

OFFICIAL - SENSITIVE - COMMERCIAL

Digital Care Services Catalogue Agreement

Catalogue Terms

Date:

2021

**HEALTH AND SOCIAL CARE INFORMATION CENTRE (KNOWN
AS NHS DIGITAL)**

and

Insert name of Supplier

Digital Care Services Catalogue Agreement

Catalogue Terms

Catalogue Terms

Contents

No.	Heading	Page
	SECTION A - PRELIMINARIES.....	5
1.	DEFINITIONS AND INTERPRETATION	5
2.	CATALOGUE AGREEMENT CONTEXT.....	7
	SECTION B – CATALOGUE ARRANGEMENTS.....	9
3.	TERM OF CATALOGUE AGREEMENT.....	9
4.	DUE DILIGENCE	9
5.	SELLING CATALOGUE SOLUTIONS ON THE CATALOGUE.....	10
6.	SERVICES	10
7.	SUPPLIER OBLIGATIONS.....	10
8.	CATALOGUE AUTHORITY CAUSE.....	13
9.	OBLIGATION TO NOTIFY.....	13
10.	GOVERNANCE.....	14
11.	REPORTS AND RECORDS AND RIGHTS OF AUDIT	14
12.	SOFTWARE.....	14
13.	COMPLIANCE WITH THE ACCEPTABLE USE POLICY	14
14.	CATALOGUE AUTHORITY RESPONSIBILITIES.....	14
	SECTION C – CHANGE	15
15.	GENERAL	15
16.	CATALOGUE AGREEMENT COMMON CONTRACT CHANGES	15
17.	CHANGES IN LAW	15
18.	CHANGES TO CATALOGUE SOLUTION LISTING	16
19.	CHANGES TO CATALOGUE SOLUTION LIST PRICE.....	17
20.	CHANGES TO THE CATALOGUE ANCILLARY DOCUMENTS	17
21.	CHANGES TO THE STANDARDS AND/OR CAPABILITIES	18
22.	CHANGES REQUESTED BY THE SUPPLIER TO A CATALOGUE SOLUTION.....	18
23.	URGENT CHANGE.....	18
24.	DISPUTES TO CHANGES	19
	SECTION D – STANDARDS	19
25.	STANDARDS COMPLIANCE	19
	SECTION E - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY.....	19
26.	INTELLECTUAL PROPERTY RIGHTS	19
27.	TRANSFER AND LICENCES GRANTED BY THE SUPPLIER	21
28.	LICENCES GRANTED BY THE CATALOGUE AUTHORITY	22

Catalogue Terms

29.	SPECIALLY WRITTEN SOFTWARE.....	22
30.	IPRS INDEMNITY	22
31.	ESCROW	ERROR! BOOKMARK NOT DEFINED.
	SECTION F – CONFIDENTIALITY AND PERSONAL DATA.....	24
32.	CONFIDENTIALITY	24
33.	TRANSPARENCY.....	26
34.	FREEDOM OF INFORMATION.....	27
35.	PROTECTION OF PERSONAL DATA	28
36.	PUBLICITY AND BRANDING	28
	SECTION G – SUPPLIER AND AUTHORITY PROTECTIONS.....	28
37.	FORCE MAJEURE	28
38.	KEY ROLES	30
39.	FLOW DOWN OF PROVISIONS.....	30
	SECTION H – INDEMNITIES, LIABILITY AND INSURANCE.....	31
40.	CONDUCT OF INDEMNITY CLAIMS.....	31
41.	LIMITATIONS ON LIABILITY.....	31
	SECTION I – SUSPENSION, AND TERMINATION RECTIFICATION PLAN PROCESS.....	32
42.	CATALOGUE REMEDIATION PROCESS	32
43.	ESCALATED TIMEFRAMES	36
44.	IMMEDIATE TERMINATION BY THE CATALOGUE AUTHORITY OF A CATALOGUE SOLUTION OR OF THE CATALOGUE AGREEMENT	37
45.	REMOVAL BY THE SUPPLIER OF A CATALOGUE SOLUTION FROM THE CATALOGUE.....	38
46.	TERMINATION BY THE SUPPLIER OF THE CATALOGUE AGREEMENT	38
47.	CONSEQUENCES OF SUSPENSION.....	38
48.	CONSEQUENCES OF REMOVAL OF A CATALOGUE SOLUTION AND/OR TERMINATION OF THE CATALOGUE AGREEMENT	39
49.	EXIT MANAGEMENT	39
	SECTION J – MISCELLANEOUS AND GOVERNING LAW.....	40
50.	MODERN SLAVERY.....	40
51.	CORPORATE SOCIAL RESPONSIBILITY	40
52.	ASSIGNMENT AND NOVATION.....	40
53.	WAIVER AND CUMULATIVE REMEDIES	41
54.	RELATIONSHIP OF THE PARTIES.....	41
55.	PREVENTION OF FRAUD AND BRIBERY.....	42
56.	SEVERANCE	43
57.	FURTHER ASSURANCES	43
58.	ENTIRE AGREEMENT	44

Catalogue Terms

59.	THIRD PARTY RIGHTS.....	44
60.	NOTICES	44
61.	DISPUTES	45
62.	INDEXATION	45
63.	GOVERNING LAW AND JURISDICTION	45
64.	COUNTERPARTS	46

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Digital Care Services Catalogue Agreement
Catalogue Terms

SCHEDULES

1. Definitions
2. Commercially Sensitive Information
3. List of Software
4. Governance
5. Common Contract Change Control Procedure
6. Dispute Resolution
7. Audit Rights
8. Reports and Record Provisions
9. Exit Management
10. Key Roles
11. Conduct of Claims

Catalogue Terms

THIS CATALOGUE AGREEMENT is made on 2021

BETWEEN:

- (1) Health and Social Care Information Centre (known as NHS Digital) of 1 Trevelyan Square, Boar Lane, Leeds LS1 6AE ("**Catalogue Authority**"); and
 - (2) **Name of Supplier** a company registered in England and Wales under company number [REDACTED] whose registered office is at [REDACTED] (the "**Supplier**"),
- each a "**Party**" and together the "**Parties**".

INTRODUCTION

- (A) The Parties have agreed to enter into this Catalogue Agreement on the terms and conditions set out below.
- (B) This Catalogue Agreement establishes the basis on which a Supplier is able use the Catalogue, including how the Supplier can be on-boarded onto the Catalogue, how the Supplier can sell its Catalogue Solutions to Call Off Ordering Parties (potential and actual) and the obligations the Supplier must comply with in order to continue to benefit from the use of the Catalogue.

IT IS AGREED as follows:

SECTION A - PRELIMINARIES

1. Definitions and Interpretation

- 1.1 In this Catalogue Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in schedule 1 (*Definitions*) or the relevant schedule in which that capitalised expression appears.
- 1.2 In this Catalogue Agreement, unless the context otherwise requires:
 - 1.2.1 the singular includes the plural and vice versa;
 - 1.2.2 a reference to a gender includes the other gender and the neuter;
 - 1.2.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government or NHS Body;
 - 1.2.4 any references to a named body or organisation shall include references to successors of that body or organisation and/or any equivalent bodies or organisations that perform the same or substantially similar functions;
 - 1.2.5 a reference to a Law includes a reference to that Law as modified, amended, extended, consolidated or re-enacted from time to time before or after the date of this Catalogue Agreement and any prior or subsequent legislation under it;

OFFICIAL - SENSITIVE - COMMERCIAL

Digital Care Services Catalogue Agreement

Catalogue Terms

- 1.2.6 the words "including", "other", "in particular", "for example" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
 - 1.2.7 references to "writing" include typing, printing, lithography, photography, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - 1.2.8 the headings are for ease of reference only and shall not affect the interpretation or construction of this Catalogue Agreement;
 - 1.2.9 references to clauses and schedules are references to the clauses and schedules of this Catalogue Agreement, and references in any schedule to paragraphs, parts and annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the schedule or the part of the schedule in which the references appear;
 - 1.2.10 references to this Catalogue Agreement are references to this Catalogue Agreement as amended from time to time; and
 - 1.2.11 any monetary sums set out in this Catalogue Agreement shall (unless expressly stated otherwise) be in pounds sterling.
- 1.3 Where a standard, policy or document is referred to in this Catalogue Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Catalogue Authority and the Parties shall update this Catalogue Agreement with a reference to the replacement hyperlink in accordance with the Common Contract Change Control Procedure.
- 1.4 If there is any conflict between the Catalogue Agreement, Standards, any Framework Agreement and the Call Off Agreement(s) executed pursuant to the applicable Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:
- 1.4.1 the Commercial Standard;
 - 1.4.2 the remaining Standards excluding the Commercial Standard;
 - 1.4.3 the Catalogue Agreement (other than the schedules);
 - 1.4.4 the schedules of the Catalogue Agreement;
 - 1.4.5 the terms of the applicable Framework Agreement;
 - 1.4.6 the schedules of the applicable Framework Agreement;
 - 1.4.7 the Call Off Terms; and

Digital Care Services Catalogue Agreement

Catalogue Terms

- 1.4.8 the schedules of the Call Off Agreement(s) executed pursuant to the applicable Framework Agreement.
- 1.5 The schedules (and their annexes and appendices) attached to this Catalogue Agreement and the Catalogue Ancillary Documents and Standards form part of this Catalogue Agreement.
- 1.6 To the extent that the provisions of this Catalogue Agreement, including the Commercial Standard, require a Supplier to execute terms of use or other agreements, the Supplier shall do so as part of complying with this Catalogue Agreement and shall not apply its own terms.

2. Catalogue Agreement Context

- 2.1 The Catalogue Agreement, the Standards Roadmap and the Catalogue Ancillary Documents collectively set out:
 - 2.1.1 the market level commercial obligations applicable to all sales of Catalogue Solutions via the Catalogue, as set out in the Commercial Standard;
 - 2.1.2 the Epics and Capabilities within the scope of the Catalogue and the Standards applicable such Epics and Capabilities (including the Epics, Capabilities and Standards within the scope of each Framework Agreement);
 - 2.1.3 the process through which Suppliers are able to register themselves and their Catalogue Solutions on the Catalogue, including the Capability assessment and Compliance Testing requirements applicable to each Standard and by proxy each Catalogue Solution that is subject to such Standards;
 - 2.1.4 the Standards Roadmap and the way in which its content obligates Suppliers to develop their Catalogue Solutions;
 - 2.1.5 the processes which manage change to the Catalogue Agreement, Standards, the Standards Roadmap, Catalogue Ancillary Documents and Catalogue Solutions, including Urgent Changes;
 - 2.1.6 the governance applicable to:
 - 2.1.6.1 monitoring and managing by the Catalogue Authority of the compliance of Catalogue Solutions with the Capabilities and Standards;
 - 2.1.6.2 collaborating on the development of the markets encompassed by the Catalogue, including the Standards Roadmap and future framework establishment;
 - 2.1.6.3 collaborating on the improvement of the functioning of the Catalogue and the management of the Catalogue Agreement; and
 - 2.1.6.4 collaborating on the development of data migration related standards;
 - 2.1.7 setting the conditions with which a Supplier or Catalogue Solution must comply with on exit, for example to ensure service continuity;

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Digital Care Services Catalogue Agreement

Catalogue Terms

- 2.1.8 the Catalogue Remedial Process applied to breaches of the Catalogue Agreement; and
- 2.1.9 a range of obligations that facilitate the operation of the above.
- 2.2 The scope of the procurement of each Framework Agreement shall, among other things, cover:
 - 2.2.1 the definition of the market settings, Capabilities and Potential Call Off Ordering Parties within its scope;
 - 2.2.2 the definition of any lots which will be used to segment the provision of services within its scope, and optionally to include a lot for the competing of opportunities for the development of items on the Standards Roadmap and/or other collaborative work-packages; and
 - 2.2.3 the definition of the award criteria applicable to awarding a Framework Agreement to a Supplier and Catalogue Solutions, including any Catalogue Solution List Price affordability caps,with the aim of securing a competitive market for the provision of the services within its scope.
- 2.3 In order to market a Catalogue Solution:
 - 2.3.1 the Supplier must have obtained Catalogue Authority approval for its Catalogue Solution Listing;
 - 2.3.2 that Catalogue Solution must hold a Compliant Status; and
 - 2.3.3 the Supplier must have populated all information required to have fully complete schedules to both the Catalogue Agreement and the relevant Framework Agreement(s).
- 2.4 In order to enter into a contract for the delivery of a Catalogue Solution (i.e. a Call Off Agreement), in addition to the conditions set out at clause 2.3 the Supplier must be unconditionally awarded a Framework Agreement (or have satisfied any conditions set) that covers the purchase of that Catalogue Solution.
- 2.5 The key features of each Framework Agreement are:
 - 2.5.1 the processes by which Potential Call Off Ordering Parties can procure services from the Framework Agreement, including the constraints on the applicable award criteria;
 - 2.5.2 the definition of the Call Off Agreements applicable to the Framework Agreement and the extent to which Potential Call Off Ordering Parties may vary such agreements;
 - 2.5.3 to define any commercial mechanisms applicable to incentivising Suppliers to ensure on-going compliance with the Standards and the implementation of items on the Standards Roadmap;
 - 2.5.4 to define the performance monitoring obligations and commercial mechanisms applicable to motivating Suppliers to meet the applicable Service Levels;

Digital Care Services Catalogue Agreement

Catalogue Terms

- 2.5.5 the charging and invoicing obligations;
 - 2.5.6 the processes which manage change to the Framework Agreement, Call Off Agreement and where applicable the enactment of Urgent Changes;
 - 2.5.7 how breaches of the Framework Agreement and Call Off Agreements are dealt with;
 - 2.5.8 setting the obligations applicable to the exit of a Supplier and/or Catalogue Solution from the Framework Agreement, including the requirement on the Supplier to provide an overall transition plan that is approved by the Framework Authority; and
 - 2.5.9 a range of obligations that facilitate the operation of the above.
- 2.6 The key features of each Call Off Agreement used to contract for the services available via the relevant Framework Agreements are:
- 2.6.1 the Call Off Terms, that will set out the provisions with which the Supplier must comply in its provision of the Catalogue Solution(s) (including any Additional Services) and/or Associated Services to the Call Off Ordering Party and Service Recipients; and
 - 2.6.2 the Call Off Order Form that will set out the particulars of the sale of the services to the Call Off Ordering Party, including the Catalogue Solution(s) (including any Additional Services) and (where applicable) Associated Services purchased for each Service Recipient, the agreed price of such services, the implementation requirements and delivery plans of such services and for Type 2 Catalogue Solutions, the Service Levels, and a description of the Personal Data that may be processed pursuant to the services.
- 2.7 The Catalogue Authority shall have the right to act as the agent of any Framework Authority or Call Off Ordering Party, at their request.
- 2.8 The Supplier acknowledges that:
- 2.8.1 there is no requirement for any Potential Call Off Ordering Party to procure any Catalogue Solutions from the Supplier; and
 - 2.8.2 the Supplier participates in and completes the Catalogue On-boarding Process at its own cost and risk.

SECTION B – CATALOGUE ARRANGEMENTS

3. Term of Catalogue Agreement

This Catalogue Agreement shall take effect on the Commencement Date and shall continue until it is terminated by operation of Law or in accordance with this Catalogue Agreement.

4. Due Diligence

By executing this Catalogue Agreement, the Supplier confirms it has read and understood the terms of this Catalogue Agreement.

Catalogue Terms

5. Selling Catalogue Solutions on the Catalogue

Catalogue On-boarding Process

- 5.1 The Supplier must comply with the Catalogue On-boarding Process for each Catalogue Solution in order for such Catalogue Solution to attain a Compliant Status. A Compliant Status must be achieved before such Catalogue Solution will, subject to such Catalogue Solution being in the scope of a Supplier's Framework Agreement, be available to be purchased by Potential Call Off Ordering Parties on the Catalogue.

Continuing Compliance

- 5.2 Once a Supplier has a Catalogue Solution(s) of a Compliant Status it must, with regard to maintaining its Compliant Status, comply with the Change Management Process and Roadmap Content for the Term.
- 5.3 If, for whatever reason and by whichever Party, a Catalogue Solution is removed from the Catalogue, the Supplier shall be required to comply with schedule 9 (*Exit Management*) in relation to how it must maintain its Compliant Status for the provision of any Catalogue Solutions still being provided under any existing Framework Agreements and/or Call Off Agreements.

Catalogue Assistance

- 5.4 In the event the Supplier has any issues in relation to its use and/or access to the Catalogue, it shall follow the steps as set out in the Catalogue Support Arrangements Paper.

6. Services

- 6.1 The Supplier shall perform its obligations under this Catalogue Agreement and shall provide its Catalogue Solution(s) to Service Recipients in accordance with (as applicable):

- 6.1.1 these Catalogue Terms;
- 6.1.2 Good Industry Practice;
- 6.1.3 the Standards and Capabilities relevant to its Catalogue Solution(s);
- 6.1.4 any applicable Service Levels; and
- 6.1.5 the Law.

- 6.2 The Supplier shall draw any conflict of which it is aware, or should reasonably be aware, between any of the requirements of clause 6.1 to the attention of the Catalogue Authority and shall comply with the Catalogue Authority's reasonable instruction as to how that conflict shall be resolved.

- 6.3 The Supplier shall provide any Associated Services in accordance with the specification for such services as provided by the Supplier in its Catalogue Solution Listing.

7. Supplier Obligations

- 7.1 The Supplier warrants and represents that:

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Digital Care Services Catalogue Agreement

Catalogue Terms

- 7.1.1 it has full capacity and authority to enter into and to perform this Catalogue Agreement;
 - 7.1.2 this Catalogue Agreement is executed by its duly authorised representative;
 - 7.1.3 there are no actions, suits or proceedings or regulatory investigations before any court, regulator or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Catalogue Agreement;
 - 7.1.4 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
 - 7.1.5 it shall be validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
 - 7.1.6 all material information submitted onto the Catalogue, to Potential Call Off Ordering Parties and/or to Call Off Ordering Parties is accurate; and
 - 7.1.7 it has all necessary consents and regulatory approvals to enter into this Catalogue Agreement.
- 7.2 Where applicable, the Supplier warrants and represents that it has all consents, registrations, approvals, licences and permissions relating to Medical Devices as recommended or stipulated by any materials published by the Medicines and Healthcare Products Regulatory Agency.
- 7.3 During the Term, the Supplier shall:
- 7.3.1 obtain and maintain throughout the duration of this Catalogue Agreement all consents, registrations, approvals, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary for the provision of the Catalogue Solution(s);
 - 7.3.2 ensure its execution, delivery and performance of its obligations under this Catalogue Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
 - 7.3.3 ensure that it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Catalogue Agreement;
 - 7.3.4 at all times provide sufficient and suitably qualified staff to fulfil the Supplier's roles and duties under this Catalogue Agreement;
 - 7.3.5 provide the Catalogue Authority with such assistance as the Catalogue Authority may reasonably require in respect of the continued running of the Catalogue;
 - 7.3.6 gather, collate and provide such information and co-operation as the Catalogue Authority may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Catalogue Agreement;

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Digital Care Services Catalogue Agreement

Catalogue Terms

- 7.3.7 unless it can demonstrate to the satisfaction of the Catalogue Authority that the effort associated with producing the relevant information under this clause 7.3.7 would exceed 16 hours per individual request of Supplier Personnel time, provide the Catalogue Authority with any information it reasonably requests, subject to a maximum of;
- 7.3.7.1 12 requests per Contract Year for Type 1 Catalogue Solutions; and
- 7.3.7.2 2 requests per Contract Year for Type 2 Catalogue Solutions,
- 7.3.8 in relation to the provision of the Services within ten Working Days of a request from the Catalogue Authority (or any other time period as may be agreed between the Parties);
- 7.3.9 notify the Catalogue Authority in writing as soon as it becomes aware of a potential Change of Control taking place or, if not already notified, within 20 Working Days following any Change of Control taking place;
- 7.3.10 notify the Catalogue Authority in writing within 10 Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court, regulator or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Catalogue Agreement;
- 7.3.11 ensure that neither it, nor any of its Affiliates, embarrasses the Catalogue Authority or otherwise brings the Catalogue Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Catalogue Authority, regardless of whether or not such act or omission is related to the Supplier's obligations under this Catalogue Agreement; and
- 7.3.12 ensure all written statements and representations in any written submissions made by the Supplier as part of the Catalogue On-boarding Process and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Catalogue Agreement or any other contract subsequently executed by the Supplier and the Catalogue Authority, and/or except to the extent that the Supplier has otherwise disclosed to the Catalogue Authority in writing prior to the date of this Catalogue Agreement.
- 7.4 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Supplier Personnel also do, or refrain from doing, such act or thing.
- 7.5 Each of the representations and warranties set out in clause 7.1 shall be construed as a separate warranty and representation and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Catalogue Agreement.
- 7.6 If at any time the Supplier becomes aware that a warranty or representation given by it under clause 7.1 has been breached, is untrue or is misleading, it shall immediately notify the Catalogue Authority of the relevant occurrence in sufficient detail to enable the Catalogue Authority to make an accurate assessment of the situation.

Catalogue Terms

8. Catalogue Authority Cause

8.1 A "**Relief Event**" means where the Catalogue Authority does not comply with an express obligation or responsibility set out in the Catalogue Agreement or where the Supplier's compliance with the Standards directly causes the Supplier to be in breach of this Catalogue Agreement.

8.2 If the Supplier is in breach of this Catalogue Agreement because of the occurrence of a Relief Event, the Supplier shall be entitled to relief from liability and/or breach of this Catalogue Agreement if and to the extent:

8.2.1 the Supplier's non-performance results directly from or in connection with such Relief Event;

8.2.2 the Supplier uses all reasonable endeavours to mitigate the Relief Event and to perform the Services notwithstanding the Relief Event; and

8.2.3 the Supplier notifies the Catalogue Authority's Account Manager in writing (providing full details) as soon as the Supplier becomes aware that a Relief Event has occurred and that it is likely to give rise to the need for relief on the part of the Supplier (and where relevant via a notice in such format as may have been agreed between the Parties for that purpose) ("**Relief Notice**").

8.3 The Relief Notice shall specify the following information:

8.3.1 the affected Services or obligations under this Catalogue Agreement (including any impacted Framework Agreements and/or Call Off Agreements);

8.3.2 the cause(s) of the delay or interruption; and

8.3.3 details of the extent of the likely delay or interruption, showing impact on all Services and obligations under this Catalogue Agreement affected directly or indirectly by the failure.

9. Obligation to Notify

9.1 Without prejudice to the Supplier's obligations under any Framework Agreement or Call Off Terms and/or pursuant to Data Protection Legislation to make any notifications relating to Personal Data where the Supplier becomes aware of an issue that represents a material risk to Patient/Service User safety the Supplier shall notify the Catalogue Authority in accordance with the Service Management Standard.

9.2 Where the Supplier becomes aware of a data breach relating to Patient/Service User information, the Supplier shall notify the Patient/Service Users without delay and in any event within 48 hours upon becoming aware of a data breach. Such notification shall as a minimum (to the extent that such information is available to the Supplier):

9.2.1 describe the nature of the data breach, the categories and numbers of data subjects concerned, and the categories and numbers of personal data records concerned;

9.2.2 communicate the name and contact details of the data protection officer or other relevant contact from whom more information may be obtained;

Catalogue Terms

9.2.3 describe the likely consequences of the data breach; and

9.2.4 describe the measures taken or proposed to be taken to address the data breach;

9.3 Without prejudice to the Catalogue Authority's other rights or remedies or to the Supplier's other reporting obligations set out in this Catalogue Agreement, the Supplier shall notify the Catalogue Authority in writing, as soon as reasonably practicable (and in any event within no less than 20 Working Days, or in accordance with any applicable Service Levels, whichever is earlier) after it comes to the Supplier's attention, or after the Supplier should reasonably have become aware (whichever is earlier) of any event or circumstance which may adversely affect the Supplier's compliance with any of the obligations under this Catalogue Agreement or which is reasonably likely to result in a Default by the Supplier or trigger a right of termination in favour of the Catalogue Authority.

10. Governance

The Supplier and the Catalogue Authority will work together and the Supplier shall comply with the governance process and requirements, as set out in schedule 4 (*Governance*).

11. Reports and Records and Rights of Audit

11.1 The Supplier shall comply with the audit provisions and record related obligations, as set out in schedule 7 (*Audit Rights*) and schedule 8 (*Reports and Records Provisions*).

11.2 If there is a breach of this Catalogue Agreement, the audit rights triggered by such breach as set out in schedule 7 (*Audit Rights*) shall apply.

11.3 During the Term of this Catalogue Agreement, the Supplier may be required to evidence its on-going compliance with the Standards and the provisions of this Catalogue Agreement. In order to do this, the Supplier shall comply with the reasonable requests of the Catalogue Authority, which may be additional to the reports and records required in accordance with and as further detailed at schedule 8 (*Reports and Records Provisions*).

12. Software

The Supplier shall provide and keep up-to-date details of its Catalogue Solution(s) and any Third Party Software in accordance with schedule 3 (*List of Software*).

13. Compliance with the Acceptable Use Policy

When using the Catalogue, the Supplier must comply with the Acceptable Use Policy.

14. Catalogue Authority Responsibilities

14.1 The Catalogue Authority shall:

14.1.1 act reasonably in relation to the enforcement of provisions under this Catalogue Agreement;

14.1.2 perform any obligations of the Catalogue Authority which are set out in the clauses of this Catalogue Agreement and the paragraphs of the schedules;

14.1.3 perform any obligations required of it by the Catalogue On-boarding Process;

Digital Care Services Catalogue Agreement

Catalogue Terms

- 14.1.4 use its reasonable endeavours to provide the Supplier with access to appropriate members of the Catalogue Authority's staff, as such access is reasonably requested by the Supplier;
 - 14.1.5 provide sufficient and suitably qualified staff to fulfil the Catalogue Authority's roles and duties under this Catalogue Agreement; and
 - 14.1.6 use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests and that is necessary to perform its obligations under the terms of this Catalogue Agreement provided that such documentation, data and/or information is available to the Catalogue Authority and is authorised for release by the Catalogue Authority.
- 14.2 The Catalogue Authority warrants and represents that:
- 14.2.1 it has full capacity and authority to enter into this Catalogue Agreement; and
 - 14.2.2 this Catalogue Agreement is executed by its duly authorised representative.
- 14.3 The Catalogue Authority offers no express or implied warranty or other assurance with regards to the availability and/or processing speed of the Catalogue and/or the web pages within it.

SECTION C – CHANGE

15. General

Depending on the nature of a Change, it will be dealt with according to the relevant provisions below. Only changes to the Catalogue Terms will be dealt with by the Common Contract Change Control Procedure.

16. Catalogue Agreement Common Contract Changes

- 16.1 Common Contract Changes shall be made in accordance with schedule 5 (*Common Contract Change Control Procedure*).
- 16.2 Where the Parties agree that the nature of a Change means it would not reasonably be appropriate to follow the process set out in schedule 5 (*Common Contract Change Control Procedure*), (for example, where the information subject to the Change is Supplier specific, such as its Commercially Sensitive Information and the list of Software), the Parties shall confirm such change in writing and shall update the Catalogue Agreement accordingly.

17. Changes in Law

- 17.1 The Supplier shall not be relieved of its obligations under this Catalogue Agreement as the result of:
 - 17.1.1 a General Change in Law; or
 - 17.1.2 a Specific Change in Law where the effect of that Specific Change in Law on the Supplier's obligations is reasonably foreseeable at the Commencement Date.

Catalogue Terms

- 17.2 If a Specific Change in Law occurs during the Term (other than as referred to in clause 17.1.2), the Supplier shall:
- 17.2.1 notify the Catalogue Authority as soon as reasonably practicable (and in any event within 20 Working Days) of becoming aware of such Specific Change in Law of the likely effects of that change, including:
 - 17.2.1.1 whether any Common Contract Change is required to this Catalogue Agreement;
 - 17.2.1.2 whether any change is required to one or more Standards; and
 - 17.2.1.3 whether any relief from compliance with the Supplier's obligations under this Catalogue Agreement is required; and
 - 17.2.2 be entitled to relief from its obligations under this Catalogue Agreement to the extent impacted by the relevant Specific Change in Law.
- 17.3 Any relief from the Supplier's obligations resulting from a Specific Change in Law as set out at clause 17.2.2 shall be implemented in accordance with the relevant Change provisions, depending on the nature of the required Change.
- 18. Changes to Catalogue Solution Listing**
- 18.1 If the Supplier wants to amend the Catalogue Solution Listing of an existing Catalogue Solution, the Supplier shall:
- 18.1.1 notify the Catalogue Authority;
 - 18.1.2 provide the Catalogue Authority with the rationale for the proposed change;
 - 18.1.3 provide the Catalogue Authority with the updated Catalogue Solution Listing description and ensure that such description is clear and accurate; and
 - 18.1.4 provide the Catalogue Authority with any additional information that it reasonably requires.
- 18.2 Once the Catalogue Authority is reasonably satisfied that it has all the information it reasonably requires it shall either:
- 18.2.1 notify the Supplier of its approval of the amended Catalogue Solution Listing description; or
 - 18.2.2 notify the Supplier that it has rejected the proposed Catalogue Solution Listing description, with reasons for such rejection,
- in either event without undue delay.
- 18.3 If the Catalogue Authority rejects the proposed Catalogue Solution Listing description in accordance with clause 18.2.2 above, the Supplier shall be entitled to make any necessary changes and resubmit the revised Catalogue Solution Listing description in accordance with clause 18.1.

Catalogue Terms

18.4 Once the Supplier has received the Catalogue Authority's approval in accordance with clause 18.2.1 above, the Supplier or Catalogue Authority (as determined by the Catalogue Authority, acting reasonably) shall be entitled to update the Catalogue Solution Listing.

19. Changes to Catalogue Solution List Price

19.1 If the Supplier wants to amend the Catalogue Solution List Price under an existing Framework Agreement of any one of its existing Catalogue Solutions, the Supplier shall provide to the Catalogue Authority:

19.1.1 the detail of the Catalogue Solution to which the Catalogue Solution List Price relates;

19.1.2 the proposed Change to the Catalogue Solution List Price;

19.1.3 evidence of each relevant Framework Authority's agreement to such Change;

19.1.4 an updated Framework Financial Model to reflect the revised Catalogue Solution List Price; and

19.1.5 any additional information that the Catalogue Authority reasonably requires.

19.2 Subject to clause 19.3 below, once the Catalogue Authority is satisfied that it has received all of the information it requires, it shall notify the Supplier in writing of its approval of the amended Catalogue Solution List Price without undue delay.

19.3 If there are grounds to cause the Catalogue Authority to reasonably believe that it is necessary to reject the proposed Change to the Catalogue Solution List Price, then it shall notify the Supplier without undue delay and provide reasons for such rejection. If the Catalogue Authority rejects the proposed Catalogue Solution List Price, the Supplier shall be entitled to make any necessary changes and resubmit the revised Catalogue Solution List Price in accordance with clause 19.1.

19.4 Once the Supplier has received the Catalogue Authority's approval in accordance with clause 19.2 above, the Catalogue Authority or the Supplier (as determined by the Catalogue Authority, acting reasonably) shall be entitled to update the Catalogue Solution List Price in relation to the relevant Framework Agreement(s).

19.5 If a Change to the Catalogue Solution List Price is agreed in accordance with clause 19.2, the amended Catalogue Solution List Price shall be effective in respect of the relevant Framework Agreement(s) from the date the Catalogue Authority notifies the Supplier of its approval.

19.6 Nothing in this clause 19 shall have the effect of impacting any existing orders that the Supplier has entered into with its Call Off Ordering Parties under any existing Call Off Agreements or otherwise.

20. Changes to the Catalogue Ancillary Documents

20.1 Subject to clause 20.2, the Catalogue Authority may make any reasonably required Changes to the Catalogue Ancillary Documents throughout the Term and such Changes shall be made available to the Supplier via the Catalogue from time to time.

Catalogue Terms

20.2 Where the Catalogue Authority is of the reasonable opinion that the proposed Change(s) will have a significant impact on the Supplier, it shall consult with the Supplier in good faith to understand:

20.2.1 the Supplier's views on the proposed Change; and

20.2.2 the potential impact to the Supplier of such Change,

and shall take account of such consultation and input when finalising the relevant Change(s) to the Catalogue Ancillary Documents.

20.3 The Catalogue Authority shall notify the Supplier of any such Change within 5 Working Days of the updated Catalogue Ancillary Document being published on the Catalogue.

20.4 Any such variation or update made in accordance with this clause 20 shall take effect from the effective date set out in the relevant Catalogue Ancillary Document, meaning that from that effective date the new version of the relevant Catalogue Ancillary Document shall supersede all previous versions of the relevant Catalogue Ancillary Document.

21. Changes to the Standards and/or Capabilities

21.1 The Catalogue Authority may make Changes to Standards and/or Capabilities via the Standards Roadmap throughout the Term and such Changes shall be made by the Catalogue Authority in accordance with the processes set out in the Change Management Process and Roadmap Content document.

21.2 In the deployment and enforcement of any such Changes, the Parties shall comply with the obligations and processes as set out in the Change Management Process and Roadmap Content document.

21.3 None of the Changes which are identified via the Standards Roadmap shall constitute a Change in Law.

22. Changes requested by the Supplier to a Catalogue Solution

If the Supplier wants to make a Change to one of its Catalogue Solutions, the Parties shall follow the processes and comply with the obligations as set out in Appendix 1 of the Service Management Standard.

23. Urgent Change

23.1 If the Catalogue Authority identifies that a Change to any part of the Services, or to the Catalogue Solution(s) and/or Associated Services that are being provided to Service Recipients is required in order to:

23.1.1 address a serious clinical safety issue; and/or

23.1.2 avoid or mitigate (either directly or indirectly) a material detriment to the operation of the NHS,

(each of the above being an "**Urgent Change**"), then the Change to such services shall be mandatory and shall be proportionate to the issue it is intended to address.

Catalogue Terms

- 23.2 If either Party notifies the other of an Urgent Change, the Parties shall comply with the relevant processes and obligations as set out in the Change Management Process and Roadmap Content document.
- 23.3 The Catalogue Authority shall notify all relevant Framework Authorities if an Urgent Change is required. If the Framework Authority does not make any funding available, the Supplier shall not be relieved of any of its obligations arising as the result of the Urgent Change.

24. Disputes to Changes

Any Disputes that arise in relation to a Change or proposed Change shall be dealt with in accordance with schedule 6 (*Dispute Resolution Procedure*).

SECTION D – STANDARDS

25. Standards Compliance

- 25.1 The Supplier must ensure that at all times its Catalogue Solutions meet the Epics and Capabilities to which each is mapped and the Standards applicable to such Epics and Capabilities.
- 25.2 Where the Supplier has implemented a Standard and the relevant Standard is deprecated, the Supplier shall continue to meet any deprecated Standard up until the date required by the Standards Roadmap.
- 25.3 The Catalogue Authority may elect another Framework Authority to exercise any of the Catalogue Authority's rights under this Catalogue Agreement in respect of Catalogue Solutions within the scope of that Framework Authority's Framework Agreement, including but not limited to:
- 25.3.1 assessment and assurance of Epics, Capabilities and Standards compliance;
 - 25.3.2 contributing to the Catalogue On-boarding Process;
 - 25.3.3 input into the Change Management Process and Roadmap Content;
- and the Catalogue Authority may revoke any such election in its discretion at any time by giving notice to the relevant Framework Authority.
- 25.4 Suppliers will be informed when the Catalogue Authority elects another Framework Authority to exercise rights under clause 25.3.

SECTION E - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

26. Intellectual Property Rights

- 26.1 Except as expressly set out in this Catalogue Agreement:
- 26.1.1 the Catalogue Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including to:
 - 26.1.1.1 the Catalogue Solutions;

Digital Care Services Catalogue Agreement

Catalogue Terms

- 26.1.1.2 the Third Party Software;
- 26.1.1.3 the Third Party IPRs; and
- 26.1.1.4 the Supplier Background IPRs;
- 26.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Catalogue Authority or its licensors, including:
 - 26.1.2.1 the Catalogue and all related software;
 - 26.1.2.2 this Catalogue Agreement, including the Standards;
 - 26.1.2.3 Catalogue Authority Software;
 - 26.1.2.4 the Catalogue Authority Data;
 - 26.1.2.5 clinical data, care provision data and other operational data, including Personal Data, which is generated and recorded through health and care delivery (including where material Supplier enhancements have created derived information or data which contains any Personal Data); and
 - 26.1.2.6 the Catalogue Authority Background IPRs.
- 26.1.3 the Supplier shall not acquire any right, title or interest in or to any Personal Data (including where material Supplier enhancements have created and/or derived information or data which contains Personal Data); and/or
- 26.1.4 the Supplier shall not acquire any right, title or interest in or to any clinical data, care provision data and/or any other Service Recipient related operational data, which is generated and recorded in relation to health and care delivery (including where material Supplier enhancements have created derived information or data which contains the source clinical data, care provision data and other Service Recipient related operational data).
- 26.2 The presence in the Catalogue Solution, or in any data structures, algorithms and/or tools that are created by the Supplier to optimise the performance of the Catalogue Solutions, of Personal Data as described in clause 26.1.3 and/or data referred to in clause 26.1.4 shall not prevent the Supplier from owning the Intellectual Property Rights in the Catalogue Solution and such data structures, algorithms and/or tools, subject to:
 - 26.2.1 The exclusion of the Personal Data, as described in clause 26.1.3 and/or data referred to in clause 26.1.4 from ownership by the Supplier; and
 - 26.2.2 The Supplier's overriding obligation to comply with the Standards, the terms of this Catalogue Agreement and Data Protection Legislation in relation to all such data including in relation to its return, destruction and/or migration to replacement systems.
- 26.3 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in clause 26.1, in consideration of the mutual rights and obligations under this Catalogue Agreement, each Party hereby assigns to the other

Catalogue Terms

Party, by way of present and future assignment, such Intellectual Property Rights as it has acquired.

- 26.4 Subject to clause 36 below, neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services or any related materials (such as pre-sales and marketing materials) without the other Party's prior written consent.

27. Transfer and Licences Granted by the Supplier

Catalogue Solution

- 27.1 The Supplier hereby grants to the Catalogue Authority all licences to the Catalogue Solution(s) and Associated Services (where applicable) and all related methodologies, tools and documents as may reasonably be required to enable the Catalogue Authority to:

27.1.1 actuate a step in procedure in order to provide the services to Service Recipients in accordance with paragraph 4 of schedule 9 (Exit Management);

27.1.2 validate any of the information or software provided by the Supplier to demonstrate its compliance with this Catalogue Agreement to the extent described within the Compliance Testing documentation associated with each Standard;;

27.1.3 satisfy any obligations or roles of the Catalogue Authority in relation to the Standards or otherwise (including to allow the Catalogue Authority to test the interoperability of the Supplier's Catalogue Solution(s) in accordance with the Testing Standard; and

27.1.4 assist the Supplier in satisfying its obligations under this Catalogue Agreement,

and the Supplier shall ensure that the Catalogue Authority has the same rights to use (for the same purposes described above) Third Party Software and Third Party IPR which forms part of the Catalogue Solution, either through the sub-licensing of the Supplier's rights or through a direct licence to the Catalogue Authority, in each case at no cost to the Catalogue Authority.

- 27.2 Where the Supplier is unable to obtain a licence for the Catalogue Authority, relevant Framework Authority, Call Off Ordering Party and/or Service Recipient in relation to any Third Party Software and Third Party IPR which forms part of the Catalogue Solution in accordance with clause 27.1 above, the Supplier shall notify the Catalogue Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use.

Catalogue Authority's right to sub-license

- 27.3 The Catalogue Authority may sub-license any of the rights granted under clause 27.1 to a third party provided that:

27.3.1 the sub-licence is on terms no broader than those granted to the Catalogue Authority;

27.3.2 the sub-licensee is not a competitor of the Supplier (unless otherwise agreed between the Parties, such agreement not to be unreasonably withheld or delayed); and

Catalogue Terms

27.3.3 the sub-licensee shall have executed a confidentiality undertaking in favour of the Supplier.

27.4 The Catalogue Authority shall retain a list of its sub-licensees referred to in clause 27.3 and shall, no more than once per year, disclose a version of that list to the Supplier.

Catalogue Authority's right to assign/novate licences

27.5 The Catalogue Authority may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to clause 27.1 to:

27.5.1 a Central Government or NHS Body; or

27.5.2 any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Catalogue Authority.

27.6 If a licence granted in accordance with clause 27.1 is novated under clause 27.5, the rights acquired on that novation shall not extend beyond those previously enjoyed by the Catalogue Authority.

28. Licences Granted by the Catalogue Authority

The Catalogue Authority owns the IPR associated with all Standards and Catalogue Ancillary Documents. These documents shall be made available to the Supplier under an Open Government Licence.

29. Specially Written Software

If the Supplier creates any Specially Written Software, it shall notify the Catalogue Authority without undue delay prior to agreeing terms with the relevant Call Off Ordering Parties and such notification shall provide sufficient technical detail as to the software that has been developed. The purpose of the notification is to ensure that the Catalogue Authority has the opportunity to provide guidance and consistency for the Call Off Ordering Parties in relation to the use, ownership and/or commercial value of the Specially Written Software.

30. IPRs Indemnity

30.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Catalogue Authority and each other Indemnified Person, and keep the Catalogue Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim, but only to the extent that the IPR Claim is not a direct result of a breach by the relevant Indemnified Person of licence terms (as referred to in this Catalogue Agreement) for the relevant IPRs.

30.2 The Supplier shall not settle or compromise any IPRs Claim without the Catalogue Authority's prior written consent (not to be unreasonably withheld or delayed).

30.3 Where an IPRs Claim is made against the Catalogue Authority then the Catalogue Authority shall:

30.3.1 upon becoming aware of any infringement or allegations of infringement notify the Supplier of the same as soon as reasonably practicable;

Digital Care Services Catalogue Agreement

Catalogue Terms

- 30.3.2 not make any admissions without the Supplier's consent (such consent not to be unreasonably withheld or delayed); and
 - 30.3.3 provide reasonable assistance at the Supplier's cost and expense in connection with any negotiations and litigation arising from such claims and the Supplier shall, act in good faith and reasonably consult with and pay due regard to the interest and views of the Catalogue Authority in the conduct of any defence to any claim or demand hereunder.
- 30.4 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:
- 30.4.1 procure for the Catalogue Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
 - 30.4.2 replace or modify the relevant item with non-infringing substitutes provided that:
 - 30.4.2.1 the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - 30.4.2.2 the replaced or modified item does not have an adverse effect on any other services or the IT Environment;
 - 30.4.2.3 there is no cost to the Catalogue Authority or relevant Indemnified Person (as the case may be); and
 - 30.4.2.4 the terms and conditions of this Catalogue Agreement shall apply to the replaced or modified services.
- 30.5 If the Supplier elects to procure a licence in accordance with clause 30.4.1 or to modify or replace an item pursuant to clause 30.4.2, but this has not avoided or resolved the IPRs Claim, then:
- (a) the Catalogue Authority may terminate this Catalogue Agreement (if subsisting) with immediate effect by written notice to the Supplier; and
 - (b) without prejudice to the indemnity set out in clause 30.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

31. Escrow

- 31.1 Subject to clause 31.2, as part of the service continuity assessment made by the Catalogue Authority in accordance with schedule 9 (*Exit Management*), the Catalogue Authority shall determine the Catalogue Solutions that are required to be held in escrow and the Supplier shall list and update the list of its Catalogue Solution(s) and Third Party Software that are to be held in escrow, in accordance with schedule 3 (*List of Software*).
- 31.2 For the avoidance of doubt, where the Supplier's Catalogue Solution encompasses Web Facing SaaS, then in respect of that Catalogue Solution, the Catalogue Authority will not require such software to be placed in escrow. Where the Web Facing SaaS is part of a Catalogue Solution that is an Enhanced Exit Catalogue Solution as detailed at Schedule 9 (*Exit Management*), then the Parties shall, acting in good faith, agree the detail of how they will ensure and allow for

service continuity, including facilitating continued delivery of the Catalogue Solution in the event the Supplier is unable to provide it but not including any software to be placed in escrow.

SECTION F – CONFIDENTIALITY AND PERSONAL DATA

32. Confidentiality

- 32.1 For the purposes of this clause 32, the term "**Disclosing Party**" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "**Recipient**" shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 32.2 Except to the extent set out in this clause 32, or where disclosure is expressly permitted elsewhere in this Catalogue Agreement, the Recipient shall:
- 32.2.1 treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
 - 32.2.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Catalogue Agreement or without obtaining the owner's prior written consent;
 - 32.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Catalogue Agreement; and
 - 32.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 32.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party if and to the extent that:
- 32.3.1 the Recipient is required to disclose the Confidential Information by Law;
 - 32.3.2 the need for such disclosure arises out of or in connection with:
 - 32.3.2.1 any legal challenge or potential legal challenge against the Catalogue Authority arising out of or in connection with this Catalogue Agreement;
 - 32.3.2.2 the examination and certification of the Catalogue Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Catalogue Authority is making use of any Services provided under this Catalogue Agreement; or

Digital Care Services Catalogue Agreement

Catalogue Terms

- 32.3.2.3 the conduct of a Central Government or NHS Body review and/or a major projects review and/or any such similar assurance review carried out by or on behalf of the Government in respect of this Catalogue Agreement,
- 32.3.3 the Recipient has reasonable grounds to believe that the Disclosing Party is or any of the Disclosing Party's directors, officers, employees, agents, consultants or contractors are involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office as defined in the Act.
- 32.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 32.5 The Supplier may disclose the Confidential Information of the Catalogue Authority on a confidential basis only to:
- 32.5.1 Supplier Personnel who are directly involved in the provision of the Services, who are subject to confidentiality provisions no less onerous than these and who need to know the Confidential Information to enable performance of the Supplier's obligations under this Catalogue Agreement;
- 32.5.2 its auditors; and
- 32.5.3 its professional advisers for the purposes of obtaining advice in relation to this Catalogue Agreement.
- 32.6 Where the Supplier discloses Confidential Information of the Catalogue Authority pursuant to clause 32.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Catalogue Agreement by the persons to whom disclosure has been made, including by making Sub-Contractors, auditors or other third party advisers aware of the obligations set out in this clause 32.
- 32.7 The Catalogue Authority may disclose the Confidential Information of the Supplier:
- 32.7.1 on a confidential basis as may be reasonably required to any Potential Call Off Ordering Party and/or Call Off Ordering Party where the Confidential Information relates to the services under the scope of the Catalogue (excluding any discounts to the Catalogue Solution List Prices) required by, and/or purchasing decisions on the Catalogue of, the Potential Call Off Ordering Party and/or Call Off Ordering Party;
- 32.7.2 on a confidential basis reasonably to any Framework Authority or Call Off Ordering Party who relies upon the rights set out at clause 59;

Digital Care Services Catalogue Agreement

Catalogue Terms

- 32.7.3 on a confidential basis to any Central Government or NHS Body for any proper purpose of the Catalogue Authority or of the relevant Central Government or NHS Body;
- 32.7.4 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- 32.7.5 to the extent that the Catalogue Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- 32.7.6 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in clauses 32.7.1 or 32.7.3 for any purpose relating to or connected with this Catalogue Agreement;
- 32.7.7 on a confidential basis for the purpose of the exercise of its rights under this Catalogue Agreement; or
- 32.7.8 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Catalogue Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Catalogue Authority under this clause 32.

- 32.8 Nothing in this clause 32 shall prevent a Recipient from using any techniques, ideas or Know-How gained during the performance of this Catalogue Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

33. Transparency

- 33.1 The Parties acknowledge that the content of this Catalogue Agreement, including any changes to this Catalogue Agreement agreed from time to time is not Confidential Information. For the purposes of this Catalogue Agreement, "**Transparency Information**" means:
 - 33.1.1 information related to the provision of the interfaces set out in the Interoperability Standard;
 - 33.1.2 feedback that has been generated from Call Off Ordering Parties, Service Recipients and/or other suppliers under the Framework Agreements, including feedback obtained via surveys, case studies and benefits data;
 - 33.1.3 service performance related information of the Supplier in meeting the Standards; and
 - 33.1.4 Catalogue Solution Listing information of any of the Supplier's Catalogue Solutions.
- 33.2 Notwithstanding any other provision of this Catalogue Agreement, the Supplier hereby gives its consent for the Catalogue Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in

Digital Care Services Catalogue Agreement

Catalogue Terms

accordance with the provisions of the FOIA redacted). The Catalogue Authority shall, to the extent it reasonably deems necessary, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

- 33.3 The Supplier shall assist and co-operate with the Catalogue Authority to enable the Catalogue Authority to publish the Transparency Information.
- 33.4 If the Catalogue Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Catalogue Authority shall be entitled to exclude such information from publication. The Catalogue Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Catalogue Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.
- 33.5 The Catalogue Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- 33.6 The Supplier agrees that any information it holds, that has not already been provided to the Catalogue Authority through its reports but is reasonably relevant to or that arises from the provision of the Services, shall be provided to the Catalogue Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Catalogue Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information and Confidential Information (subject always to the Catalogue Authority's over-riding rights of disclosure of Supplier's Confidential Information set out at clause 32.7.5)) also publish such Information. The Supplier shall provide to the Catalogue Authority within five Working Days (or such other period as the Catalogue Authority may reasonably specify) any such Information requested by the Catalogue Authority.

34. Freedom of Information

- 34.1 The Supplier acknowledges that the Catalogue Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- 34.1.1 provide all necessary assistance and cooperation as reasonably requested by the Catalogue Authority to enable the Catalogue Authority to comply with its obligations under the FOIA and the EIRs;
- 34.1.2 transfer to the Catalogue Authority all Requests for Information relating to this Catalogue Agreement that it receives as soon as practicable and in any event within two Working Days of receipt;
- 34.1.3 provide the Catalogue Authority with a copy of all Information belonging to the Catalogue Authority requested in the Request for Information (as defined in FOIA) which is in its possession, or control in the form that the Catalogue Authority requires within five Working Days (or such other period as the Catalogue Authority may reasonably specify) of the Catalogue Authority's request for such Information; and

Catalogue Terms

34.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Catalogue Authority.

34.2 The Supplier acknowledges that the Catalogue Authority may be required under the FOIA and the EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Catalogue Authority shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Catalogue Agreement) the Catalogue Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

35. Protection of Personal Data

It is a condition of this Catalogue Agreement that the Supplier complies with Data Protection Legislation.

36. Publicity and Branding

36.1 The Commercial Standard (as updated from time to time) will detail the rules on when and how the Supplier is permitted to publicise this Catalogue Agreement or its contents in any way and, if applicable, the Catalogue Assurance Logo.

36.2 Without prejudice to a requirement for the Supplier to disclose Confidential Information pursuant to clause 32.3.1, the Supplier shall comply at all times with the rules around publicity referred to in clause 36.1.

36.3 Subject to the rules around publicity referred to in clause 36.1, the Supplier shall not without the prior written consent of the Catalogue Authority (such consent not to be unreasonably withheld) and in any case only in compliance with the NHS branding guidelines published by NHS England from time to time:

36.3.1 make any press announcements or publicise this Catalogue Agreement or its contents in any way;

36.3.2 use the Catalogue Authority's name or brand in any promotion or marketing or announcement of orders; or

36.3.3 refer to or imply the approval or accreditation by the Catalogue Authority of the Supplier's products and services in any promotion or marketing or announcement of orders or communications with Call Off Ordering Parties (potential and actual).

SECTION G – SUPPLIER AND AUTHORITY PROTECTIONS

37. Force Majeure

37.1 Subject to the remaining provisions of this clause 37, either Party may claim relief under this clause 37 from liability for failure to meet its obligations under this Catalogue Agreement for as

Catalogue Terms

long as and only to the extent the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Catalogue Agreement which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

- 37.2 The Affected Party shall as soon as reasonably practicable following the occurrence of a Force Majeure Event issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.
- 37.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this clause 37 to the extent that consequences of the relevant Force Majeure Event:
- 37.3.1 are capable of being mitigated, but the Supplier has failed to do so; and/or
- 37.3.2 should have been foreseen and prevented or avoided by a prudent supplier, operating to the standards required by this Catalogue Agreement.
- 37.4 Subject to clause 37.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 37.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 37.6 Where, as a result of a Force Majeure Event an Affected Party fails to perform its obligations in accordance with this Catalogue Agreement, then during the continuance of the Force Majeure Event:
- 37.6.1 the other Party shall not be entitled to exercise any rights to terminate this Catalogue Agreement in whole or in part as a result of such failure other than pursuant to clause 44; and
- 37.6.2 neither Party shall be liable for any Default arising as a result of such failure.
- 37.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Catalogue Agreement.
- 37.8 Relief from liability for the Affected Party under this clause 37 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Catalogue Agreement and shall not be dependent on the serving of notice under clause 37.7.

Catalogue Terms

38. Key Roles

- 38.1 The Supplier shall ensure that Key Roles are fulfilled at all times during the Term to assist with the fulfilment of the Supplier's Catalogue Agreement obligations. Schedule 10 (*Key Roles*) lists the Key Roles that must be fulfilled as at the Commencement Date.
- 38.2 The Supplier shall keep the list of Supplier Personnel fulfilling the Key Roles up-to-date and shall promptly notify the Catalogue Authority in writing of any changes to the Supplier Personnel fulfilling any one of the Key Roles.
- 38.3 The Supplier shall:
- 38.3.1 notify the Catalogue Authority promptly of any unfulfilled Key Roles (other than for short-term sickness or holidays of two weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
 - 38.3.2 ensure that any Key Role is not vacant for any longer than 10 Working Days;
 - 38.3.3 ensure that all arrangements for planned changes to the Supplier Personnel fulfilling a Key Role provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services and/or provision of the Catalogue Solution and/or Associated Services to any Service Recipients; and
 - 38.3.4 ensure that any Supplier Personnel fulfilling a Key Role:
 - 38.3.4.1 have a level of qualifications and experience appropriate to the relevant role; and
 - 38.3.4.2 are fully competent to carry out the tasks assigned to the Key Role.

39. Flow Down of Provisions

- 39.1 The Supplier shall use reasonable endeavours to ensure that each Key Sub-contract shall include:
- 39.1.1 a right under the Contracts (Rights of Third Parties) Act 1999 for the Catalogue Authority to enforce the terms of that Key Sub-contract as if it were the Supplier;
 - 39.1.2 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Catalogue Authority;
 - 39.1.3 a provision requiring the Key Sub-contractor to enter into a direct confidentiality agreement with the Catalogue Authority on the same terms as set out in clause 32 (*Confidentiality*);
 - 39.1.4 a provision requiring the Key Sub-contractor to comply with the restrictions on corrupt gifts and payments pursuant to clause 55 (*Prevention of Fraud and Bribery*);
 - 39.1.5 a provision restricting the ability of the Key Sub-contractor to further sub-contract elements of the service provided to the Supplier without first seeking the consent of the Catalogue Authority; and

Catalogue Terms

- 39.1.6 a provision requiring the Key Sub-contractor to notify the Catalogue Authority promptly in writing of any material non-payment or late payment of any sums properly due to the Key Sub-contractor from the Supplier under the Key Sub-contract, under a specified valid invoice and not subject to a genuine dispute.
- 39.2 The Catalogue Authority may require that the relevant Key Sub-contractor enters into a direct agreement with the Catalogue Authority, in which case the Supplier shall use its reasonable endeavours to procure that such Key Sub-contractor enters into a direct agreement with the Catalogue Authority as soon as reasonably practicable and on such terms as may be reasonably requested by the Catalogue Authority.

SECTION H – INDEMNITIES, LIABILITY AND INSURANCE

40. Conduct of indemnity claims

Where under this Catalogue Agreement one Party indemnifies the other Party, the Parties shall comply with the provisions of schedule 11 (*Conduct of Claims*) of the Catalogue Agreement in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.

41. Limitations on Liability

41.1 Neither Party limits its liability for:

- 41.1.1 death or personal injury caused by its negligence;
- 41.1.2 fraud or fraudulent misrepresentation by it or made on its behalf; or
- 41.1.3 any liability to the extent it cannot be limited or excluded by Law.

41.2 The Supplier's liability under this Catalogue Agreement shall be unlimited in respect of:

- 41.2.1 the indemnities granted in clause 30 (*IPRs Indemnity*); and
- 41.2.2 disclosure of Confidential Information which is not permitted by the terms of this Agreement.

41.3 Subject to clause 41.1, the total aggregate liability of the Catalogue Authority under or in connection with this Catalogue Agreement shall in no event exceed £100,000 (subject to indexation).

41.4 Subject to clause 41.1 and 41.1.3, the total aggregate liability of the Supplier under or in connection with this Catalogue Agreement shall in no event exceed £500,000 (subject to indexation).

41.5 Subject to clauses 41.1 and 41.1.3, neither Party shall be liable to the other Party for:

- 41.5.1 any indirect, special or consequential Loss; or
- 41.5.2 any loss of profits, turnover, business opportunities, sales, revenue, anticipated savings, or damage to goodwill or reputation (in each case whether direct or indirect).

Catalogue Terms

- 41.6 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Catalogue Agreement, including any Losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Catalogue Agreement.

SECTION I – SUSPENSION, AND TERMINATION RECTIFICATION PLAN PROCESS

42. Catalogue Remediation Process

- 42.1 If there is a breach of the Supplier's obligations under this Catalogue Agreement and such breach triggers a termination right as listed in clause 44, the Catalogue Authority may decide to first initiate the Catalogue Remediation Process. For any other breaches of the Catalogue Agreement by the Supplier, including if the Catalogue Authority reasonably believes that the Supplier is in breach, the Catalogue Authority shall not be entitled to terminate the Catalogue Agreement without having first initiated the Catalogue Remediation Process. The timeframes and process set out in this clause 42 are subject to the exceptions set out at clause 43. In addition, if at any point in this process the Catalogue Authority reasonably believes that:

42.1.1 the breach subject to a Catalogue Remedial Plan is not possible of being remedied;
or

42.1.2 it is not possible for the Supplier to comply with the provisions of a Catalogue Remedial Plan,

then the Catalogue Authority may immediately move to suspension in accordance with clause 42.16.

- 42.2 If the Parties disagree as to whether a breach relating to the same subject matter should be dealt with via this Catalogue Agreement, a Framework Agreement or Call Off Agreement, the Catalogue Authority shall have the ultimate decision (acting reasonably) as to where the breach is dealt with. No breach shall be dealt with via more than one of the Catalogue Remediation Process, a Framework Remediation Process and/or a Call Off Remediation Process at the same time. Breaches relating to non-compliance with Standards and/or Capabilities should generally be dealt with via the Catalogue Remediation Process, whereas breaches relating to implementation plans should be dealt with via a Call Off Remediation Process. This shall not affect or prejudice the rights and remedies under each of these agreements.

- 42.3 If the Supplier is in breach of the transition and/or exit provisions in relation to one or more Call Off Agreement(s) then:

42.3.1 the breach shall also constitute a breach of this Catalogue Agreement which shall trigger the Catalogue Remediation Process if the Catalogue Authority elects to;
and

42.3.2 the Catalogue Authority may invoke suspension as described in clause 42.16 without applying any of the preceding timeframes referred to in this clause 42 for the Catalogue Remediation Process.

- 42.4 The Catalogue Remediation Process set out in this clause 42 shall not restrict or limit any rights and remedies available under this Catalogue Agreement, a Framework Agreement and/or a Call Off Agreement as a result of a breach that relates to the same subject matter.

Catalogue Terms

Catalogue Remedial Plan

- 42.5 If the Catalogue Authority initiates the Catalogue Remediation Process in accordance with clause 42.1, then the Supplier shall co-operate with the Catalogue Authority to develop and agree a Catalogue Remedial Plan in accordance with clause 42.6 and 42.7 below.
- 42.6 The Catalogue Remedial Plan process is as follows:
- 42.6.1 the Catalogue Authority notifies the Supplier that it considers that the Supplier is in breach of the Catalogue Agreement (as described at clause 42.1) and that it requires a Catalogue Remedial Plan. The notice may specify the matters complained of in outline, but must contain sufficient detail so that it is reasonably clear what the Supplier has to remedy;
 - 42.6.2 the Supplier shall serve a draft Catalogue Remedial Plan within five Working Days (or any other period agreed by the parties) in accordance with clause 42.7, even if the Supplier disputes that it is responsible for the matters complained of;
 - 42.6.3 if the Catalogue Authority considers that the draft Catalogue Remedial Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the matters complained of, then it shall notify the Supplier without undue delay and may agree a further time period for the development and agreement of the Catalogue Remedial Plan; and
 - 42.6.4 the Catalogue Authority must approve the Catalogue Remedial Plan before it can be finalised, such approval not to be unreasonably withheld or delayed.
- 42.7 The Catalogue Remedial Plan must contain the following:
- 42.7.1 a full description of the Supplier's breach of the Catalogue Agreement, including the impact of such breach on the Supplier's provision of services to Call Off Ordering Parties;
 - 42.7.2 a full description of the Supplier's steps to remedy such breach, including the timetable associated with such steps; and
 - 42.7.3 the method and format by which the Supplier will provide evidence to the Catalogue Authority that the breach has been remedied.
- 42.8 If on the day falling six weeks after the date (or any day thereafter) that the Catalogue Authority notified the Supplier of the breach in accordance with clause 42.5:
- 42.8.1 the Supplier has not responded to the notification;
 - 42.8.2 the Catalogue Authority has not approved a Catalogue Remedial Plan; or
 - 42.8.3 at any point during that six week period the Supplier has failed to co-operate with the Catalogue Authority in relation to the Catalogue Remedial Plan,

Catalogue Terms

then the Catalogue Authority shall have the right to develop and impose a Catalogue Remedial Plan, which the Supplier must comply with.

Call Off Ordering Party Notification

42.9 If on the day falling six weeks after the date (or on any day thereafter) that the Catalogue Remedial Plan is agreed in accordance with clauses 42.5, or imposed in accordance with 42.8 (as appropriate) the Catalogue Authority is of the reasonable opinion that:

42.9.1 the breach subject to the Catalogue Remedial Plan is not possible of being remedied;

42.9.2 it is not possible for the Supplier to comply with the provisions of the Catalogue Remedial Plan; or

42.9.3 the Supplier is not complying with the Catalogue Remedial Plan in a manner that the Catalogue Authority (in its sole discretion) deems to be material,

then the Catalogue Authority may contact any relevant Call Off Ordering Parties to notify them of the breach committed by the Supplier, along with any other information that the Catalogue Authority deems necessary.

Observing Consultant

42.10 If the circumstances described in clause 42.9.3 occur, the Catalogue Authority, in its sole discretion, may without prejudice to any of the Catalogue Authority's other rights and remedies under this Catalogue Agreement or at law, by notice in writing to the Supplier, appoint an independent third party consultant ("**Observing Consultant**") to observe and advise the Supplier on its provision of the Services that are in breach (for example, advising on best practice and remedial steps). The size of the team used by the Observing Consultant shall be proportionate to the particular circumstances. The Observing Consultant shall not be a competitor of the Supplier and the Catalogue Authority shall ensure that the rates of the Observing Consultant are comparable to prevailing market rates.

42.11 The appointment of an Observing Consultant shall in no way relieve the Supplier of its obligations under this Catalogue Agreement.

42.12 Prior to appointing the Observing Consultant, the Catalogue Authority shall ensure that the Observing Consultant shall sign an appropriate confidentiality agreement.

42.13 The Supplier shall co-operate fully and in good faith with the Observing Consultant. The Supplier shall, and shall ensure that any of its Sub Contractors shall, grant to the Observing Consultant the right of access to any of the Supplier premises and/or Supplier Personnel as the Observing Consultant may reasonably require in order to observe the activities of the Supplier and any of its Sub Contractors in connection with the breach that is subject to the Catalogue Remedial Plan.

42.14 If the Observing Consultant recommends that the Supplier is able to restore provision of the Services and that the breach has been remedied and is unlikely to re-occur, then the Catalogue

Catalogue Terms

Authority shall provide a written notice to the Supplier specifying in reasonable detail any additional instructions arising from the Observing Consultant's recommendation for the Supplier to adhere to. The Services shall be considered to have been restored from the date of the notice provided by the Catalogue Authority.

- 42.15 The Supplier shall, with regard to the above provisions relating to Observing Consultants:
- 42.15.1 bear any costs or expenses incurred by the Supplier in taking such steps (including any fees of the Observing Consultant) as are required by the Catalogue Authority; and
 - 42.15.2 on demand reimburse the Catalogue Authority for all reasonable Losses incurred by it in relation to taking these steps, or engaging others to take these steps, or incurred by the Catalogue Authority in requiring the Supplier to take such steps.

Suspension

- 42.16 If on the day falling six weeks after (or on any day thereafter) the earlier of:
- 42.16.1 the Catalogue Authority notifying any Call Off Ordering Parties of the Supplier's breach in accordance with clause 42.9; or
 - 42.16.2 the Catalogue Authority appointing an Observing Consultant in accordance with clause 42.10,
- the Catalogue Authority is of the reasonable opinion that:
- 42.16.3 the breach subject to the Catalogue Remedial Plan is not capable of being remedied;
 - 42.16.4 it is not possible for the Supplier to comply with the provisions of the Catalogue Remedial Plan;
 - 42.16.5 the Supplier is not complying with the Catalogue Remedial Plan; or
 - 42.16.6 in the case of an Observing Consultant being appointed, a finding as set out in clause 42.14 has not been given,

then the Catalogue Authority may, acting reasonably, suspend either the relevant Catalogue Solution(s), or the Supplier's entire Catalogue offering (as, in its sole discretion, it deems appropriate) from being sold to Potential Call Off Ordering Parties via the Catalogue whilst the suspension is in force.

- 42.17 The Catalogue Authority may lift a Catalogue Solution suspension (returning the Catalogue Solution to a Compliant Status) that has been imposed under this clause 42 if:
- 42.17.1 the Supplier demonstrates to the Catalogue Authority's satisfaction that the relevant breach has been remedied;

Catalogue Terms

42.17.2 the Supplier is using its best efforts to comply with the Catalogue Remedial Plan and the Catalogue Authority is of the opinion that the breach is still capable of being remedied; and/or

42.17.3 the Catalogue Authority otherwise deems it appropriate.

Termination

42.18 Subject to clause 42.19 below, if on the day falling six weeks after the date (or any day thereafter) that a Catalogue Solution or all of the Supplier's Catalogue Solutions are suspended in accordance with clause 42.16 (or on any day thereafter), the Catalogue Authority is of the reasonable opinion that:

42.18.1 the breach subject to the Catalogue Remedial Plan is not possible of being remedied;

42.18.2 it is not possible for the Supplier to comply with the provisions of the Catalogue Remedial Plan; or

42.18.3 the Supplier is not complying with the Catalogue Remedial Plan,

then the Catalogue Authority may terminate either the Compliant Status of the relevant Catalogue Solution(s), disabling it from being sold on the Catalogue, or this Catalogue Agreement in its entirety (as, in its sole discretion, it deems appropriate) by notice in writing having immediate effect.

42.19 Without prejudice to the termination rights set out at clause 44, the termination right set out at clause 42.18 shall only be permitted where the breach in question is material.

42.20 Following notice of termination in accordance with clause 42.18, the Supplier must for each terminated Catalogue Solution comply with the exit provisions as set out in schedule 9 (*Exit Management*).

43. Escalated Timeframes

43.1 Subject to clause 43.2, the Catalogue Authority shall have the ability to deviate from the process set out in clause 42, whether by missing out a stage or escalating timeframes in the event that:

43.1.1 it is required to do so by any regulatory body applicable to the breach in question;

43.1.2 the Catalogue Authority has reasonable grounds to believe that the breach is a result of the Supplier acting in bad faith;

43.1.3 the breach is material and/or not capable of remedy;

43.1.4 the breach has a potential or actual clinical safety or security impact;

43.1.5 the Catalogue Authority is of the reasonable opinion that the Supplier is not, or does not intend to, co-operate and use its best endeavours to remedy the breach; or

Digital Care Services Catalogue Agreement

Catalogue Terms

43.1.6 there is a repetition of substantially the same breach relating to the same subject matter within a period of three months following the execution of a Catalogue Remedial Plan.

43.2 Where the Catalogue Authority has opted to use the Catalogue Remediation Process, the Catalogue Authority must follow at least one of the stages in the Catalogue Remediation Process at clause 42 before proceeding to termination in accordance with clause 42.18.

44. Immediate Termination by the Catalogue Authority of a Catalogue Solution or of the Catalogue Agreement

44.1 The Catalogue Authority may terminate either this Catalogue Agreement or the Compliant Status of a Catalogue Solution, disabling it from being sold via the Catalogue (as, in its sole discretion, it deems appropriate) by notice in writing having immediate effect if any of the following events or circumstances take place:

44.1.1 the Catalogue Remediation Process (as described at clause 42 above), but due to the acts and/or omissions of the Supplier the matter has escalated to a right for the Catalogue Authority to trigger termination, as set out in clause 42.18;

44.1.2 the Supplier commits a material breach (and for these purposes a material breach may be a single material breach or a number of breaches or repeated breaches, whether of the same or different obligations, which taken together constitute a material breach) of this Catalogue Agreement which is not in the reasonable opinion of the Catalogue Authority capable of remedy;

44.1.3 the Supplier is in material breach and for these purposes a material breach may be a single material breach or a number of breaches or repeated breaches which taken together constitute a material breach) of:

44.1.3.1 clause 32 (Confidentiality);

44.1.3.2 clause 34 (Freedom of Information);

44.1.3.3 clause 52 (Assignment and Novation); and

44.1.3.4 clause 55 (Prevention of Fraud and Bribery),

and such material breach shall be treated as material breach not capable of remedy;

44.1.4 there is a Change of Control in respect of the Supplier (or any company which Controls the Supplier) unless:

44.1.4.1 the Catalogue Authority has given its prior written consent (such consent not to be unreasonably withheld) to the particular Change of Control, which subsequently takes place as proposed; or

44.1.4.2 the Catalogue Authority has not served its notice of objection within six months of the later of the date on which the Change of Control took

Catalogue Terms

place or the date on which the Catalogue Authority was given notice of the Change of Control;

44.1.5 the representations and warranties given by the Supplier in this Catalogue Agreement being materially untrue or misleading; and

44.1.6 where a right of termination is otherwise expressly reserved in this Catalogue Agreement.

44.2 The Catalogue Authority may terminate this Catalogue Agreement for convenience for any reason at any time on giving no less than 90 days' written notice to the Supplier.

45. Removal by the Supplier of a Catalogue Solution from the Catalogue

45.1 The Supplier shall have the right to request at any point to remove any of its Catalogue Solutions from the Catalogue, by notifying the Catalogue Authority in writing and the Catalogue Authority shall ensure that such Catalogue Solution(s) is removed from the Catalogue without undue delay.

45.2 Once the Catalogue Authority removes the Catalogue Solution(s) from the Catalogue, the Potential Call Off Ordering Parties will no longer be able to see and/or access the Catalogue Solution via the Catalogue for purchase.

45.3 As soon as the Supplier notifies the Catalogue Authority that it is going to remove a Catalogue Solution in accordance with clause 45.1, the Supplier must comply with all exit provisions that shall be triggered as a result of such notification.

46. Termination by the Supplier of the Catalogue Agreement

46.1 Subject to clause 46.2 below, the Supplier has the right to terminate this Catalogue Agreement by giving reasonable notice to the Catalogue Authority in writing.

46.2 Following a notification of its intention to terminate the Catalogue Agreement, the Supplier shall comply with all exit provisions that shall be triggered as a result of such notification, including any requirements to support the delivery of the Call Off Agreements until the expiry or termination of those Call Off Agreements.

47. Consequences of Suspension

47.1 If a Catalogue Solution, or the Supplier's offering in its entirety, is suspended in accordance with clause 42.16, the relevant Catalogue Solution(s) are deemed to not be achieving a Compliant Status. This means that the Supplier will need to follow the compliance process as set out in the Catalogue On-Boarding Process in order for its Compliant Status to be re-attained, unless instructed otherwise by the Catalogue Authority.

47.2 Suspension in accordance with clause 47.1 shall not relieve the Supplier of any of its existing obligations pursuant to this Catalogue Agreement, or any related Framework Agreements and/or Call Off Agreements.

Digital Care Services Catalogue Agreement

Catalogue Terms

47.3 Where a Supplier is suspended, the Catalogue Authority may notify any Framework Authorities or Call Off Ordering Parties of the suspension, including the nature of the breach and any next steps identified.

47.4 Once the Supplier re-attains a Complaint Status for the Catalogue Solution(s) in question, the Catalogue Authority will notify the Supplier that the suspension has been lifted and that it can use the Catalogue for its sales of the Catalogue Solution(s) to Potential Call Off Ordering Parties again.

48. Consequences of Removal of a Catalogue Solution and/or Termination of the Catalogue Agreement

48.1 The termination of this Catalogue Agreement or of a Catalogue Solution shall not affect the accrued rights of any Party.

48.2 Following notice of termination of the Catalogue Agreement, the Catalogue Agreement shall remain in force until all Call Off Agreements have expired or have been terminated.

48.3 If this Catalogue Agreement terminates, the Catalogue Authority may notify, and in any event the Supplier shall immediately notify, all of the relevant Framework Authorities and Call Off Ordering Parties of such termination. Following such notification, the Supplier shall comply with the relevant exit provisions of this Catalogue Agreement.

48.4 On termination of this Catalogue Agreement, the Framework Agreements will be automatically terminated. Notwithstanding the expiry or termination of this Catalogue Agreement, any Call Off Agreement in force at the time of such expiry or termination shall continue in full force and effect for the remainder of its term, unless such Call Off Agreement is terminated in accordance with its terms.

48.5 Termination of a Catalogue Solution or of the Catalogue Agreement shall not relieve the Supplier of any of its existing obligations pursuant to this Catalogue Agreement or any related Framework Agreements and/or Call Off Agreements, subject to anything agreed otherwise between the Parties in accordance with schedule 9 (*Exit Management*).

48.6 If the Compliant Status of a Catalogue Solution is terminated, the Supplier will have to re-submit the Catalogue Solution and repeat assessment and assurance in accordance with the Catalogue On-Boarding Process if it wishes to sell such Catalogue Solution via the Catalogue again.

49. Exit Management

The Parties shall comply with the exit provisions as set out at schedule 9 (*Exit Management*) and any relevant Framework Agreement and/or Call Off Agreement exit provisions in the event of termination of a Catalogue Solution(s) or of this Catalogue Agreement.

SECTION J – MISCELLANEOUS AND GOVERNING LAW

50. Modern Slavery

50.1 The Supplier represents and warrants that as at the Commencement Date, neither the Supplier, nor any of its officers, employees:

50.1.1 has been convicted of any offence involving slavery or human trafficking; and

50.1.2 having made reasonable enquiries, so far as it is aware, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

50.2 The Supplier shall implement due diligence procedures for its Sub-Contractors and other participants in its supply chains to ensure that there is no slavery or human trafficking in its supply chains.

50.3 The Supplier shall prepare and deliver to the Catalogue Authority each year, an annual slavery and human trafficking report (unless a general statement or publication has been made that is acceptable to the Catalogue Authority, at its sole discretion) setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.

51. Corporate Social Responsibility

51.1 The Catalogue Authority applies corporate and social responsibility values to its business operations and activities which are consistent with the Government's corporate social responsibility policies, including, without limitation, those policies relating to anti-bribery and corruption, health and safety, the environment and sustainable development, equality and diversity.

51.2 To the extent applicable, the Supplier represents and warrants that it:

51.2.1 complies with all CSR Laws;

51.2.2 shall use its best endeavours to ensure that its Sub-contractors and any person under its control, comply with all CSR Laws; and

51.2.3 has adopted a written corporate and social responsibility policy that sets out its values for relevant activity and behaviour (including, without limitation, addressing the impact on employees, clients, stakeholders, communities and the environment by the Supplier's business activities).

51.3 The Supplier shall notify the Catalogue Authority if its corporate and social responsibility policy is in conflict with any CSR Policies notified to the Supplier or which it should reasonably be aware of.

52. Assignment and Novation

52.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Catalogue Agreement without the prior written consent of the Catalogue Authority, which shall not be unreasonably withheld.

Digital Care Services Catalogue Agreement

Catalogue Terms

- 52.2 The Catalogue Authority may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Catalogue Agreement to:
- 52.2.1 any Central Government or NHS Body or other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Catalogue Authority; or
 - 52.2.2 any private sector body which substantially performs the functions of the Catalogue Authority,

and the Supplier shall, at the Catalogue Authority's request, enter into a novation agreement in such form as the Catalogue Authority shall reasonably specify in order to enable the Catalogue Authority to exercise its rights pursuant to this clause 52.2.

- 52.3 A change in the legal status of the Catalogue Authority such that it ceases to be a Central Government or NHS Body shall not affect the validity of this Catalogue Agreement and this Catalogue Agreement shall be binding on any successor body to the Catalogue Authority.
- 52.4 If the Catalogue Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Catalogue Agreement to a body which is not a Central Government or NHS Body or if a body which is not a Central Government or NHS Body succeeds the Catalogue Authority (any such body a "**Successor Body**"), the Supplier shall have the right to terminate this Catalogue Agreement in respect of any Insolvency Event affecting the Successor Body, on terms identical to the right of termination of the Catalogue Authority under Insolvency Events (as if references to the Supplier in those provisions and references to a Party in the definition of Insolvency Event were references to the Successor Body).

53. Waiver and Cumulative Remedies

- 53.1 The rights and remedies under this Catalogue Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Catalogue Agreement or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 53.2 Unless otherwise provided in this Catalogue Agreement, rights and remedies under this Catalogue Agreement are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

54. Relationship of the Parties

Except as expressly provided otherwise in this Catalogue Agreement, nothing in this Catalogue Agreement, nor any actions taken by the Parties pursuant to this Catalogue Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

55. Prevention of Fraud and Bribery

- 55.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Commencement Date:
- 55.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - 55.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 55.2 The Supplier shall not during the term of this Catalogue Agreement:
- 55.2.1 commit a Prohibited Act; and/or
 - 55.2.2 do or suffer anything to be done which would cause the Catalogue Authority, any Call Off Ordering Party or any employees, consultants, contractors, Sub-Contractors or agents of the same to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 55.3 The Supplier shall during the term of this Catalogue Agreement:
- 55.3.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
 - 55.3.2 keep appropriate records of its compliance with its obligations under clause 55.3.1 and make such records available to the Catalogue Authority and Call Off Ordering Parties on request.
- 55.4 The Supplier shall immediately notify the Catalogue Authority and any relevant Call Off Ordering Party (together the "**Notified Parties**") in writing if it becomes aware of any breach of clause 55.1 and/or 55.2, or has reason to believe that it has or any of the Supplier Personnel have:
- 55.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 55.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 55.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Catalogue Agreement or otherwise

Catalogue Terms

suspects that any person or Party directly or indirectly connected with this Catalogue Agreement has committed or attempted to commit a Prohibited Act.

- 55.5 If the Supplier makes a notification to the Notified Parties pursuant to clause 55.4, the Supplier shall respond promptly to the Notified Parties' enquiries, co-operate with any investigation, and allow the Notified Parties to Audit any books, Records and/or any other relevant documentation in accordance with schedule 7 (*Audit Rights*).
- 55.6 If the Supplier is in Default under clauses 55.1 and/or 55.2 the Catalogue Authority may:
- 55.6.1 follow the Catalogue Remediation Process as set out at clauses 42 and 43 of this Catalogue Agreement; and
- 55.6.2 require the Supplier to remove from performance of this Catalogue Agreement any Supplier Personnel whose acts or omissions have caused the Default.
- 55.7 Any notice served by the Catalogue Authority or a Call Off Ordering Party under clause 55.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Catalogue Authority or a Call Off Ordering Party (as applicable) believes has committed the Prohibited Act and the action that the Catalogue Authority or a Call Off Ordering Party has elected to take.

56. Severance

- 56.1 If any provision of this Catalogue Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Catalogue Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Catalogue Agreement shall not be affected.
- 56.2 If any deemed deletion under clause 56.1 is so fundamental as to prevent the accomplishment of the purpose of this Catalogue Agreement or materially alters the balance of risks and rewards in this Catalogue Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Catalogue Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Catalogue Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 56.3 If the Parties are unable to agree on the revisions to this Catalogue Agreement within five Working Days of the date of the notice given pursuant to clause 56.2, the matter shall be dealt with in accordance with the Dispute Resolution Procedure.

57. Further Assurances

Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be reasonably necessary to give effect to the meaning of this Catalogue Agreement.

Catalogue Terms

58. Entire Agreement

- 58.1 This Catalogue Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understandings, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 58.2 Neither Party has been given, nor entered into this Catalogue Agreement in reliance on any warranty, statement, promise or representation other than those expressly set out in this Catalogue Agreement.
- 58.3 Nothing in this clause 58 shall exclude any liability in respect of misrepresentations made fraudulently.

59. Third Party Rights

A person who is not a Party to this Catalogue Agreement has no right under the CRTPA to enforce any term of this Catalogue Agreement, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA.

60. Notices

- 60.1 Any notices sent under this Catalogue Agreement must be in writing.
- 60.2 The following table sets out the method by which notices may be served under this Catalogue Agreement and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of Delivery
Email	9.00am on the first Working Day after sending.	Dispatched as part of or as a legible document attachment to an e-mail to the correct e-mail address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	Properly addressed and delivered as evidenced by signature of a delivery receipt.
Prepaid, Royal Mail Signed For™ 1st Class or other prepaid, next Working Day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt.

Catalogue Terms

Manner of Delivery	Deemed time of service	Proof of Delivery
	delivery before 9.00am) or on the next Working Day (if after 5.00pm).	

60.3 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party in writing for the purpose of service of notices under this Catalogue Agreement:

	Supplier	Catalogue Authority
Contact		
Address		
Email		

60.4 This clause 60 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice).

61. Disputes

In relation to any Disputes that arise, the Parties shall comply with schedule 6 (*Dispute Resolution Procedure*).

62. Indexation

62.1 Any amounts expressed as being subject to indexation in this Catalogue Agreement may have adjustments made on 1 April in each Contract Year (except for the first Contract Year) by the lower of:

62.1.1 the changes in the Consumer Price Index (CPI) over the previous 12 months minus 0.5; or

62.1.2 2%.

63. Governing Law and Jurisdiction

63.1 This Catalogue Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

63.2 Subject to clause 61 (*Disputes*), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-

Catalogue Terms

contractual) that arises out of or in connection with this Catalogue Agreement or its subject matter or formation.

64. Counterparts

- 64.1 This Catalogue Agreement may be executed in any number of counterparts, and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart.
- 64.2 Each counterpart shall constitute an original of this Catalogue Agreement, but all the counterparts shall together constitute one and the same instrument.

Digital Care Services Catalogue Agreement

Catalogue Terms

IN WITNESS of which this Catalogue Agreement has been duly executed by the Parties on the date which appears at the head of its page 1.

SIGNED for and on behalf of **HEALTH AND SOCIAL CARE INFORMATION CENTRE**

SIGNED for and on behalf of [REDACTED]

Signature

Signature

Name

Name

Position.....

Position.....

Date.....

Date.....