, and shall relate to the relevant Party as set out in Paragraph 6.2;

"Data Processor" means as defined by Data Protection Law and shall relate to the relevant Party as set out in Paragraph 6.2;

"Data Protection Law" means the Data Protection Act 1998, Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all other applicable laws and regulations relating to the protection of personal data and privacy of individuals, including where applicable the guidance and codes of practice issued by the Information Commissioner (all such acts, directives and codes are as amended);

"Data Subject" means as defined by Data Protection Law;

"Dispute Resolution Procedure" means the procedure for resolving disputes as set out in Paragraph 11 of this Agreement;

“Employment Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;

"Environmental Information Regulations" the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

"FOIA" means the Freedom of Information Act 2000;

"Guidance" means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to HSCIC by the Authority and/or have been published and/or notified to HSCIC by the Authority, Monitor, NHS England, the Medicines and Healthcare Products Regulatory Agency, the European Medicine Agency, the European Commission, the Care Quality Commission and/or any other regulator or competent body;

"HSCA12" means the Health and Social Care Act 2012 (as amended);

"HSCIC Background Intellectual Property Rights" means (unless otherwise explicitly specified in an Agreed Work Package), the Intellectual Property Rights owned by HSCIC or its licensors prior to the commencement of the Agreed Work Package, that will be used on the Agreed Work Package, and includes but is not limited to those rights listed under the heading "HSCIC Background IPR" in an Agreed Work Package;

"HSCIC Responsibilities" means the responsibilities of HSCIC in respect of the Project and/or Services, as set out in an Agreed Work Package;

"Information" has the meaning given under section 84 of FOIA;

"Intellectual Property Rights" means any patents, copyright, rights in and to inventions, trade marks, service marks, design rights, registered designs, know-how, database rights, moral rights, rights in get-up, goodwill and the right to sue for passing off, rights to use, and protect the confidentiality of, confidential information, confidential formulae and applications for any of the foregoing, patents, trademarks, registered designs, copyright, database rights, know-how, trade or business names (including internet domain names) and other rights of a similar nature, where registered or unregistered, existing now or in the future anywhere in the world;

"Key Personnel" means those members of personnel identified in an Agreed Work Package;

"Law" means:

- (a) any applicable statute or proclamation or any delegated or subordinate legislation or regulation;
- (b) any applicable European Union directive, regulation, decision or law;
- (c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;
- (d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;
- (e) requirements set by any regulatory body; and
- (f) any applicable code of practice,

in each case as applicable in England and Wales;

"Milestones" means the milestone dates by which certain Objectives and responsibilities are to be achieved as specified in an Agreed Work Package;

"**NHS**" means the National Health Service;

"**NHSA06**" means the National Health Service Act 2006 (as amended);

"**Notice of Dispute**" means a written notice served by one Party on the other stating that the Party serving the notice believes there is a dispute;

"**Objectives**" means the objectives of the Parties for the Work Package as set out in an Agreed Work Package;

"**Party**" means the Authority or HSCIC as appropriate and 'Parties' means both the Authority and HSCIC;

"**Personal Data**" means personal data as defined in the Data Protection Act 1998 (as amended);

"**Process**" has the meaning given to it under Data Protection Law and, for the purposes of this Agreement, it shall include both manual and automatic processing. Processing and Processed shall be construed accordingly;

"**Project(s)**" means the project described in an Agreed Work Package;

"**Register of Commissions**" means a document containing a summary of the information set out in Schedule 4;

"**Relevant Transfer**" means a transfer of employment to which the Employment Regulations applies;

"**Request for Information**" a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;

"**Senior Management Team**" means each respective Party's senior management team responsible for the Work Package, the members of which are set out in an Agreed Work Package;

"**Sensitive Personal Data**" means sensitive personal data as defined in the Data Protection Act 1998 (as amended);

"**Services**" means the services described in an Agreed Work Package;

"**Staff**" means all persons employed or engaged by a Party to perform its obligations under this Agreement and the Agreed Work Packages, including any contractors and subcontractors and person employed or engaged by such contractor or subcontractors;

"**Term**" shall have the meaning set out in Paragraph 8.1; and

"**Working Day**" any day other than a Saturday, Sunday or public holiday in England and Wales.

- 1.2 In this Agreement references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3 References to Paragraphs are references to the paragraphs of this Agreement, and references to Schedules are references to the Schedules of this Agreement.

1.4 References to days are references to calendar days.

1.5 The headings in this Agreement shall not affect the construction or interpretation of this Agreement.

2 LEGAL STATUS OF THIS AGREEMENT

2.1 This Agreement:

2.1.1 seeks to outline the key principles of the collaboration arrangements agreed between HSCIC and the Authority in respect of each Agreed Work Package;

2.1.2 sets out the respective duties, obligations and allocations of risk which have been and shall be agreed between the Parties;

2.1.3 is intended to be the sole point of reference in respect of the agreed arrangements for the Agreed Work Package;

2.1.4 subject to Paragraph 177, together with an Agreed Work Package constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and undertakings between them, whether written or oral, relating to its subject matter.

2.1.5 is for the benefit of the Parties and is not intended to benefit to, or be enforceable by, any third party; and

2.1.6 is not intended to be contractually binding in a court of law nor to give rise to any other legally enforceable rights or obligations, nor does this document constitute an offer to purchase or to supply services or goods on the terms set out in this document or at all.

3 AGREEING DETAILS OF WORK PACKAGES

3.1 Each distinct Project and/or Service shall be described as a 'Work Package'.

3.2 If the Authority wishes to initiate a Work Package, it shall send to HSCIC its proposals in writing using standard forms and notifications. HSCIC shall then consider the proposal in good faith, and the Parties shall use their reasonable endeavours to agree the basis of the Work Package.

3.3 If HSCIC intends to use a third party or sub-contractor in the delivery of a Work Package it will inform the Authority (or its representative) using existing governance channels.

3.4 In the event that HSCIC enters into any sub-contract, pursuant to Paragraph 3.3 above, in connection with this Agreement it shall:

3.4.1 remain responsible to the Authority for the performance of its obligations under this Agreement and any Agreed Work Package notwithstanding the appointment of any sub-contractor and be responsible for the acts, omissions and neglects of its sub-contractors;

- 3.4.2 impose obligations on its sub-contractor in the same terms as those imposed on it pursuant to this Agreement, in the form of a legally binding agreement between HSCIC and its sub-contractors and shall procure that the sub-contractor complies with such terms; and
- 3.4.3 provide a copy, at no charge to the Authority, of any such sub-contract on receipt of a request for such by the Authority or its authorised representative.
- 3.5 Unless otherwise agreed and recorded in an Agreed Work Package pursuant to Paragraph 7.1, all licences necessary to deliver a Work Package will be secured or procured by HSCIC and will be identified and charged under the Work Package.
- 3.6 Once both Parties have signed a Work Package, the Agreed Work Package together with this Agreement shall form the agreed scope and terms of the arrangement.
- 3.7 All Work Packages will attain appropriate governance approval prior to inclusion under the Provision of Service Agreement or commencement of work.
- 3.8 Each Work Package will have a unique portfolio identification number which will be allocated by the HSCIC Portfolio Office.
- 3.9 Each Work Package will be included on the Register of Commissions.
- 3.10 The Work Packages will be regularly reviewed (as frequently as is specified in each Work Package) by the Project team and sponsor.
- 3.11 The Register of Commissions will be regularly reviewed by Senior Management, on a minimum of a quarterly basis or as agreed between Parties.

4 KEY PERSONNEL

- 4.1 The Parties have agreed that certain Key Personnel, as set out in the Agreed Work Package (where applicable), are critical to the provision of the Project and/or Services.
- 4.2 HSCIC shall not remove or replace any of the Key Personnel unless:
 - 4.2.1 the person is on long-term sick leave;
 - 4.2.2 the element of the Project and/or Services in respect of which the individual was engaged has been completed to the Authority's satisfaction;
 - 4.2.3 the person takes up a new position within the HSCIC or resigns from their employment.
- 4.3 Where a member of Key Personnel is removed or replaced, the HSCIC shall inform the Authority of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified.
- 4.4 HSCIC shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 30 Working Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced.
- 4.5 The Authority will use all reasonable endeavours to ensure continuity of its relationship with HSCIC, however where a member of the Authority's Key Personnel is removed or replaced

during the provision of a Project and/or Services, the Authority shall promptly notify HSCIC of such change and provide details of the replacement Key Personnel.

5 OBLIGATIONS

- 5.1 The Parties shall work together in good faith throughout the term of the Agreed Work Package(s) (as defined therein), and shall use best endeavours to achieve the Objectives.
- 5.2 During the Term, the Authority shall carry out all of the Authority Responsibilities in a timely and professional manner, using all due skill and care, in accordance with the Objectives.
- 5.3 During the Term, HSCIC shall carry out all of HSCIC Responsibilities in a timely and professional manner, using all due skill and care, in accordance with the Objectives.
- 5.4 During the Term, the Authority and HSCIC shall make payments (if any are specified in the Agreed Work Package) in accordance with the payment provisions set out in the Agreed Work Package.
- 5.5 Within 14 days of the execution of each Agreed Work Package (or any CCN in relation to an Agreed Work Package), HSCIC shall, update the Asset Register detailing the title, reference number and date of execution of the Agreed Work Package.

6 DATA PROTECTION

- 6.1 The Parties shall comply with the information governance standards and procedures as set out in the Agreed Work Package. The Authority shall be able to propose that HSCIC adheres to any particular relevant data quality standard(s) as part of agreeing the terms of a new Work Package.
- 6.2 In performance of a Work Package, where:
 - 6.2.1 HSCIC is the Data Controller, and the Authority is its Data Processor, the Authority shall abide by the security requirements set out in the Agreed Work Package and as reasonably required by HSCIC; and where
 - 6.2.2 the Authority is the Data Controller, and HSCIC is its Data Processor, HSCIC shall abide by the security requirements set out in the Agreed Work Package and as reasonably required by the Authority; and where
 - 6.2.3 both Parties are a Data Controller, each party shall abide by the security requirements set out in the Agreed Work Package and as reasonably required by the other party.
- 6.3 The Parties acknowledge and shall comply with their respective duties under Data Protection Law and shall give each other all reasonable assistance as appropriate or necessary to enable each other to comply with those duties.
- 6.4 Where a Data Processor is Processing Personal Data under or in connection with this Agreement or an Agreed Work Package, the Data Processor shall, in particular, but without limitation:
 - 6.4.1 only Process such Personal Data as is necessary to perform its obligations under this Agreement or an Agreed Work Package, and only in accordance with any instructions given by the Data Controller under this Agreement or an Agreed Work Package or otherwise notified by the Data Controller to the Date Processor from time to time;

- 6.4.2 maintain a log of all processing carried out on the Personal Data and provide a copy to the Data Controller on request;
- 6.4.3 not disclose or transfer to any third party the Personal Data (including in a barnardised form), without first obtaining the written consent of the Data Controller (or, where the disclosure is made further to a legal obligation, without prior notice to the Data Controller);
- 6.4.4 implement appropriate technical, organisational and security measures against any unauthorised or unlawful Processing of that Personal Data, and against the accidental loss, destruction of, damage to, alteration to or disclosure of such Personal Data having regard to the specific requirements of this Paragraph 6, the nature of the Personal Data which is to be protected, 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;
- 6.4.5 use best endeavours to ensure the reliability of its Staff who will have access to Personal Data, ensure that its Staff are aware of and trained in the policies and procedures identified in this Paragraph 6 and provide evidence of the same to the Data Controller if requested;
- 6.4.6 ensure that all Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Paragraph 6;
- 6.4.7 ensure that no Staff publish, disclose, or divulge any of the Personal Data to any third party unless the Data Controller has granted its written consent;
- 6.4.8 promptly inform the Data Controller if any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable;
- 6.4.9 promptly notify the Data Controller of any complaint notice or communication relating directly or indirectly to the processing of Personal Data further to this Agreement and provide at its own expense full support, co-operation and assistance to the Data Controller in relation to any such complaint, notice or communication, including by:
 - 6.4.9.1 providing the Data Controller with full details of the complaint or request;
 - 6.4.9.2 complying with a data access request within the relevant timescales set out in the Data Protection Act 1998 and in accordance with the Data Controller's instructions;
 - 6.4.9.3 providing the Data Controller with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Data Controller); and
 - 6.4.9.4 providing the Data Controller with any information requested by the Data Controller.
 - 6.4.9.5 not cause or allow Personal Data to be transferred outside the European Economic Area without the prior consent of the Data Controller and where the Data Controller consents to a transfer, to comply with:
 - 6.4.9.6 the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
 - 6.4.9.7 any reasonable instructions notified to it by the Data Controller.

- 6.4.10 permit the Data Controller or the Data Controller's Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Data Processor's data Processing activities (and/or those of its agents, and sub-contractors) and comply with all reasonable requests or directions by the Data Controller to enable the Data Controller to verify and/or procure that the Data Processor is in full compliance with its obligations under this Agreement; and
- 6.4.11 provide a written description of the technical and organisational methods employed by the Data Processor for Processing Personal Data (within the timescales required by the Data Controller).
- 6.5 HSCIC may only authorise a third party ("sub-contractor") to process the Personal Data from an Agreed Work Package:
 - 6.5.1 subject to the Authority's prior agreement (either through the Programme Board or directly from the Senior Management Team) where HSCIC has supplied the Authority with full details of such sub-contractor;
 - 6.5.2 provided where any Personal Data is Processed by any sub-contractor of HSCIC in connection with this Agreement, HSCIC shall procure that such sub-contractor shall comply with the relevant obligations set out in Paragraph 6, as if such sub-contractor were HSCIC; and
 - 6.5.3 provided that the sub-contractor ceases processing Personal Data immediately on termination of this Agreement for any reason, and, at the request of the Data Controller:
 - 6.5.3.1 returns the Personal Data processed to the Data Controller; or
 - 6.5.3.2 certifies the permanent destruction of the Personal Data processed.
- 6.6 The Data Processor and the Data Controller 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 it is encrypted in accordance with any international data encryption standards for healthcare, and as otherwise required by those standards applicable to the Data Controller under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).
- 6.7 Where, as a requirement of this Agreement, the Data Processor is Processing Personal Data (to include, without limitation, Sensitive Personal Data) relating to patients and/or service users as part of the Services, the Data Processor shall:
 - 6.7.1 complete and publish an annual information governance assessment using the NHS information governance toolkit;
 - 6.7.2 achieve a minimum level 2 performance against all requirements in the relevant NHS information governance toolkit;
 - 6.7.3 nominate an information governance lead able to communicate with the Data Controller's governance body, who will be responsible for information governance and from whom the Data Controller's governance body may reasonably request regular reports on information governance matters including, but not limited to, details of all incidents of data loss and breach of confidence;

- 6.7.4 report all incidents of data loss and breach of confidence in accordance with the Data Controller's guidelines;
- 6.7.5 put in place and maintain policies that describe individual personal responsibilities for handling Personal Data and apply those policies vigorously;
- 6.7.6 put in place and maintain a policy that supports its obligations under relevant Data Protection Law and any associated good practice to include the HSCIC Guide to Confidentiality in Health and Social Care;
- 6.7.7 subject always to Paragraph 6.4, put in place and maintain agreed protocols for the lawful sharing of Personal Data with other NHS organisations and (as appropriate) with non-NHS organisations in circumstances in which sharing of that data is required under this Agreement; and
- 6.7.8 where appropriate, have a system in place and a policy for the recording of any telephone calls in relation to the Services, including the retention and disposal of those recordings.
- 6.8 HSCIC and any sub-contractor authorised by HSCIC shall comply at all times with the Data Protection Law and shall not perform its obligations under this Agreement in such a way as to cause the Authority to breach any of its applicable obligations.
- 6.9 The Data Processor shall indemnify and keep the Data Controller indemnified against, any loss, damages, costs, expenses (including without limitation any monetary penalty notice issued by the Information Commissioner, legal costs and expenses), claims or proceedings whatsoever or howsoever arising from the Data Processor's failure to comply with Data Protection Law or any third party's (authorised by the Data Processor to Process Personal Data) failure to comply with Data Protection Law in connection with this Agreement.
- 6.10 The provisions of this Paragraph 6 shall apply during the Term of this Agreement and shall subsist until, at the request of the Data Controller and to the Data Controller's satisfaction, the Data Processor:
 - 6.10.1 returns the Personal Data processed to the Data Controller; or
 - 6.10.2 certifies the permanent destruction of the Personal Data processed,at which point the relationship of Data Controller and Data Processor shall come to an end and the provisions of this Paragraph 6 shall no longer apply.

7 INTELLECTUAL PROPERTY RIGHTS

- 7.1 For each Work Package, the Parties shall identify any third party licences for software or other materials which are required in the performance of the Services and the Parties shall agree and record in the Agreed Work Package who shall be responsible for procuring and paying for the licences to such items.
- 7.2 Unless otherwise specified in an Agreed Work Package, and with the exception of the Authority Background Intellectual Property Rights, all Intellectual Property Rights in deliverables created by HSCIC under this Agreement and the Agreed Work Packages ("Deliverable(s)") shall be owned by HSCIC.
- 7.3 HSCIC grants to the Authority an irrevocable, non-exclusive, royalty-free, perpetual licence to use all Intellectual Property Rights owned by HSCIC, which may subsist in the

Deliverables, to the extent necessary to enable the Authority to make use of the Deliverables and the Services in England.

- 7.4 Where either Party acquires, by operation of law, title to Intellectual Property Rights in a Deliverable that is inconsistent with the allocation of title set out in Paragraph 7.2, it shall assign in writing such Intellectual Property Rights in that Deliverable, with the exception of Background intellectual Property Rights, as it has acquired to the other Party promptly upon receipt of a written request of the other Party.
- 7.5 Unless otherwise specified in an Agreed Work Package, HSCIC warrants to the Authority that it owns, or is entitled to grant a licence to use on the terms set out in Paragraphs 7.3 and 7.8:
- 7.5.1 the HSCIC Background Intellectual Property Rights; and
- 7.5.2 any Intellectual Property Rights developed by HSCIC during and pursuant to an Agreed Work Package.
- 7.6 the Authority warrants to HSCIC that it owns, or is entitled to grant a licence on the terms set out in Paragraph 7.8 below to:
- 7.6.1 the Authority Background Intellectual Property Rights; and
- 7.6.2 any Intellectual Property Rights developed by the Authority during and pursuant to an Agreed Work Package.
- 7.7 Each Party warrants to the other that, in the performance of the Services under this Agreement and/or any Agreed Work Package, they have not infringed and shall not infringe the Intellectual Property Rights of any third party.
- 7.8 Where Background Intellectual Property Rights are vested in one Party and such Background Intellectual Property Rights are necessary in relation to performance of the Work Package, then the Party who owns those Background Intellectual Property Rights shall grant (or shall procure a grant) of a an irrevocable, non-exclusive, royalty-free, perpetual licence to the other Party to use such Background Intellectual Property Rights in connection with the performance of the obligations in relation to the Work Package. Further details of such Background Intellectual Property Rights shall be set out in the Agreed Work Package.

8 TERM AND TERMINATION

- 8.1 This Agreement shall commence on the Commencement Date and shall continue until terminated by either party in accordance with Paragraph 8.2.
- 8.2 Either Party shall be entitled to terminate this Agreement by giving the other Party not less than six (6) months prior written notice, or as otherwise agreed to in writing by both Parties.
- 8.3 Receipt of written notice of termination (given pursuant to Paragraph 8.2) shall immediately end either Party's ability to agree new work packages..
- 8.4 Each Agreed Work Package will be effective as of the date set forth in such Agreed Work Package and will remain in effect until its expiration or termination and the terms of this Agreement shall remain in full force and effect for the purposes of such Agreed Work Package until the expiration or termination of such Agreed Work Package(s) to enable the Parties to fulfil their obligations under the same.

9 TERMINATION OF A WORK PACKAGE

- 9.1 Unless otherwise specified in the relevant Agreed Work Package, either Party shall be entitled to terminate an Agreed Work Package by giving the other Party not less than three (3) months prior written notice.
- 9.2 Following the expiry or termination of an Agreed Work Package, each Party shall:
- 9.2.1 make any assignment required by the other party pursuant to Paragraph 7;
 - 9.2.2 cease to use the other Party's Confidential Information and shall return or destroy such Confidential Information (as instructed by the Party who owns the Confidential Information); and
 - 9.2.3 make all outstanding payments due to the other Party, in accordance with the payment provisions in the Agreed Work Package (if any such provisions are specified in the Agreed Work Package), for all Services delivered in accordance with the Agreed Work package up to and including the date of termination.
- 9.3 Where either Party terminates an Agreed Work Package, it shall make any payments due to the non-terminating Party to cover any commitments, liabilities or expenditure (including any associated staffing costs) set out in the Agreed Work Package which represent an unavoidable direct loss to the non-terminating Party by reason of the termination of the Agreed Work Package, provided that the non-terminating Party takes all reasonable steps to mitigate such loss. The non-terminating Party shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the terminating Party, with supporting evidence, of any losses reasonably and actually incurred as a result of termination. Neither party shall be liable to the other for any loss of profit due to termination of an Agreed Work Package or for any amount which was claimable under the non-terminating Party's insurance.

10 NOT USED

11 DISPUTE RESOLUTION PROCEDURE

- 11.1 If a dispute arises between the Parties during the Term of the Agreement or the term of an Agreed Work Package in relation to any matter either Party shall be entitled to initiate the Dispute Resolution Procedure by serving a Notice of Dispute on the other Party.
- 11.2 Upon the initiation of the Dispute Resolution Procedure, in the first instance, the Parties will use reasonable endeavours to resolve the dispute within 14 Working Days of service of the Notice of Dispute with the local operational management of each Party involved in the Work Package.
- 11.3 Where the dispute cannot be resolved by local operational management of each Party involved in the Work Package within 14 Working Days of service of the Notice of Dispute, either Party may refer the matter for senior management determination. Any dispute referred for senior management determination shall be considered by a meeting of an equal number of members of each Party's Senior Management Team, who shall meet and seek in good faith to resolve the dispute reasonably.
- 11.4 If any dispute is not resolved within 30 Working Days of the referral of the dispute to the Senior Management Team, then either Party may escalate it for determination to the Secretary of State as set out in section 9 of the NHSA06 (as amended by the HSCA12).

11.5 During any dispute, including a dispute as to the validity of this Agreement, it is agreed that both Parties shall continue their performance of the provisions of the Work Packages as set out in the Agreed Work Packages.

12 CHARGES AND PAYMENT

12.1 The Charges:

12.1.1 shall be payable from the commencement date specified in the individual Work Package;

12.1.2 shall remain fixed during the Term (unless amended by CCN); and

12.1.3 are the entire price payable by the Authority to the HSCIC in respect of the Project Services and include, without limitation, any royalties, licence fees, supplies and all consumables used by the HSCIC, travel costs, accommodation expenses and the cost of HSCIC Staff.

12.2 For time and materials charges, unless specified otherwise under an individual Agreed Work Package, the payments shall be made monthly in arrears, and HSCIC shall invoice the Authority, within 14 days of the end of each calendar month, the Charges in respect of the Project Services provided in compliance with these terms in the preceding calendar month.

12.3 For fixed price charges payable on the completion of certain Milestones, HSCIC shall invoice the Authority for the Project Services successfully completed at any time following completion of the relevant Milestone in compliance with the terms of this Agreement and respective Work Package.

12.4 For fixed price charges payable on final delivery, HSCIC shall invoice the Authority for the Project Services at any time following completion of the provision of the Project Services in compliance with the terms of this Agreement and respective Work Package.

12.5 HSCIC shall ensure that each invoice contains the following information:

12.5.1 the date of the invoice;

12.5.2 a unique invoice number;

12.5.3 the period for which the invoice relates;

12.5.4 details of the correct Agreed Work Package reference number;

12.5.5 any payments due in respect of the achievement of Milestones;

12.5.6 details of any Delay Payments (as agreed and set out in section 7 of the relevant Agreed Work Package) or similar deductions that shall apply to the Charges detailed in the invoice;

12.5.7 a contact name and telephone number of a responsible person in the HSCIC's finance department in the event of any administrative queries; and

12.5.8 the banking details for payment to HSCIC via electronic transfer of funds.

12.6 Each invoice shall contain such information and be addressed to such individual as the Authority may inform HSCIC from time to time.

- 12.7 The Charges are exclusive of VAT, which, if properly chargeable, the Authority shall pay at the prevailing rate subject to receipt from HSCIC of a valid and accurate VAT invoice. Such VAT invoices shall show the VAT calculations as a separate line item.
- 12.8 The Authority shall pay each validly invoiced and undisputed amounts in accordance with the provisions of this Agreement and the relevant Agreed Work Package within thirty days of receipt of such invoice at the latest. However, the Authority shall use its reasonable endeavours to pay such validly invoiced and undisputed amounts sooner in accordance with any applicable government prompt payment targets.
- 12.9 HSCIC will make available any Delay Payments (as agreed and set out in section 7 of the relevant Agreed Work Package) that may become due in accordance with the provisions of section 7 of the individual Work Package.

13 FREEDOM OF INFORMATION

- 13.1 Where a Party receives a Request for Information associated with this Agreement or any Work Package(s) (the "**Receiving Party**"), it shall as soon as reasonably possible, inform the other Party (the "**Non-Receiving Party**").
- 13.2 The Non-Receiving Party acknowledges that the Receiving Party is subject to the requirements of the FOIA. The Non-Receiving Party must assist and co-operate with the Receiving Party at no cost to enable it to comply with its disclosure obligations under the FOIA. The Non-Receiving Party agrees:
- 13.2.1 that this Agreement and any other recorded information held by the Non-Receiving Party on the Receiving Party's behalf for the purposes of this Agreement are subject to the obligations and commitments of the Receiving Party under FOIA;
- 13.2.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under FOIA is a decision solely for the Receiving Party (if this is to whom the request is addressed);
- 13.2.3 that where the Non-Receiving Party receives a request for information under FOIA, it will liaise with the Receiving Party as to the contents of any response before a response to a request is issued and will promptly (and in any event within 10 Working Days of receipt of request) provide a copy of the request and any draft response to the Receiving Party;
- 13.2.4 that the Receiving Party, 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 Information Regulations 2004, may disclose information concerning the Non-Receiving Party and this Agreement either without consulting with the Non-Receiving Party, or following consultation with the Non-Receiving Party and having taken its views into account; and
- 13.2.5 to assist the Receiving Party in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA) 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 Receiving Party within 5 Working Days of that request and without charge.

14 CONFIDENTIALITY

- 14.1 Except to the extent set out in this Paragraph or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall treat the other Party's Confidential Information as confidential and safeguard it accordingly and shall not disclose the other Party's Confidential Information to any other person without the Confidential Information owner's prior written consent.
- 14.2 Paragraph 14.1 shall not apply to the extent that:
- 14.2.1 such disclosure is a requirement of law placed upon the Party making the disclosure, including any requirements for disclosure under FOIA (as amended), Codes of Practice on Access to Government Information, on Discharge of Public Authorities' Functions or on the Management of Records or the Environmental Information Regulations 2004 (as amended);
 - 14.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 14.2.3 such information was obtained from a third Party without obligation of confidentiality;
 - 14.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
 - 14.2.5 it is independently developed without access to the other Party's Confidential Information.
- 14.3 The Parties may disclose the Confidential Information to contractors, consultants, advisers and the Staff who are directly involved in the provision of Services under the Agreed Work Package and who need to know the information, and the Party disclosing the Confidential Information shall ensure that such third parties are aware of and shall comply with these obligations as to confidentiality.
- 14.4 Subject to the rights set out in Paragraph 7.3, the Parties shall not (and shall procure that any contractors, consultants, advisers and the Staff and the who have access to Confidential Information pursuant to Paragraph 14.3 shall not) use any of the Confidential Information received for any purpose other than for the purposes of the Agreed Work Package and/or the Objectives.
- 14.5 HSCIC shall ensure that the HSCIC Staff (excluding the Authority and its Staff) are aware of and shall comply with the obligations in this Paragraph 14.5 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 request, destroyed securely or returned to the Authority when it is no longer required. HSCIC shall not, and shall ensure that the HSCIC Staff (excluding the Authority and its Staff) do not, use any of the Authority's Confidential Information received otherwise than for the purposes of performing the HSCIC's obligations in this Agreement and in an Agreed Work Package.
- 14.6 The Authority shall ensure that the Authority Staff are aware of and shall comply with the obligations in this Paragraph 14.6 as to confidentiality and that all information, including Confidential Information, is held securely, protected against unauthorised use or loss and, at HSCIC's written request, destroyed securely or returned to HSCIC when it is no longer required. Authority shall not, and shall ensure that the Authority Staff do not, use any of HSCIC's Confidential Information received otherwise than for the purposes of performing the Authority's obligations in this Agreement and in an Agreed Work Package.

- 14.7 The Parties will not make any announcement or other disclosure concerning the contents of this Agreement except as required by law or any other regulatory authority, without mutual agreement between the Parties. Where such an announcement or disclosure is required, the Parties shall work together to ensure that the publicity statements are coordinated.

15 CHANGE CONTROL PROCEDURE

- 15.1 If either Party wishes to amend any part of this Agreement and / or any Agreed Work Package, it shall contact the other Party and shall send to them a completed Change Control Note ("**CCN**") setting out in writing its proposals for changes to the relevant part of the Agreement or Schedule, along with an explanation of why such changes are mutually desirable and in the interests of the Work Package and of the overall Objectives.
- 15.2 Each CCN shall be in the form set out at schedule 3 (*Change Control Note*).
- 15.3 Upon receipt of a CCN, the receiving Party shall evaluate the CCN, and as appropriate either:
- 15.3.1 request further information; or
- 15.3.2 approve the CCN; or
- 15.3.3 notify the other of the rejection of the CCN; and
- 15.3.4 if approved, arrange for two copies of the approved CCN to be signed for and on behalf of HSCIC and the Authority. The signing of the CCN shall signify acceptance of a change by HSCIC and the Authority.
- 15.4 Once signed by HSCIC and the Authority in accordance with Paragraph 15.3 the change shall be immediately effective and HSCIC and the Authority shall perform their respective obligations on the basis of the agreed amendment.
- 15.5 For each CCN agreed, HSCIC shall allocate a unique number which will be a sub-set of the allocated Work Package number, and update the list in the Asset Register and Register of Commissions to include reference to the CCN.

16 STAFF TRANSFERS

The Parties agree that where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 2 (*Employment Matters*) shall apply dependant upon the applicable scenario.

17 PRE-EXISTING MEMORANDUMS OF UNDERSTANDING

- 17.1 If a work package is operating under the terms of an existing memorandum of understanding ("**Pre-existing MOU**") then that work package will continue to be governed exclusively by the terms of such Pre-existing MOU and not this Agreement, unless or until the parties agree in writing to introduce such work package as an Agreed Work Package through this Agreement, at which time the Pre-existing MOU shall cease to exist and the terms of this Agreement shall apply to the Agreed Work Package.
- 17.2 For reference purposes only, all Pre-Existing MOUs are attached to this Agreement at Schedule 5 (Pre-existing Memorandums of Understanding) and for the avoidance of doubt are

not otherwise governed by or incorporated into this Agreement, and shall be included in the Register of Commissions more particularly described in Schedule 4.

18 GOVERNING LAW AND JURISDICTION

The Parties recognise that the Agreement is not a legally binding contract but nevertheless will honour, observe and perform as if it was. The Agreement shall be subject to English law and to the jurisdiction of the courts of England and Wales.

Signed on behalf of Health and Social Care Information Centre

NAME OF AUTHORISED SIGNATORY

INSERT JOB TITLE

Date:

Signed on behalf of THE Secretary of State for Health



NAME OF AUTHORISED SIGNATORY

Will Cavendish

INSERT JOB TITLE
Technology

Director General Innovation, Growth &

Date: 31/03/15

SCHEDULE 1: WORK PACKAGES

The Project

SCHEDULE 2: EMPLOYMENT MATTERS

Staff Transfer

The assumption of this Schedule 2 (Staff Transfer (TUPE)) is that HSCIC is providing the Project and/or Services under an Agreed Work Package. Therefore, Schedule 2 would need to be adapted accordingly if the Authority is to provide the Project and/or Services under an Agreed Work Package. Set out below are the scenarios in which staff may transfer in to HSCIC and out from the Authority and / or a third party supplier.

Guidance: Four different scenarios could apply regarding staff transfer at the start of service delivery:

- 1. No Staff may transfer to HSCIC;*
- 2. Staff may transfer from the Authority to HSCIC;*
- 3. Staff may transfer from a third party supplier providing the same or similar services immediately before start of service delivery under this Agreement; or*
- 4. Staff could transfer both from the Authority and from a third party supplier.*

This Schedule 2 contains wording depending on which circumstances apply and the notes below explain which wording to use for which scenarios:

- 1. If no staff transfer to HSCIC under TUPE:***
 - 1.1 retain the wording at Part 1; and*
 - 1.2 replace any paragraphs under parts 2, 3, 4 and 5 with "Not used".*
- 2. If staff transfer from the Authority under TUPE:***
 - 2.1 retain the wording at Parts 2 and 4;*
 - 2.2 replace the paragraphs under parts 1 and 3 "Not used" under each part; and*
 - 2.3 prepare part 5 as appropriate to the Project and/or Services and associated commercial considerations.*
- 3. If staff transfer from a current provider under TUPE (i.e. this is a second or third generation TUPE transfer):***
 - 3.1 retain the wording at parts 3 and 4;*
 - 3.2 replace the paragraphs under parts 1 and 2 with "Not used" under each part; and*
 - 3.3 prepare part 5 as appropriate to the Project and/or Services associated commercial considerations.*

4. ***If staff transfer both from the Authority under TUPE and from a current provider under TUPE:***

- 4.1 *retain the wording at parts 2, 3 and 4;*
- 4.2 *replace the paragraphs under part 1 with "Not used"; and*
- 4.3 *prepare part 5 as appropriate to the Project and/or Services associated commercial considerations.*

Interpretation

For the purposes of this Schedule 2 (Staff Transfer (TUPE)), the following definitions, as well as those definitions set out in the Agreement, shall apply unless the context requires otherwise:

"Actual Service Commencement Date" means the date HSCIC actually commences delivery of all of the Services;

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

"Cabinet Office Statement" means the Cabinet Office Statement of Practice – Staff Transfers in the Public Sector 2000 (as revised 2007) as may be amended or replaced;

"Direction Employer" means an employer which may participate in the NHSPS pursuant to a direction made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967;

"Eligible Employees" means those of the Transferring Employees who were:

- (a) active members of the NHSPS on the Transfer Date;
- (b) in a waiting period;
- (c) opted-out of membership but were entitled to re-join the NHSPS; or
- (d) entitled to join the NHSPS but for absence on account of ill-health;

and any employees who are transferred to HSCIC from a third party supplier in connection with the Project or Services whom the Parties agree should be eligible for membership of the NHSPS pursuant to New Fair Deal;

"Employment Liabilities" means all claims, demands, actions, proceedings, damages, compensation, tribunal awards, fines, costs (including but not limited to reasonable legal costs), expenses and all other liabilities whatsoever;

"Measures" means any measures proposed by HSCIC or any subcontractor within the meaning of regulation 13(2)(d) of TUPE;

"New Fair Deal" mean the guidance, "Fair Deal for Staff Pensions: staff transfers from Central Government", issued by HM Treasury in October 2013;

"NHSPS" means the National Health Service Pension Scheme as constituted under and governed by the National Health Service Pension Scheme Regulations 1995 and 2008 (as amended);

Relevant Employees: those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Authority or a Replacement Service Provider by virtue of the application of TUPE.

Replacement Services: any services that are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Authority internally or by any Replacement Service Provider;

Replacement Service Provider: any third party supplier of Replacement Services appointed by the Authority from time to time;

Service Provider's Final Staff List: the list of all the Service Provider's and Sub-Contractor's personnel wholly or mainly assigned to the provision of the Services or any part of the Services at the Service Transfer Date;

Service Provider's Provisional Staff List: the list prepared and updated by the Service Provider of all the Service Provider's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list;

Service Transfer Date: the date on which the Services (or any part of the Services), transfer from the Service Provider or Sub-Contractor to the Authority or any Replacement Service Provider;

"Staff" means all persons employed or engaged by HSCIC to perform its obligations under this Agreement including any subcontractors and person employed or engaged by such subcontractors;

Staffing Information: in relation to all persons detailed on the Service Provider's Provisional Staff List, in an anonymised format, such information as the Authority may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services;

Sub-Contractor: the contractors or service providers engaged by the Service Provider to provide goods, services or works to, for or on behalf of the Service Provider for the purposes of providing the Services to the Authority;

"Third Party" means any supplier of the Services or services of the same or similar nature to the Services (either in whole or in part) immediately before the Transfer Date;

"Third Party Employees" means all those employees, if any, assigned by a Third Party to the provision of a service the same as or similar to the Services immediately before the Transfer Date;

"Transfer Date" means the Actual Services Commencement Date;

"Transferring Employees" means all those employees, if any, assigned by the Authority to the provision of a service the same as or similar to the Services immediately before the Transfer Date and listed in schedule 2 (Staff Transfer (TUPE));

"TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006/246) (as amended) and/or any other regulations enacted for the purpose of implementing the Acquired Rights Directive (77/187/EEC, as amended by Directive 98/50 EC and consolidated in 2001/23/EC) into English law;

Part 1:

1. The Parties agree that at the commencement of the provision of Services by HSCIC, TUPE and the Cabinet Office Statement shall not apply so as to transfer the employment of any employees of the Authority or a Third Party to HSCIC.
2. If any person who is an employee of the Authority or a Third Party claims, or it is determined, that their contract of employment has been transferred from the Authority or Third Party to HSCIC or a subcontractor pursuant to TUPE, or claims that their employment would have so transferred had they not resigned, then:
 - 2.1 HSCIC will, within seven days of becoming aware of that fact, give notice in writing to the Authority;
 - 2.2 the Authority or Third Party may offer employment to such person within twenty-eight days of the notification by HSCIC;
 - 2.3 if such offer of employment is accepted, HSCIC or a subcontractor shall immediately release the person from their employment;
 - 2.4 if after that period specified in paragraph 2.2 of this part of this schedule has elapsed, no offer of employment has been made by the Authority or Third Party, or such offer has been made by the Authority or Third Party, but not accepted within a reasonable time, HSCIC or its subcontractor shall employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person.

Part 2:

1. The Parties agree that the commencement of the provision of Services under this Agreement shall give rise to a relevant transfer as defined in TUPE. Accordingly the contracts of employment of the Transferring Employees will transfer on the Transfer Date to HSCIC or any subcontractor pursuant to TUPE and the Cabinet Office Statement.
2. HSCIC agrees, or shall ensure by written agreement that any subcontractor shall agree, to accept the Transferring Employees into its employment on the Transfer Date upon their then current terms and conditions of employment and with full continuity of employment.
3. HSCIC's agreement in paragraph 2 of this part of this schedule (and any subsequent agreement by any subcontractor), is subject to the right of any employee identified as a Transferring Employee to object to being transferred to HSCIC or any subcontractor.
4. HSCIC will, or shall ensure by written agreement that any subcontractor will:

- 4.1 not later than fourteen days after issue of a written notice in writing to it from the Authority, provide the Authority with the information required under regulation 13(4) of TUPE. HSCIC shall be liable to the Authority for, and shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any breach of this obligation;
 - 4.2 provide such assistance and information to the Authority as it may reasonably request to facilitate a smooth and efficient handover of the Transferring Employees to HSCIC or any subcontractor (including attendance at any meetings with Transferring Employees, trade unions and employee representatives); and
 - 4.3 comply with its obligations to inform and, if necessary, consult with the appropriate representatives of any employees who are affected by the relevant transfer in accordance with regulation 13 of TUPE.
5. The Authority will on or before the Transfer Date:
- 5.1 pay all wages, salaries and other benefits of the Transferring Employees (including any contributions to retirement benefit schemes) and discharge all other financial obligations (including reimbursement of any expenses) owing to the Transferring Employees in respect of the period before the Transfer Date;
 - 5.2 procure that any loans or advances made to the Transferring Employees before the Transfer Date are repaid to it;
 - 5.3 account to the proper authority for all PAYE tax deductions and national insurance contributions payable in respect of the Transferring Employees in the period before the Transfer Date; and
 - 5.4 pay HSCIC the amount which would be payable to each of the Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Transfer Date.
6. the Authority will:
- 6.1 provide such assistance and information to HSCIC as it may reasonably request to facilitate a smooth and efficient handover of the Transferring Employees to HSCIC or any subcontractor, including the provision of all employee liability information identified in regulation 11 of TUPE in relation to the Transferring Employees; and
 - 6.2 comply with its obligations to inform and, if necessary, consult with the appropriate representatives of any employees who are affected by the relevant transfer in accordance with regulation 13 of TUPE.
7. The Authority shall indemnify and keep indemnified HSCIC in relation to any Employment Liabilities arising out of or in connection with any claim which arises as a result of any act or omission of the Authority in relation to the Transferring Employees prior to the Transfer Date save for:

- 7.1 where such act or omission results from complying with the instructions of HSCIC or subcontractor, including HSCIC or subcontractor failing to comply with its obligations under regulation 13 of TUPE, but only to the extent that such claim is brought by:
- 7.1.1 any of the Transferring Employees (whether on their own behalf or in their capacity as employee representatives); or
- 7.1.2 any trade union, staff association or staff body recognised by the Authority in respect of any of the Transferring Employees or any employee representatives acting on behalf of any of the Transferring Employees.
- 7.2 Any proposal by HSCIC or sub-contractor made before the Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Employees to their material detriment on or after their transfer to the HSCIC or the sub-contractor (as the case may be) on the Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Transfer Date as a result of or for a reason connected to such proposed changes;
8. HSCIC shall be responsible for or shall procure that any relevant subcontractor shall be responsible from the Transfer Date for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees and other Staff.
9. HSCIC shall indemnify and will keep indemnified the Authority in relation to any Employment Liabilities arising out of or in connection with:
- 9.1 any act or omission of HSCIC or subcontractor on or after the Transfer Date (or any other event or occurrence after the Transfer Date) in respect of any Transferring Employee or Staff (including but not limited to any liability which arises because a Transferring Employee's employment with HSCIC or subcontractor is deemed to include their previous continuous employment with the Authority);
- 9.2 any act or omission of HSCIC or subcontractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the Authority's failure to comply with regulations 13 and 14 of TUPE;
- 9.3 any allegation or claim by a Transferring Employee or any other employee of the Authority that in consequence of the transfer of Services to HSCIC or subcontractor there has or will be a substantial change in such Transferring Employee's working conditions to their detriment within regulation 4(9) of TUPE;
- 9.4 any allegation or claim that the termination of employment of any of the Transferring Employees or any other employee of the Authority whether on

or before the Transfer Date which arises as a result of any act or omission by HSCIC or subcontractor save for where such act or omission results from complying with the instructions of the Authority; and

- 9.5 any statement communicated to or action undertaken by the HSCIC or sub-contractor to, or in respect of, any Transferring Employee before the Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority in writing.
10. If any person who is not a Transferring Employee claims or it is determined that their contract of employment has been transferred from the Authority or from any third party to HSCIC or any subcontractor pursuant to TUPE, or claims that their employment would have so transferred had they not resigned:
- 10.1 HSCIC will, within seven days of becoming aware of that fact, give notice in writing to the Authority;
- 10.2 the Authority may offer employment to such person within twenty eight days of the notification by HSCIC;
- 10.3 if such offer of employment is accepted, HSCIC or subcontractor shall immediately release the person from their employment; and
- 10.4 if after the period specified in paragraph 10.2 of this part of this schedule has elapsed, no offer of employment has been made by the Authority or such offer has been made by HSCIC but not accepted within a reasonable time, HSCIC or subcontractor shall employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person from the Transfer Date.

Part 3:

1. The Parties agree that the commencement of the provision of Services under this Agreement shall give rise to a relevant transfer as defined in TUPE. Accordingly the contracts of employment of the Third Party Employees will transfer on the Transfer Date to HSCIC or a subcontractor pursuant to TUPE and the Cabinet Office Statement.
2. HSCIC agrees, or shall ensure by written agreement that any subcontractor shall agree, to accept the Third Party Employees into its employment on the Transfer Date upon their then current terms and conditions of employment and with full continuity of employment.
3. HSCIC's agreement in paragraph 2 of this part of this schedule (and any subsequent agreement by any subcontractor), is subject to the right of any Third Party Employee to object to being transferred to HSCIC or any subcontractor.
4. HSCIC will, or shall ensure by written agreement that any subcontractor will:

- 4.1 not later than fourteen (14) days after issue of a written notice in writing to it from the Authority , provide the Third Party with the information required under regulation 13(4) of TUPE. HSCIC shall be liable to the Authority for, and shall indemnify and keep the Authority and any Third Party indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any breach of this obligation;
 - 4.2 provide such assistance and information to the Third Party as it may reasonably request to facilitate a smooth and efficient handover of the Third Party Employees to HSCIC or any subcontractor (including attendance at any meetings with Third Party Employees, trade unions and employee representatives); and
 - 4.3 comply with its obligations to inform and, if necessary, consult with the appropriate representatives of any employees who are affected by the relevant transfer in accordance with regulation 13 of TUPE.
5. HSCIC shall be responsible for, or shall procure that any relevant subcontractor shall be responsible from the Transfer Date, for all remuneration, benefits, entitlements and outgoing in respect of the Third Party Employees and other Staff.
 6. HSCIC shall indemnify and will keep indemnified the Authority and any Third Party in relation to any Employment Liabilities arising out of or in connection with:
 - 6.1 any act or omission of HSCIC or a subcontractor on or after the Transfer Date (or any other event or occurrence after the Transfer Date) in respect of any Third Party Employee or Staff (including but not limited to any liability which arises because a Third Party Employee's employment with HSCIC or a subcontractor is deemed to include their previous continuous employment with the Third Party);
 - 6.2 any act or omission of HSCIC or a subcontractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the Third Party's failure to comply with regulation 13 of TUPE;
 - 6.3 any claim or allegation by a Third Party Employee or any other employee of the Authority or Third Party that in consequence of the transfer of Services to HSCIC or a subcontractor there has or will be a substantial change in their working conditions to their detriment within regulation 4(9) of TUPE; and
 - 6.4 any claim or allegation that the termination of employment of any of the Third Party Employees or any other employee of the Third Party whether on or before the Transfer Date or not which arise as a result of any act or omission by HSCIC or a subcontractor save for where such act or omission results from complying with the instructions of the Authority.

7. The Authority shall use reasonable endeavours to transfer to HSCIC or any subcontractor the benefit of any indemnity it has from the Third Party in respect of the transfer of any Third Party Employees .

Part 4:

1. The Parties shall use all reasonable endeavours to comply with New Fair Deal.
2. HSCIC shall apply to become a Direction Employer in NHSPS so that Eligible Employees may become or continue to be members of the NHSPS in accordance with New Fair Deal and the Authority shall provide promptly all information which NHSPS may reasonably require to facilitate HSCIC's participation in the NHSPS in respect of Eligible Employees.
3. HSCIC shall confirm participation in the NHSPS with effect from the Transfer Date (as applicable) to the Authority as soon as it is able to do so and in any event by no later than thirty (30) Business Days before the Transfer Date (or such other period as is reasonable in the context of matters, responsibilities and obligations to be addressed by the Parties prior to the Transfer Date).

Part 5:

1. the Authority will indemnify HSCIC for any shortfall in funding in respect of the Eligible Employees who are employees of a third party supplier in connection with the Project or Services and who transfer their past service rights in their current scheme to the NHSPS.

Part 6 – Employment exit provisions

2. This Agreement envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part (**Subsequent Transfer**). If a Subsequent Transfer is a Relevant Transfer then the Authority or Replacement Service Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.
3. HSCIC shall and shall procure that any Sub-Contractor shall on or after receiving notice of termination of this Agreement, on request from the Authority and at such times as required by TUPE, provide in respect of any person wholly or mainly engaged or employed by the HSCIC or any Sub-Contractor in the provision of the Services, the Service Provider's Provisional Staff List and the Staffing Information together with any additional information reasonable required by the Authority, including information as to the application of TUPE to the employees. HSCIC shall notify the Authority of any material changes to this information as and when they occur.
4. At least 28 days prior to the Service Transfer Date, the HSCIC shall and shall procure that any Sub-Contractor shall prepare and provide to the Authority and/or, at the direction of the Authority, to the Replacement Service Provider, the Service Provider's Final Staff List, which shall be complete and accurate in all material respects. The Service Provider's Final Staff List shall identify which of HSCIC and Sub-Contractor's personnel named are Relevant Employees.
5. The Authority shall subject to the provisions of the Data Protection Act 1998 be permitted to use and disclose the Service Provider's Provisional Staff List, the Service Provider's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Service Provider for any services that are substantially the same type of services as (or any part of) the Services conditional on such third party providing appropriate confidentiality undertakings.
6. HSCIC warrants to the Authority that the Service Provider's Provisional Staff List, the Service Provider's Final Staff List and the Staffing Information (**TUPE Information**) will be true and accurate in all material respects and that no persons are wholly or mainly employed or engaged in the provision of the Services other than those included on the Service Provider's Final Staff List.
7. HSCIC shall and shall procure that any Sub-Contractor shall use its/their reasonable endeavours to ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.
8. In the six months prior to termination of this Agreement, HSCIC shall not and shall procure that any Sub-Contractor shall not materially increase or decrease the total number of staff listed on the Service Provider's Provisional Staff List, their remuneration, or make any other material change in the terms and conditions of those

employees without the Authority's prior written consent (which shall not be unreasonably withheld or delayed).

9. HSCIC shall indemnify and keep indemnified in full the Authority and at the Authority's request each and every Replacement Service Provider against all Employment Liabilities relating to:

(a) any person who is or has been employed or engaged by HSCIC or any Sub-Contractor in connection with the provision of any of the Services; or

(b) any trade union or staff association or employee representative; or

(c) any act or omission of HSCIC and /or any Sub-Contractor

arising from or connected with any failure by HSCIC and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date save to the extent that such claim arises from any act or omission of the Authority or any Replacement Service Provider.

10. The Authority shall indemnify and will keep indemnified HSCIC and any of its subcontractors in relation to any Employment Liabilities arising out of or in connection with:

10.1 any act or omission of the Authority or any Replacement Service Provider or subcontractor on or after the Service Transfer Date (or any other event or occurrence after the Service Transfer Date) in respect of any Relevant Employee (including but not limited to any liability which arises because a Relevant Employee's employment with the Authority or any Replacement Service Provider is deemed to include their previous continuous employment with HSCIC or a subcontractor);

10.2 any act or omission of the Authority or any Replacement Service Provider in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from HSCIC's failure to comply with regulations 13 and 14 of Relevant Employee or any other employee of HSCIC or any of its subcontractors that in consequence of the transfer of Services to the Authority or any Replacement Service Provider there has or will be a substantial change in such Relevant Employee's or other employee's working conditions to their detriment within regulation 4(9) of TUPE.

11. The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.

12. The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply from *paragraph 3.2* to *paragraph 3.11*, to the extent necessary to ensure that any Replacement Service Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Service Provider by the Service Provider or the Authority in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
13. Despite *paragraph 12*, it is expressly agreed that the parties may by agreement rescind or vary any terms of this Agreement without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

SCHEDULE 3: CHANGE CONTROL PROCEDURE

1. Change Procedure

- 1.1. A change to any agreed Work Package may be initiated by either party.
- 1.2. To request a change to an agreed Work Package the Change Control Template will be used
- 1.3. Only Authorised Change Control Notes, following agreed Governance, can amend a previously Authorised Work Package
- 1.4. Changes to agreed Work Packages will only be implemented once the Change Control Note is fully Authorised

2. Draft Template



draft CCN Template
v2.docx

SCHEDULE 4: REGISTER OF COMMISSIONS

1. Register of commissions

- 1.1. HSCIC will prepare and maintain a summary of all Agreed Work Packages commissioned under this Agreement and all work packages commissioned under Pre-existing MOUs (such as Pre-existing MOU work packages for the avoidance of doubt not forming part of this Agreement).
- 1.2. The Register of work will show summary information for each Work Package and Pre-existing MOU work packages and may be grouped by type, for example :
 - 1.2.1. Project;
 - 1.2.2. Managed Services;
 - 1.2.3. Individuals.
- 1.3. All new Work Packages will be included on the Register of Commissions once agreed Governance approval has been obtained.
- 1.4. The Register of Commissions will be available on a regular basis, as a minimum quarterly, and may be shared with the Parties and nominated supplier(s) as required.

2. Register of Commissions Content

- 2.1. The summary content may change, subject to agreement by both Parties, initially it will include:
 - 2.1.1. Title and short content description;
 - 2.1.2. Commencement and termination dates;
 - 2.1.3. Agreed charges and funding for each Work Package and work package under a Pre-existing MOU; and
 - 2.1.4. The aggregate of all charges payable pursuant to all then extant Work Packages and work packages under Pre-existing MOUs.

3. Review

- 3.1. The individual Work Packages will be reviewed by the Project team and sponsor on a regular basis, as agreed on an individual Work Package basis.
- 3.2. The Register of Commissions will be reviewed by Senior Managers from both Parties regularly, this to be no less than on a quarterly basis.
- 3.3. The Register of Commissions will also be reviewed by Senior Managers and/or Directors from both Parties at least every six months as part of a strategic forward planning meeting.

3.4. content of review meetings may include, but not limited to:

3.4.1. overall operational performance;

3.4.2. Work Package specifics;

3.4.3. financial position; invoicing, Payment, budget and forecasting.

3.5. The content of the Register of Commissions or individual Work Packages will not be shared with other bodies or individuals without the express agreement between the Parties, which would not be unreasonably withheld.

3.6. The reviews will not amend or replace the Work Package Governance process.

SCHEDULE 5: PRE-EXISTING MEMORANDUMS OF UNDERSTANDING