

OFFICIAL - SENSITIVE - COMMERCIAL

Commercial Standard & Model Interface Licence

Version	Date	Comments
1.0	21 January 2019	For Supplier feedback
2.0	11 March 2019	For Supplier review

[NOTE: CROSS REFERENCING STILL TO BE REVIEWED]

**GP IT Futures
Commercial Standard**

**Section A
Scope**

1. This document (the "**Commercial Standard**") sets out the conditions and behaviours required in respect of commercial activity relating to the provision of Catalogue Solutions sold via associated Framework Agreements or other purchasing vehicles.
2. This Commercial Standard:
 - a. underpins how a Catalogue Solution is sold, including the principles of charging; and
 - b. defines the basis on which data access and Interface Services are offered to any requesting party, in conjunction with the Interoperability Standard and Model Interface Licence.
3. In addition to the specific provisions of this Commercial Standard, all suppliers that have signed up to the Catalogue Agreement shall, in the conduct of their operations, comply with the "*NHS Commercial and Behavioural Principles*"¹ as made available from time to time by the Catalogue Authority.
4. A breach of this Commercial Standard shall qualify as a material breach of the Catalogue Agreement.
5. Capitalised terms will be interpreted in accordance with the definitions set out in [the glossary at Annex 3 of this Commercial Standard, or the definitions within the Model Interface Licence, or Schedule 1 of the Catalogue Agreement.

**Section B
Principles of Service Charging**

As A Service

6. All Catalogue Solutions shall be considered deliverable 'as a service' and as such, unit pricing shall reflect this with a single periodic charge representing the delivery of the whole scope of the Catalogue Solution as purchased to Service Recipients' devices used to access the Catalogue Solution(s) over each defined period ("**Periodic Service Charge**").

¹ The Department for Health and Social Care, NHS England and NHS Digital have developed a simple tiered-model to frame the development of Commercial standards for IT contracting across the NHS – the "NHS IT Contracting Model". The Commercial and Behavioural Principles are the first step in developing these Commercial standards.

OFFICIAL - SENSITIVE - COMMERCIAL

Commercial Standard & Model Interface Licence

7. The Suppliers shall ensure that the Periodic Service Charge for each Catalogue Solution is presented in a way that is:
 - a. simply structured and readily understandable by an appropriately informed non-expert;
 - b. transparent in relation to the scope of services included in the charges; and
 - c. calculable based on reasonably available business information.
8. For each Catalogue Solution, if a Supplier is providing Associated Services and/or Additional Services then these must be itemised separately from the Periodic Service Charge.
9. For all Associated Services and Additional Services the charges shall be:
 - a. listed separately from the Periodic Service Charge;
 - b. simply structured and readily understandable by an appropriately informed non-expert; and
 - c. transparent in relation to the scope of services included in the charges.

Right To Vary

10. Where Suppliers and their customers agree pricing terms which vary from the pricing structure set out on the Catalogue, or where they agree contract terms with a materially different scope of services, this shall be considered to be a "**Non-Standard Provision**".
11. Any proposed Non-Standard Provision must be submitted to the Catalogue Authority for approval prior to the execution of any contract which will govern the performance of the Non-Standard Provision. Suppliers do not need approval to offer discounts on its products and services.
12. The Catalogue Authority shall review any requests for approval of a Non-Standard Provision to consider:
 - a. evidence of consent from the counter party to the relevant contract;
 - b. value for money rationale (e.g. brief rationale, countersigned by the intended Call Off Ordering Party); and
 - c. impact assessment in relation to service continuity, clinical safety and information governance.
13. Where a Non-Standard Provision is approved by the Catalogue Authority, the relevant amendment and value for money rationale shall be published on the Catalogue entry for the relevant Catalogue Solution(s) so that it can be seen by users of the Catalogue.

Supplemental Charges : Framework Authorities

14. In order to accelerate investment by the Suppliers in certain technical Standards, Framework Authorities and/or Call Off Ordering Parties may, at their discretion, choose to supplement

Commercial Standard & Model Interface Licence

charges available to the Suppliers by means of supplementary payments or other contractual incentives. This shall be solely at the discretion of the relevant Framework Authorities and/or Call Off Ordering Parties and if granted will be subject to any terms agreed between the Framework Authority and/or Call Off Ordering Parties and the Supplier.

15. Where requested by a Framework Authority or Call Off Ordering Party, the Catalogue Authority may supply information regarding each Supplier's compliance with the Standards to the requesting party in order to assist in determination of any payments offered in accordance with paragraph 14. Suppliers shall not impede the Catalogue Authority in any way in the performance of this duty.

Section C

Access to Data and Commercial Treatment of Systems Interfaces

General Principles

16. This Section deals with the terms under which clinical data, care provision data and other operational data, which is generated and recorded through health and care delivery (“**NHS Data**”) is made available to other systems, clinical users, care providers and/or patients.
17. Suppliers shall not obtain profit or other commercial benefit from unreasonably delaying or excluding any potential Consumer Supplier's access to NHS Data through available interfaces, where a Consumer Supplier can demonstrate appropriate data controller/owner permissions, technical conformance and expected adherence to the terms of the relevant Interface Licence.
18. Where Service Recipients or Call Off Ordering Parties are required by NHS England to establish certain data flows (“**Mandated Information Flows**”, which are as listed in Annex 2 of this Commercial Standard) then the scope of the Interface Services required as a result shall be consistent with the Interoperability Standard and the Standards Roadmap and the Supplier shall ensure that it fulfils the Mandated Information Flows and related Interface Services an ongoing basis within the scope of the Periodic Service Charge for the Catalogue Solution.
19. Further, Suppliers shall not charge for provision of Interface Services which:
 - a. are required to access national services; or
 - b. perform data transactions which are reciprocal, even where transaction volumes or data flows are asymmetrical.
20. Suppliers may only seek financial payment for the operation of Interface Services outside of the scope of the Periodic Service Charge in accordance with the restrictions of this Commercial Standard. Even if such payment is permitted the Suppliers may only charge for access to NHS Data to the extent that it recovers processing costs only, with no recovery of any profit or other commercial benefit from the content or data which is the property of data subjects, the NHS and associated care provider bodies.

Use of Benchmark Data

21. Annex 1 of this Commercial Standard sets out principles and data to be applied as benchmarks for how Suppliers may charge for Interface Services to recover reasonable

Commercial Standard & Model Interface Licence

levels of costs for provision of Interface Services ("**Benchmark Data**"). The Benchmark Data shall be updated annually, or as required subject to the variation procedures governing this Commercial Standard².

22. Other detail on recovery of reasonable charges are set out in the Model Interface Licence.

Compliance Payments from Framework Authorities

23. Framework Authorities may choose to pay or reimburse the Connection and/or support charges relating to Interface Services, in which case the relevant Framework Authority will publish the qualifying criteria, the identity of any entities being supported in this manner and the process for payment of such charges.

Conditions Applied to Proprietary Interfaces

24. Suppliers shall take all reasonable steps to ensure, demonstrate and declare as ongoing practice the general alignment of all externally exposed interfaces³ to the NHS England Open API Policy, with specific regard to exposure of libraries of available interfaces, technical documentation availability, and commercial treatment of interfaces accessing NHS Data, and Section C of this Commercial Standard ("**Open API Alignment**").
25. Each Supplier shall make a declaration of compliance with the Open API Alignment requirements upon request by the Catalogue Authority during assurance of Catalogue Solutions and/or of compliance with this Commercial Standard. All declarations of compliance with the Open API Alignment requirements must be supported with evidence of compliance. The Onboarding Process will define a number of tests which are to be applied by the Supplier to support its declaration of compliance with the Open API Alignment requirements.
26. To the extent that a Supplier is unable to make or to fulfil a declaration of compliance with the Open API Alignment requirements or if the facts underpinning a declaration later become or are found to have been untrue or different, then the Supplier shall agree a remedial plan with the Catalogue Authority covering recommended and required activities and associated dates.
27. The scope of this requirement for compliance with the Open API Alignment includes interfaces not directly paid for or commissioned under contracts predating this Commercial Standard, where such interfaces access NHS Data, such as those made available through established commercial partner programmes which encompass interfaces between a partner solution and a Supplier's Catalogue Solution.
28. The Catalogue Authority shall have the right, acting reasonably and with the consent of relevant programme partners, to request certain information from Suppliers and/or the relevant programme partner(s), describing the commercial arrangements between the parties

² Change Management Process and Roadmap Content: Ancillary Document to Catalogue Agreement

³ Externally exposed interfaces shall for the purposes of this standard be defined as the following, in accordance with the NHS England Open API Policy:

"Open APIs are those APIs that have been exposed to enable other systems to interact with that system, and those APIs have been sufficiently documented that the available functionality is discoverable, fit for purpose and re-usable."

Commercial Standard & Model Interface Licence

to the extent that they include provision of Interface Services. Suppliers shall respond promptly and accurately to all such requests.

Use of Model Interface Licence

29. The Model Interface Licence (Annex 4 of this document) contains terms under which all direct interface services involving NHS Data shall be offered to the market where the Connection is made through any relevant interface within the Interoperability Standard.
30. The Model Interface Licence shall control the rights and responsibilities of each party in respect of:
 - a. granting of a Connection,
 - b. service availability and performance of the interface,
 - c. acceptable use of the interface.
31. Any breach of the Model Interface Licence by a Supplier, which in the reasonable opinion of the Catalogue Authority is either a repeated breach or a single material breach shall be deemed to be a breach of this Commercial Standard.
32. Interface Services can be provided through a direct pairing interface (supplier - supplier processor / supplier - provider controller / supplier - data subject) or through a centrally managed hub model (such as GP Connect) so that Connections are between the Catalogue Authority and a Supplier, in which case the provision of such interfaces shall be governed by discrete terms of use.

**Section D
Market Responsibility**

Purpose of Provisions

33. In recognition of the potential to harm operations undertaken for the public good that exists within the context of supply of digital services into the NHS, Suppliers agree that they shall be subject to additional service and relationship management interactions in the event that they are classified as exerting significant influence on the technical and commercial environment, such that their actions may be generally market affecting (or otherwise affect public wellbeing).
34. The purpose of the additional measures will be to protect the NHS in respect of supply resilience and sustainability, value for money and provision of service quality, market fairness and unconstrained customer choice (together they form the "**Market Responsibility Provisions**").

Qualifying Suppliers

35. The Market Responsibility Provisions shall apply where a Supplier is deemed to exert significant influence on the technical and commercial environment by virtue of:

Commercial Standard & Model Interface Licence

- a. having a significant market share in a defined user market (in the reasonable opinion of the Catalogue Authority); and/or
 - b. receiving over £10m per annum in charges derived from central funding allocations (this may include departmental or NHS England capital investment, recurrent funds such as the GMS fund allocated for digital services in primary care, or centrally paid charges where they are incorporated within a Framework or procurement vehicle associated with the Catalogue).
36. If the Catalogue Authority determines that a Supplier is subject to the Market Responsibility Provisions in respect of any given Catalogue Solution in accordance with paragraph 35, then the Catalogue Authority shall inform a Supplier in writing.
37. Suppliers shall have the right to challenge this decision in accordance with the processes described within the Schedule 7 (Dispute Resolution) of the Catalogue Agreement, specifically the provisions describing commercial negotiation and mediation, with deemed acceptance from the relevant Supplier after 10 Business Days from receipt of the relevant notification from the Catalogue Authority.

Obligations Applied to Qualifying Suppliers

38. Where the Market Responsibility Provisions apply in respect of a Catalogue Solution, then the Supplier shall be subject to a range of enhanced management obligations which are outlined within the Catalogue Agreement, and may be further stipulated in Framework Agreements. The consequences of these provisions in respect of the Catalogue Agreement may be amended from time to time, in accordance with the relevant variation procedure but shall include as a minimum:
- a. enhanced exit provisions and obligations (as described in the Catalogue Agreement); and
 - b. enhanced governance (eg: frequency of meetings, extent of information exchange).
39. The Market Responsibility Provisions shall be considered to have been breached (which shall constitute a breach of this Commercial Standard), if the Catalogue Authority considers, and can reasonably evidence, any of the following anti-competitive behaviours:
- a. **Predatory Market Pricing:** this is the setting of uneconomic short term pricing strategies, which are designed to leverage market scale in order to absorb short term losses, where the objective or consequence of such a strategy is to remove the ability of the competitor market to operate without loss, such that the Supplier either consolidates total market share dominance or blocks competitor services from entering successfully into the market;
 - b. **Targeted Service Deterioration:** this is the reduction in service provision such that Call Off Ordering Parties and/or Service Recipients experience material degradation in service quality and/or experience. In order to prove the behaviour, the Catalogue Authority would (relying on audit rights as well as information and reports available to it) be required to prove that:

Commercial Standard & Model Interface Licence

- i. the deterioration was due to material reduction in product scope (as reasonably expected by a customer based on historic licensing entitlements), service quality investment, or staffing; and/or
- ii. gross profit margin or increase in working capital were achieved as a result of the service degradation.

Section E

Managing Compliance With Commercial Standard

Form of Monitoring

40. In monitoring compliance with this Commercial Standard the Catalogue Authority shall conduct regular surveys of Call Off Ordering Parties, Service Recipients and Consumer Suppliers in addition to the requirements in relation to records, audit and ongoing compliance under the terms of the Catalogue Agreement.

Notification of Potential Breach

41. Where the Catalogue Authority has reasonable grounds to consider that a breach of the Commercial Standard has taken place, they shall immediately notify the relevant Supplier(s), setting out the grounds and relevant information ("**Notification**").
42. Where the Catalogue Authority issues a Notification in accordance with paragraph 41, the relevant Supplier(s) shall have 10 Business Days to respond to the Notification and each of the grounds set out in the Notification. Following receipt the Catalogue Authority shall either:
 - a. accept the Supplier response and cease any further action;
 - b. request that the Supplier meets with the Catalogue Authority in order to further consider the relevant issues; or
 - c. reject the Supplier's response, in which case paragraph 43 shall apply.
43. If the relevant Supplier(s) does not remedy the problems described in the Notification or the relevant Supplier(s) fails to respond adequately to the requests or requirements set out in the Notification, then the Catalogue Authority may at its discretion initiate the breach and remedial processes of the Catalogue Agreement for breach of this Commercial Standard.

Annex 1

Benchmark Data

1. A valuation (ie. an objective measure of what is a fair charging arrangement for provision of an Interface Service) has been made, based on:
 - a. the due diligence service requirements associated with executing an interface Connection, as specified within the Model Interface Licence; and
 - b. the processing operations cost of volumes of data transactions set at average 25mb per payload, based on a fully costed reference implementation of generally available, undiscounted, data caching and API gateway solutions (ie the front of an application programming interface which acts as a single point of entry).
2. The valuation referred to above shall be the Benchmark Data, as more particularly set out in this Annex 1.
3. Accordingly the parties to a contract for Interface Services are recommended to assess this Benchmark Data where necessary to agree fair charging arrangements for provision of an Interface Service.
4. Where a Framework Authority is seeking to cover any charges on behalf of Consumer Suppliers it shall do so in accordance with the Benchmark Data, acting as a single aggregated customer in respect of transaction volume calculations.

Benchmark Data

5. In respect of the following Interfaces provided in accordance with the Interoperability Standard:
 - (a) Interface Mechanism 1 (IM1): Desktop API
 - (b) Interface Mechanism 1 (IM1): Bulk Service
 - (c) Interface Mechanism 1 (IM1): PFS API

a per Connection benchmark has been set at £5,000 per Connection.
6. In respect of the following Interfaces provided in accordance with the Interoperability Standard;
 - (a) Interface Mechanism 1 (IM1): PFS API

a transactional cost per call according the following volume banded price table below

Volume band	Total monthly call volumes:	GBP	Pence
Band A	Up to 25,000,000	£0.000241	0.0241
Band B	Up to 50,000,000	£0.000151	0.0151
Band C	Up to 100,000,000	£0.000131	0.0131
Band D	Up to 200,000,000	£0.000120	0.0120
Band E	Up to 300,000,000	£0.000117	0.0117
Band F	Over 300,000,000	£0.000112	0.0112

Commercial Standard & Model Interface Licence

Note: No indexation will apply to the above charge rates.

7. In respect of the following Interfaces provided in accordance with the Interoperability Standard;
 - (a) Interface Mechanism 1 (IM1): Desktop API
 - (b) Interface Mechanism 1 (IM1): Bulk Service

an annual service charge of £[0],000 per Connection per annum.
8. For the avoidance of doubt, support costs in relation to Interface Services provided are not separately chargeable and are to be provided by the Interface Service provider within the scope of the Periodic Service Charge.
9. Charges are to be invoiced monthly in arrears by the Interface Service provider, either to:
 - a. The Consumer Supplier; or
 - b. The framework authority (where the relevant declaration has been signed as per the Model Interface Licence)
10. From time to time a Framework Authority who has agreed to pay Interface Service costs (as described in section C of the Commercial Standard) directly may seek to validate transactional volumes via audit rights under the terms of the relevant Framework Agreement.
11. The above arrangements will apply in relation any Interface Services that fit the criteria to be chargeable under the terms of the Commercial Standard. For the avoidance of doubt where, i) interfaces supplied under the Interoperability Standard are not deemed chargeable in accordance with the rules set out in section C of the Commercial Standard, or ii) specific interfaces are subject to restraints against recovery outside of the Periodic Service Charge as a result of the application of the Commercial Standard, then a Supplier shall not be entitled to seek payment for Associated Services. Any Supplier who is found to be requesting payment from any third party in respect of interfaces which are commercially restrained in this manner will be considered to be in breach of the Commercial Standard.

Commercial Standard & Model Interface Licence

Annex 2

Table of Standard Data Flows

A Standard Data Flow is any transmission of information or data that NHS England has specifically mandated that its providers deliver, either to a central processing body or to any other defined party (i.e. a CCG or regional group with implemented Local Health and Care Record Exemplars (LCHREs) provision). NHS England may use multiple means by which to mandate these dataflows, for instance via contractual reporting obligations within provider contracts or information standards notices (ISNs).

This table displays a list of those flows currently mandated and in force, plus those which are under active consideration for future mandation.

Item Name	Description & References	Status
In Force		
Future Forecast		

OFFICIAL - SENSITIVE - COMMERCIAL

Commercial Standard & Model Interface Licence

Annex 3

Glossary / Definitions

In this Commercial Standard, capitalised terms (if they are not defined in the Catalogue Agreement or Model Interface Licence) shall have the meanings set out below:

Term	Definition
Additional Services	means an augmentation of a Catalogue Solution provided by the Supplier that may have its own charges and that may require the purchase of one or more of the Associated Services applicable to the Catalogue Solution it augments;
Associated Services	means services associated with the implementation or optimisation of a Catalogue Solution, that the Call Off Ordering Parties have the option as to whether or not to purchase in association with their purchase of that Catalogue Solution;
Benchmark Data	has the meaning given in paragraph 21 of this Commercial Standard;
Call Off Agreement	means a call off agreement executed pursuant to any framework agreement authorised to link to and utilise the Catalogue;
Call Off Ordering Party	means any party who executes a Call Off Agreement with the Supplier;
Capability	means a specification of one or more functional capabilities and the associated Standards (if applicable), as defined in accordance with the Capability and Standards Model;
Capability and Standards Model	means the Capability and Standards Model document published by the Catalogue Authority;
Catalogue	means the digital catalogue (as may be referred to as the "Digital Buying Catalogue") used to support on-boarding, used by Suppliers to advertise Catalogue Solution(s) and by Call Off Ordering Parties to browse, compare and purchase Supplier Catalogue Solutions;
Catalogue Agreement	means the Catalogue Terms, Catalogue Ancillary Documents and other documents that are incorporated by reference;
Catalogue Ancillary Documents	means any operational documents that the Catalogue Authority reasonably requires the Supplier to comply with, that are uploaded and published by the Catalogue Authority from time to time, including but not limited to: <ul style="list-style-type: none"> (a) Catalogue On-boarding Process; (b) Privacy Policy; (c) Cookies Policy; (d) Acceptable Use Policy. (e) Catalogue Buyer's Guide; (f) Capability and Standards Model; (g) Change Management Process and Roadmap Content; (h) Model Interface Licence; (i) Catalogue Solution Migration Process; each of which is defined in the Catalogue Agreement;
Catalogue Authority	is defined in the preamble to the Catalogue Agreement;
Catalogue On-boarding Process	means the process and requirements set out in the Catalogue On-boarding Process document, as published by the Catalogue Authority;
Catalogue	means the plan detailing the steps the Supplier must follow to remedy a notified

OFFICIAL - SENSITIVE - COMMERCIAL

Commercial Standard & Model Interface Licence

Remedial Plan	breach, in accordance with clauses 40.5 to 40.8 of the Catalogue Agreement;
Catalogue Solution	means any of the Supplier's services registered on the Catalogue, including Additional Services applicable to that product;
CCG	means a clinical commissioning group;
Change Management Process and Roadmap Content	means the Change Management Process and Roadmap Content document, published by the Catalogue Authority;
Commercial Standard	has the meaning given in paragraph 1 of this Commercial Standard;
Consumer Supplier	has the meaning given in the Model Interface Licence;
Connection	means the connection of different systems so that queries aimed at an interface receive results returned following fulfilment of all criteria for the interface and connection of the systems;
Framework Agreement	means any framework agreement that the Supplier is a party to that links to the Catalogue, which shall include the clauses, schedules and any appendices and annexes to the agreement;
Framework Authority	means the party (other than the Supplier) to a Framework Agreement;
Interface	means the open application programming interfaces (APIs) and other system interfaces mandated by the Interoperability Standard;
Interface Licence	means the terms to govern the making and fulfilment of a Connection request relating to the transactional services over Interfaces;
Interface Services	means the performance of obligations to fulfil requirements in relation to Interfaces;
Interoperability Standard	means the Interoperability Standard document, as published by the Catalogue Authority;
Mandated Information Flows	has the meaning given in paragraph [18] of this Commercial Standard;
Market Responsibility Provisions	has the meaning given in paragraph [32] of this Commercial Standard;
Model Interface Licence	means the Model Interface Licence, which is a template as published by the Catalogue Authority which shall be used by the Supplier to govern Connections with the Consumer Suppliers;
NHS Data	clinical data, care provision data and other operational data, which is generated and recorded through health and care delivery;
Non-Standard Provision	has the meaning given in paragraph [10] of this Commercial Standard;
Notification	has the meaning given in paragraph [39] of this Commercial Standard;
Open API Alignment	has the meaning given in paragraph [24] of this Commercial Standard;
Open API Policy	means the NHS England managed policy for open APIs found at : [insert link]
Periodic Service Charge	has the meaning given in paragraph 6 of this Commercial Standard;
Service Recipient	means any entity which consumes services delivered under a Call Off Agreement, including as identified by a Call Off Order Form;

OFFICIAL - SENSITIVE - COMMERCIAL

Commercial Standard & Model Interface Licence

Standard Data Flow	has the meaning given in Annex 2 of this Commercial Standard;
Standards	means the standards which are formatted in accordance with the Capability and Standards Model and which are set out and mapped to Capabilities in the Change Management Process and Roadmap Content document, which will include the following types of standards: (a) the standards applicable to each Capability at the point the Catalogue Solution begins the Catalogue On-Boarding Process; (b) the standards applicable to each Capability in accordance with the Standards Roadmap; and (c) any standards defined by a Supplier as part of the agreed specification of an additional capability under the Catalogue On-boarding Process;
Standards Roadmap	means the roadmap for delivery of and/or updates to Standards as set out in the Change Management Process and Roadmap Content document;
Supplier(s)	means each supplier of a Catalogue Solution and party to a Catalogue Agreement.

OFFICIAL - SENSITIVE - COMMERCIAL
Commercial Standard & Model Interface Licence

Annex 4 : Model Interface Licence Draft

DATE: 20[]

MODEL INTERFACE LICENCE
GP IT SYSTEMS AND SERVICES

CONTENTS

1.	DEFINITIONS AND INTERPRETATION	17
2.	DURATION.....	18
3.	GRANT OF LICENCE.....	18
4.	LICENCE RESTRICTIONS	19
5.	KEY PRINCIPLES	20
6.	THE CONNECTION PROCESS	21
7.	COMPLETION OF THE MODEL INTERFACE LICENSE	22
8.	FAIR USAGE POLICY.....	22
9.	CHARGES.....	23
10.	PERSONAL DATA.....	23
11.	CONFIDENTIALITY.....	24
12.	INTELLECTUAL PROPERTY	25
13.	TERMINATION.....	25
14.	CONSEQUENCES OF TERMINATION	26
15.	LIMITATION OF LIABILITY	26
16.	FORCE MAJEURE	26
17.	NOTICES.....	27
18.	DISPUTE RESOLUTION.....	28
19.	WAIVER	29
20.	CUMULATIVE REMEDIES	29
21.	RELATIONSHIP OF THE PARTIES.....	29
22.	FURTHER ASSURANCE.....	29
23.	SEVERANCE.....	29
24.	THIRD PARTY RIGHTS.....	30
25.	VARIATION	30
26.	ENTIRE AGREEMENT.....	30
27.	COUNTERPARTS	30
28.	GOVERNING LAW AND JURISDICTION	31
	SCHEDULE 1: DEFINITIONS.....	32
	SCHEDULE 2: INTERFACE SERVICES.....	35
	SCHEDULE 3: SUPPLIER CONFORMANCE ASSESSMENT LIST (SCAL).....	36
	SCHEDULE 4: CHARGES.....	37
	SCHEDULE 5: FAIR USAGE POLICY.....	38

THIS AGREEMENT is made on

20□

BETWEEN:

- (1) a company incorporated and registered in [England and Wales] (company number) which has its [registered office at] [principal place of business at] ("**Provider Supplier**") acting as licensor ; and
- (2) a company incorporated and registered in [England and Wales] (company number) which has its [registered office at] [principal place of business at] ("**Consumer Supplier**") as licensee under this agreement.

BACKGROUND:

- A The Provider Supplier has developed one or more interfaces for access by third parties, in accordance with their obligations under the Interoperability Standard of the NHS Digital Catalogue Agreement.
- B The interfaces which may be accessed in conjunction with this license are as stated within Appendix A, and may be altered or added to from time to time in accordance with the provisions of the Catalogue Agreement (managed by NHS Digital, the "**Catalogue Authority**").
- C The Consumer Supplier wishes to access the interfaces within the scope of this license, which includes accessing confidential and protected data, in accordance with the specification of the interface/s in question.
- D This Agreement sets out the terms and conditions which govern the connection to the relevant interface services, in respect of grant and delivery of the connection, completion of the license documentation and access to the live interface/s.
- E This Agreement, in conjunction with the Commercial Standard plus any relevant Framework Agreements, also sets out how charges may be payable for the provision of services by the Provider Supplier, including a Benchmark Data provision which may be used for determining appropriate charge rates.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, capitalised words and phrases shall have the meaning given in Schedule 1 (unless the context requires otherwise).
- 1.2 In this Agreement (unless the context requires otherwise):
- 1.2.1 the words "including", "include", "for example", "in particular" and words of similar effect shall be construed so that they do not limit the general effect of the words which precede them, and so that any examples that are given are not to be exclusive or limiting examples of the matters in question;

OFFICIAL - SENSITIVE - COMMERCIAL

Commercial Standard & Model Interface Licence

- 1.2.2 references to this Agreement and any other document referred to in this Agreement, is a reference to it as validly varied, supplemented and/or novated from time to time;
- 1.2.3 references to any party include (where applicable), its lawful successors, permitted assignees and permitted transferees;
- 1.2.4 general references to a "person" shall be understood to include (as applicable), a natural person, a company, a partnership, and an unincorporated association (in each case whether or not having separate legal personality);
- 1.2.5 general references to a "company" shall be understood to include any (as applicable), company, corporation and body corporate, and any other entity having separate legal personality, wherever and however incorporated or established;
- 1.2.6 references to the singular include the plural and vice versa;
- 1.2.7 references to any one gender do not exclude other genders;
- 1.2.8 recitals and headings are all for reference only and shall be ignored in construing this Agreement.

2. DURATION

- 2.1 This Agreement shall come into force on the Commencement Date and shall continue in force until it is terminated by operation of law or in accordance with its terms.
- 2.2 Unless otherwise in written agreement between the Parties, this Agreement shall be deemed to expire 18 months from the Commencement Date where the Consumer Supplier has not achieved a Connection as recorded between the Parties.
- 2.3 The Consumer Supplier may terminate this agreement without cause upon giving one month's written notice.

3. GRANT OF LICENCE

- 3.1 In consideration of the Consumer Supplier performing its obligations in accordance with this Agreement, and with effect from the date of the Connection, the Provider Supplier grants the Consumer Supplier a non-exclusive, non-transferable licence to use the Provider Supplier's Interface/s as set out in Schedule 3 Interface Services, subject to the restrictions set out in this Agreement.
- 3.2 The right to use the Provider Supplier's Interface is conditional on:
 - 3.2.1 the Consumer Supplier demonstrating compliance with the requirements noted within the Supplier Conformance Assessment List;
 - 3.2.2 the Consumer Supplier demonstrating that it has appropriate permissions for accessing and use of NHS Data; and

Commercial Standard & Model Interface Licence

- 3.2.3 the Consumer Supplier demonstrating that it has implemented its API connection correctly, in accordance with the connection process methods described within Section 6
- 3.2.4 the Consumer Supplier operating reasonably within the boundaries for the Fair Usage Policy.
- 3.3 This Agreement does not permit the Consumer Supplier to use the Provider Supplier's Interface for or in conjunction with any purpose which is not expressly described or referred to in this Agreement.
- 3.4 The grant of the licence to use the Provider Supplier's Interface shall continue until this Agreement is terminated in accordance with its terms and extends to error corrections, patches, fixes, updates, upgrades, new releases or new versions subsequently received (if any) of the Provider Supplier's Interface.
- 3.5 The parties agree that the Catalogue Authority shall have a right to audit compliance of the Consumer Supplier with the terms of this Agreement and the Consumer Supplier shall provide all reasonable assistance, access and information to the Catalogue Authority in connection with such audits.

4. LICENCE RESTRICTIONS

- 4.1 The Consumer Supplier shall comply generally with the provisions of the SCHEDULE 5: Fair Usage Policy.
- 4.2 The Consumer Supplier shall not (to the extent permitted by law) attempt to:
 - 4.2.1 copy, adapt, duplicate, modify, create derivative works from or distribute all or any portion of Provider Supplier's Interface, except to the extent expressly set out in this Agreement; or
 - 4.2.2 reverse compile, decompile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of Provider Supplier's Interface; or
 - 4.2.3 make changes or error corrections to Provider Supplier's Interface in whole or in part; or
 - 4.2.4 use Provider Supplier's Interface:
 - (a) in connection with a criminal offence under the applicable national laws or regulations or against public order or applicable ethical standards and codes;
 - (b) in any way which causes or is intended to cause annoyance, inconvenience or needless anxiety;
 - (c) in any way which has a genuine clinical safety risk;
 - (d) for any unlawful purpose whatsoever, including fraud or terrorism;
 - (e) in any way which is abusive, harmful, threatening or defamatory or any other way that may cause offence;

Commercial Standard & Model Interface Licence

- (f) in any way that could be harmful to end users' or Provider Supplier's systems or data (including uploading any material that otherwise contains a virus or other malicious code);
 - (g) in any way which breaches or could potentially breach a legal duty to a third party (including a duty of confidentiality) or which infringes or could potentially infringe a person's right to privacy;
 - (h) in any way which promotes discrimination or is likely to incite hatred;
 - (i) in any way which may infringe the Intellectual Property Rights of third parties or which promotes any unlawful act.
- 4.3 Without prejudice to the Provider Supplier's commitments to the Catalogue Authority under the Catalogue Agreement, the Provider Supplier's Interface is provided to the Consumer Supplier on an "*as is*" basis without (to the extent permitted by law) any warranty or representation of any kind either express or implied (including the implied warranties of merchantability and fitness for a particular purpose).
- 5. KEY PRINCIPLES**
- 5.1 This Agreement is executed between the Parties prior to submission of the Supplier Conformance Assessment List, and covers within its scope;
 - 5.1.1 provision of support for a Consumer Supplier attempting to achieve a Connection, including provision of connection support;
 - 5.1.2 requirements of the Consumer Supplier in order to achieve a Connection; and
 - 5.1.3 ongoing obligations and agreement between the connected Parties.
- 5.2 The Provider Supplier shall make available to any Consumer Supplier all technical guidance and materials necessary to;
 - 5.2.1 develop the Consumer Supplier connection and implement within the Consumer Supplier service; and
 - 5.2.2 test the Consumer Supplier connection for compliance with the interface specification
 - 5.2.3 submit information in support of the requirements of the Supplier Conformance Assessment List (SCAL).
- 5.3 The Provider Supplier shall, in conjunction with the Catalogue Authority, by means of the SCAL, perform reasonable diligence and assurance activities in respect of any Consumer Supplier
 - 5.3.1 fitness to access the interface in respect of organisational status, business model as pertaining to data accessed via the interface/s and organisational controls;
 - 5.3.2 compliance with requirements noted within the SCAL in respect of information governance and security management;

Commercial Standard & Model Interface Licence

- 5.3.3 compliance with requirements noted within the SCAL in respect of clinical safety risk management in use of data and behaviour of the interface;
- 5.3.4 compliance with the technical interface as demonstrated through the Connection Witness Test.
- 5.4 The Provider Supplier shall assign a named contact to each progressing Consumer Supplier, and shall make reasonable support available to a Consumer Supplier in respect of clarifying aspects of the requirements, technical facilitation, facilitation of witness tests, in support of the activities outlined under paragraph 5.3.
- 5.5 The Consumer Supplier is only permitted to access data to the extent that they are able to demonstrate the requisite permissions in compliance with the General Data Protection Regulations as set out in clause 10 and must operate the API within the boundaries of the Fair Usage Policy as set out in Schedule 5.

6. THE CONNECTION PROCESS

- 6.1 The Consumer Supplier shall execute and commit to the provisions of this Agreement.
- 6.2 A Consumer Supplier shall register at [xx.xx@xx.com] in accordance with the instructions given in order to commence the Connection Application.
- 6.3 Registration includes the execution and commencement of this Agreement.
- 6.4 The Provider Supplier and the Catalogue Authority shall support the Consumer Supplier on a reasonable endeavours basis in support of the Connection Application.
- 6.5 The Provider Supplier shall for each Connection Application deploy appropriate resources to enable the Connection to be achieved.
- 6.6 The Consumer Supplier shall apply for a Connection and commence connection diligence and testing in accordance with the following process:
 - 6.6.1 the Consumer Supplier shall submit a response to the SCAL, which shall be subject to assessment by the Catalogue Authority on behalf of the Provider Supplier and relevant Data Controllers;
 - 6.6.2 after a request from the Catalogue Authority, the Consumer Supplier shall schedule access to a supported test environment from the Provider Supplier, such access being granted for a period of 2 calendar weeks;
 - 6.6.3 during the period of access to the supported test environment, the Consumer Supplier shall perform a Connection Witness Test in witness of the Catalogue Authority, with Provider Supplier in attendance at their discretion;
 - 6.6.4 the Catalogue Authority shall, subject to successful completion of Connection Witness Test and satisfactory assessment of the SCAL, grant a Recommendation To Connect to the Provider Supplier; and
 - 6.6.5 the Catalogue Authority may also, based on its reasonable judgement:
 - 6.6.5.1 reject the Consumer Supplier

Commercial Standard & Model Interface Licence

- 6.6.5.2 request a subsequent Connection Witness Test
 - 6.6.5.3 request further clarification in respect of the SCAL
 - 6.6.5.4 grant the Recommendation To Connect with a refusal to accept charges on behalf of a Framework Authority.
- 6.7 The Provider Supplier shall complete the Connection in accordance with the following process:
- 6.7.1 the Provider Supplier shall have 5 calendar days to dispute any Recommendation To Connect (in which case the dispute shall be managed in accordance with the provisions of the Catalogue Agreement as executed between the Provider Supplier and the Catalogue Authority, utilising the Expert Determination procedure described in the Catalogue Agreement) otherwise deemed acceptance shall apply;
 - 6.7.2 notwithstanding Provider Supplier rights to dispute, the Provider Supplier shall deliver access to the Interface for the Connection to the Consumer Supplier within 10 Business Days of receipt of a Recommendation to Connect;
 - 6.7.3 where a connection is subject to a staged rollout across Provider Supplier infrastructure estate, then the Provider Supplier shall ensure that the Consumer Supplier has achieved 80% estate coverage with 40 Business Days of Recommendation to Connect, unless otherwise agreed between the Parties;
 - 6.7.4 the Provider Supplier shall issue a certificate to confirm the Connection which shall be validated by the Consumer Supplier and presented, along with the completed Interface licence to the Catalogue Authority; and
 - 6.7.5 the dispute resolution processes available to the Consumer Supplier under this Agreement in respect of the Connection Application process are as outlined within Section 18 below.

7. COMPLETION OF THE MODEL INTERFACE LICENCE

- 7.1 The Parties shall execute a Change to this Agreement at the point of Connection, which shall comprise:
- 7.1.1 insertion of completed SCAL, as SCHEDULE 3: to this Agreement; and
 - 7.1.2 completion the charges table in SCHEDULE 4: Charges where Consumer Supplier is not subject to charge cover under a relevant Framework Agreement.
- 7.2 Subsequent to the execution of this change this Agreement shall be known as the [Interface Name] Interface Licence [Consumer Supplier Name].

8. FAIR USAGE POLICY

- 8.1 The Consumer Supplier hereby agrees to abide by the Fair Usage Policy as set out within SCHEDULE 5: .
- 8.2 Where the Consumer Supplier commits a material breach of the Fair Usage Policy, the Provider Supplier reserves the following rights under this Agreement;

Commercial Standard & Model Interface Licence

- 8.2.1 interface throttling;
- 8.2.2 suspension of interface service to Consumer Supplier, subject to 1 month notice;
- 8.2.3 immediate suspension of interface service upon discovery of data breach or clinical safety incident, subject to the written consent of the Catalogue Authority;
- 8.2.4 termination of this agreement, subject to the written consent of the Catalogue Authority.

9. CHARGES

- 9.1 Notwithstanding the constraints placed upon the Provider Supplier by the Commercial Standard to which they are subject under the Catalogue Agreement, the Provider Supplier may charge for services required for the successful delivery of a Connection.
- 9.2 Notwithstanding the constraints place upon the Provider Supplier by the Commercial Standard to which they are subject, the Provider Supplier may charge for continued use of the interface service periodically from point of Connection.
- 9.3 The Provider Supplier accepts the Benchmark Data as published by the Catalogue Authority represents a fair commercial charge for the provision of the interface services which are the subject of this agreement.
- 9.4 Where the Consumer Supplier satisfies the conditions of and completes the relevant declarations within the SCAL then any charges accruing from the enabling and servicing of this connection shall be charged directly by the Provider Supplier to the [Name of Framework] Authority in accordance with the terms of the [Name of] Framework Agreement.
- 9.5 Where the Consumer Supplier does not satisfy or will not make the relevant declarations then the relevant Framework Authority shall not accept charges on their behalf in relation to this Agreement. If this occurs,

subject to the Consumer Supplier satisfying the remainder of the SCAL, the Parties may agree charging arrangements with reference to the Benchmark Data published by the Catalogue Authority, completing the charging table in SCHEDULE 4: (Charges) prior to achievement of a Connection.

10. PERSONAL DATA

- 10.1 The parties hereby acknowledge that each of them acts as a Processor in respect of the Personal Data processed and/or shared pursuant to this Licence, and that each is subject to terms contained in separate agreements with the respective Data Controller(s) of the Personal Data. Each Party shall comply with all terms relating to data protection as are contained in such agreements with its respective Data Controller(s) which are relevant to the Personal Data. *[Note: may need to account specifically for consumer suppliers being data controllers in common with other parties – drafting to be updated to reflect]*
- 10.2 Each Party shall comply with the Data Protection Laws, as applicable to it, in its processing of the Personal Data pursuant to this Licence.
- 10.3 Without limitation to the foregoing provisions of this clause 10 the Consumer Supplier shall:

Commercial Standard & Model Interface Licence

- 10.3.1 provide reasonable assistance to the Provider Supplier to enable the Provider Supplier to comply with any of its obligation pursuant to the agreements referred to in clause 10.1;
- 10.3.2 taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of its processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, implement appropriate technical and organisational measures to ensure a level of security commensurate to the risk, including inter alia as appropriate:
 - 10.3.2.1 the pseudonymisation and encryption of the Personal Data;
 - 10.3.2.2 the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - 10.3.2.3 the ability to restore the availability and access to the Personal Data in a timely manner in the event of a physical or technical incident; and
 - 10.3.2.4 a process for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of the processing;
- 10.3.3 take reasonable steps to ensure the reliability and integrity of any of its personnel who may have access to the Personal Data, ensuring in each case that access is strictly limited to those individuals who need to access the relevant Personal Data, and are subject to confidentiality obligations;
- 10.3.4 notify the Provider Supplier immediately upon becoming aware of a Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach providing the Provider Supplier with sufficient information to meet any obligations to report a Personal Data Breach under the agreements referred to at clause 10.1;
- 10.3.5 notify the Provider Supplier within [3 Business Days] if it receives any communication from a Supervisory Authority or any other regulatory authority in connection with the processing of the Personal Data pursuant to this Licence.

11. CONFIDENTIALITY

- 11.1 Each party shall maintain the confidentiality of the other party's Confidential Information and shall not without the prior written consent of the other party use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than as necessary for the performance of its rights and obligations under this Agreement.
- 11.2 Each party undertakes to:
 - 11.2.1 disclose the other party's Confidential Information only to those of its officers, employees, agents, professional advisers and contractors to whom and to the extent to which such disclosure is necessary for the purposes contemplated under this Agreement;

Commercial Standard & Model Interface Licence

- 11.2.2 to procure that such persons are made aware of and agree in writing to observe the obligations in this clause; and
- 11.2.3 give notice to the other of any unauthorised misuse, disclosure, theft or loss of the other party's Confidential Information immediately upon becoming aware of it.
- 11.3 The obligations under this clause shall survive the variation, expiry or termination of this Agreement for a period of three years thereafter.

12. INTELLECTUAL PROPERTY

- 12.1 All Intellectual Property Rights created and developed by (or on behalf of) the Provider Supplier which subsist or are used in, or in connection with, the Provider Supplier's Interface and its proprietary software and applications will be the absolute property of, and will vest and remain vested in the Provider Supplier.
- 12.2 All Intellectual Property Rights created and developed by (or on behalf of) the Consumer Supplier which subsist or are used in, or in connection with, the Consumer Supplier's proprietary software, applications and interfaces will be the absolute property of, and will vest and remain vested in the Consumer Supplier.

13. TERMINATION

- 13.1 Either party may, without prejudice to its other rights and remedies arising under or in connection with this Agreement or by law, terminate this Agreement with immediate effect by written notice to the other, on or at any time after the occurrence of any of the following events:
 - 13.1.1 the other party commits a material breach of this Agreement (being a single event or a series of events which together constitute a material breach) which is incapable of remedy or is capable of remedy but has not been remedied within 30 days (or such longer period as may be specified in the notice), of receipt of a written notice identifying the material breach and the intention to terminate this Agreement if the breach is not remedied;
 - 13.1.2 the other party is, or is adjudicated or found to be, insolvent as set out in section 123 of the Insolvency Act 1986 (whether or not the company is registered or unregistered) or stops or suspends payments of its debts or is (or is deemed to be) unable to or has no real prospect of being able to or admits inability to pay its debts as they fall due or fails to satisfy any judgment debt in whole or in part within 14 days of the judgment date; or
 - 13.1.3 the other party enters into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them; or
 - 13.1.4 the other party passes a resolution or makes a determination for it to be wound up (without a declaration of solvency / except for the purposes of amalgamation or reconstruction); or
 - 13.1.5 the other party has a winding-up order or bankruptcy order made against it; or
 - 13.1.6 the other party has appointed to it an administrator or administrative receiver; or

Commercial Standard & Model Interface Licence

- 13.1.7 the other party, if it is a partnership, in addition to the above, suffers bankruptcy orders being made against all of its partners; or
- 13.1.8 the other party suffers any event or step analogous to the events or steps set out in clauses 13.1.2 to 13.1.7 (inclusive) in any jurisdiction other than England and Wales.

14. CONSEQUENCES OF TERMINATION

- 14.1 Termination or expiry of this Agreement, howsoever caused, shall not prejudice any obligations or rights or remedies of either of the parties which have accrued before termination or expiry and shall not affect any provision of this Agreement which is expressly, or by implication, intended to come into effect on, or to continue in effect after, such termination or expiry.
- 14.2 Upon the termination or expiry of this Agreement all undisputed sums owing by either party to the other shall become immediately due and payable.

15. LIMITATION OF LIABILITY

- 15.1 Subject to subclause 15.2, under no circumstances shall either party be liable to the other party for any of the following types of loss or damage arising under or in relation to this Agreement (whether arising for breach of contract (including under any indemnity), misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty, warranty, strict liability or any other legal theory howsoever arising):
 - 15.1.1 any loss of profits, business, contracts, anticipated savings, goodwill, or revenue, any wasted expenditure, regardless of whether any of these types of loss or damage are direct, indirect or consequential; or
 - 15.1.2 any indirect or consequential loss or damage whatsoever, even if that party was aware of the possibility that such loss or damage might be incurred by the other.
- 15.2 Notwithstanding the above, neither party excludes or limits any liability for:
 - 15.2.1 personal injury (including sickness and death) to the extent that such injury results from the negligence or wilful default of a party or its employees; or
 - 15.2.2 fraud, fraudulent misrepresentation or fraudulent concealment; or
 - 15.2.3 any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - 15.2.4 any other liability to the extent the same cannot be excluded or limited by law.

16. FORCE MAJEURE

- 16.1 Subject to compliance with clauses 16.2 and 16.3, neither party shall be liable to the other for delay or non-performance of its obligations under this Agreement for as long as (and only to the extent that) this is due to a Force Majeure Event.
- 16.2 Where a party is delayed or prevented from performing its obligations under this Agreement by a Force Majeure Event that party shall notify the other as soon as reasonably possible with details of the Force Majeure Event, its effect on the relevant obligations and its estimated

Commercial Standard & Model Interface Licence

duration. The affected party shall use all reasonable endeavours to mitigate the effect of the Force Majeure Event upon the performance of its obligations under this Agreement.

- 16.3 Subject to clause 16.4, as soon as reasonably possible following the end of the Force Majeure Event, the affected party shall notify the other and this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event, unless agreed otherwise by the parties.
- 16.4 If any Force Majeure Event prevents the affected party from fulfilling its obligations under this Agreement for a continuous period of more than 7 days or an aggregate period of more than 14 days in a one month period, that affected party may terminate this Agreement by written notice with immediate effect.

17. NOTICES

17.1 Any notice to be given under this Agreement shall be in writing in the English language and signed by, or on behalf, of the party giving it.

17.2 Addresses:

Notices shall be delivered to the recipient and address set out in the table below:

	Provider Supplier	Consumer Supplier
Email		
Postal Address		
For the attention of	<i>[insert job title instead of / in addition to an individual's name]</i>	<i>[insert job title instead of / in addition to an individual's name]</i>

17.3 Delivery:

Manner of Delivery	Deemed time of delivery	Proof of Service
Email	9.00 am on the first Business Day after sending.	Dispatched in an emailed pdf form to the correct email address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00 am and 5.00 pm on a Business Day. Otherwise, delivery will occur at 9.00 am on the same Business Day (if delivery is before 9.00 am) or 9.00 am on the next Business Day (if after 5.00 pm).	Properly addressed and delivered as evidenced by signature of a delivery receipt.
Prepaid, Recorded	At the time recorded by the	Properly addressed

delivery or other service providing proof of delivery	delivery service, provided that delivery is between 9.00 am and 5.00 pm on a Business Day. Otherwise, delivery will occur at 9.00 am on the same Business Day (if delivery is before 9.00 am on the next Business Day (if after 5.00 pm).	prepaid and delivered as evidenced by signature of a delivery receipt.
Prepaid international air postal service with a requirement for signature on delivery	At the time recorded by the delivery service, provided that delivery if between 9.00 am and 5.00 pm on a Business Day. Otherwise, delivery will occur at 9.00 am on the same Business Day (if delivery is before 9.00 am) or 9.00 am on the next Business Day (if after 5.00pm).	Properly addressed, prepaid and delivered as evidenced by signature of a delivery receipt.

17.4 A party may notify the other of a change to its details for the purposes of this clause. This notification shall be effective from the date falling 7 days after the date on which such notification is, in accordance with this clause, deemed to have been delivered or on such later date as may be specified in the notification.

18. DISPUTE RESOLUTION

18.1 Subject to a right to claim injunctive relief where applicable, the parties shall first attempt to resolve any dispute between them arising out of, or in connection with, this Agreement in accordance with the following dispute resolution procedure.

18.2 Either party will give to the other written notice of the dispute, including a full description of the circumstances giving rise to such dispute ("**Dispute Notice**"), together with relevant available supporting documentation. Each party's senior commercial managers will attempt in good faith to resolve the dispute within 5 Business Days of the date of delivery of the Dispute Notice.

18.3 If each party's senior commercial managers are for any reason unable to resolve the dispute within 5 Business Days of the date of delivery of the Dispute Notice, then within a further 2 Business Days, the matter shall be referred by both parties to their respective senior executive officers and they will attempt in good faith to resolve it.

18.4 If the parties senior executive officers are for any reason unable to resolve the dispute within 5 Business Days of it being referred to them, then within a further 2 Business Days, each party shall refer the matter to the Catalogue Authority.

18.5 The Catalogue Authority shall investigate each matter referred to it and each party shall cooperate with any enquiries relating to that investigation including by promptly providing information and attendance at mediation meetings as reasonably requested. The Catalogue Authority shall assess compliance of the parties with the Commercial Standard when considering any dispute. Both parties shall comply with any decisions and instructions of the Catalogue Authority at the conclusion of any such investigation (which may include referral of the dispute for expert determination or mediation).

18.6 Nothing in this Agreement will restrict, at any time, either party's freedom to commence court proceedings for whatever reason.

19. WAIVER

Any delay or failure by a party in exercising, or any waiver by a party of, its rights under or in connection with this Agreement will not limit or restrict the future exercise or enforceability of those rights.

20. CUMULATIVE REMEDIES

The rights and remedies under this Agreement are cumulative and in addition to and, except where otherwise expressly provided in this Agreement, do not exclude, any rights and remedies provided by law (including equitable remedies) or otherwise.

21. RELATIONSHIP OF THE PARTIES

Nothing in this Agreement is intended or shall be construed as creating a partnership, joint venture, the relationship of principal and agent, or any other legal relationship between the parties that would impose liability upon one party for the act or failure to act of the other. Neither party has authority or power to make representations or bind the other in any way.

22. FURTHER ASSURANCE

Each party shall, at the request and cost of the other, use all reasonable endeavours to do or procure the doing of all such further acts, and execute and deliver or procure the valid execution and delivery of all such documents, as may from time to time be necessary in the requesting party's reasonable opinion to give full effect to this Agreement and to secure to the requesting party the full benefit of the rights, remedies and benefits conferred on it by this Agreement.

23. SEVERANCE

If any provision (or part of any provision) of this Agreement is, or becomes illegal, invalid or unenforceable in any respect: (a) it shall not affect or impair the legality, validity or enforceability of any other provision of this Agreement; and (b) that provision (or part provision), will be deemed deleted.

24. THIRD PARTY RIGHTS

- 24.1 The Health and Social Care Information Centre, known as NHS Digital, shall in its capacity as the "Catalogue Authority" in managing the Catalogue (as defined in the Catalogue Agreement) have rights to enforce the terms of this Model Interface Licence. These rights of enforcement shall apply to any party replacing or succeeding the Health and Social Care Information Centre as the Catalogue Authority.
- 24.2 Except for the Catalogue Authority as described in clause 24.1, a person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 ("CRTPA") to enforce any term of the Agreement.
- 24.3 This clause 24 will not affect any right or remedy of any person which exists, or is available, otherwise than pursuant to CRTPA.

25. VARIATION

No variation of this Agreement shall be valid unless it is in writing and signed by, or on behalf of each of the parties to this Agreement.

26. ENTIRE AGREEMENT

- 26.1 This Agreement constitutes the entire agreement and understanding between the parties in respect of its subject matter and supersedes any previous agreement, warranty, statement, representation, understanding, or undertaking (in each case whether written or oral) given or made before the date of this Agreement by, or on behalf of, the parties and relating to its subject matter.
- 26.2 Each party confirms that it has not relied upon, and shall have no remedy in respect of, any agreement, warranty, statement, representation, understanding or undertaking made by any party (whether or not a party to this Agreement) unless that warranty, statement, representation, understanding or undertaking is expressly set out in this Agreement.
- 26.3 Subject to clause 26.4, neither party shall be entitled to the remedies of rescission or damages for misrepresentation arising out of, or in connection with, any agreement, warranty, statement, representation, understanding or undertaking whether or not it is set out in this Agreement.
- 26.4 Nothing in this Agreement shall restrict or exclude any liability for (or remedy in respect of) fraud or fraudulent misrepresentation.

27. COUNTERPARTS

- 27.1 This Agreement may be executed in any number of counterparts, and by the parties as separate counterparts but will not be effective until each party has executed at least one counterpart.
- 27.2 Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same Agreement.

28. GOVERNING LAW AND JURISDICTION

- 28.1 This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of England.
- 28.2 Any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including any non-contractual dispute or claim) shall be subject to the exclusive jurisdiction of the courts of England, and the parties hereby irrevocably submit to the exclusive jurisdiction of the courts of England for these purposes.

Execution

In witness of which the parties have executed this Agreement as follows:

Signed by [<i>insert full name of director/authorised signatory</i>]	[.....]
for and on behalf of	[Director OR Authorised signatory]
[<i>insert name of Provider Supplier company</i>]	

and

Signed by [<i>insert full name of director/authorised signatory</i>]	[.....]
for and on behalf of	[Director OR Authorised signatory]
[<i>insert name of Consumer Supplier company</i>]	

SCHEDULE 1: DEFINITIONS**1. Definitions**

1.1 In this Agreement:

Additional Services	means an augmentation of a Catalogue Solution provided by the Supplier that may have its own charges and that may require the purchase of one or more of the Associated Services applicable to the Catalogue Solution it augments;
API	means application programming interface;
Associated Services	means services associated with the implementation or optimisation of a Catalogue Solution, that the Call Off Ordering Parties have the option as to whether or not to purchase in association with their purchase of that Catalogue Solution;
Benchmark Data	has the meaning given in the Commercial Standard;
Business Day	means a day (other than a Saturday or Sunday) on which the banks are ordinarily open for business in the City of London;
Catalogue	means the digital catalogue (as may be referred to as the "Digital Buying Catalogue") used to support on-boarding, used by Suppliers to advertise Catalogue Solution(s) and by Call Off Ordering Parties to browse, compare and purchase Supplier Catalogue Solutions;
Catalogue Agreement	means the agreement governing the solutions developed and maintained by the Provider Supplier relevant to this Licence;
Catalogue Authority	as defined in the Catalogue Agreement and clause 24 of this Agreement;
Catalogue Solution	means any of the Supplier's services registered on the Catalogue, including Additional Services applicable to that product;
Change	means any change as set out in clauses 15 to 24 of the Catalogue Agreement (as applicable);
Commencement Date	means the date on the cover sheet of this Agreement;
Commercial Standard	means the set of standards to regulate the conduct of the Provider Supplier with respect to provision of the interface within scope of this Agreement, including commercial and behavioural principles;
Confidential Information	<p>means any information that is disclosed (however conveyed), by one party (the "Disclosing Party") to the other party (the "Recipient") on or after the date of this Agreement which would appear to a reasonable business person to be confidential or is marked confidential, or is accompanied by a written or oral statement saying that it is confidential or proprietary and which relates to the business affairs of the Disclosing, including products, product information, operations, processes, plans or intentions, developments, trade secrets, know how, design rights, market opportunities, personnel, customers and suppliers of the Disclosing Party, and all information derived from the above other than information that:</p> <p>(a) was in the public domain at the time so disclosed (unless the information so disclosed was a compilation of such publicly available information in a form not previously known);</p> <p>(b) passes into the public domain after it has been disclosed without the Recipient being in breach of any obligation of confidentiality;</p> <p>(c) is given to the Recipient by a third party who is lawfully entitled to disclose it and has no duty to respect any right of confidence in the information;</p> <p>(d) was already known (or had been independently generated) by the</p>

OFFICIAL - SENSITIVE - COMMERCIAL

Commercial Standard & Model Interface Licence

	Recipient prior to its receipt or disclosure; or (e) the parties agree in writing is not confidential.
Connection	means the connection of different systems so that queries aimed at an interface receive results returned following fulfilment of all criteria for the interface and connection of the systems;
Connection Application	means the processes in which an entity applies to gain a live Connection to the Provider Supplier's Interface;
Connection Witness Test	means the tests described in the SCAL (Schedule 3);
CRTPA	has the meaning given in clause 24.1 of this Agreement;
Data Controller	means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the Processing of Personal Data;
Data Protection Laws	means applicable legislation protecting the fundamental rights and freedoms of individuals, in respect of their right to privacy and the processing of their personal data, as amended from time to time, including Regulation (EU)_2016/679, 'the General Data Protection Regulation' (" GDPR ") and the Data Protection Act 2018) and the Privacy and Electronic Communications Regulations 2003, together with decisions, guidelines, guidance notes and codes of practice issued from time to time by courts, data protection authorities and other applicable Government authorities (and the terms "Processor", "Data Subject", "Personal Data Breach", "process/processing" and "Supervisory Authority" shall have the meanings given to them in the Data Protection Laws);
Dispute Notice	has the meaning given in clause 18.2 of this Agreement;
Fair Usage Policy	means the Fair Usage Policy set out at Schedule 5 to this Agreement;
Force Majeure Event	means an event which is beyond the reasonable control of the affected party and includes (insofar as it is beyond such control) an event which falls into one or more of the following categories: (a) strike, lock out, work stoppages, or any other industrial or labour dispute (excluding, in all cases, by the employees of the party liable to effect performance or its sub contractors or suppliers); (b) act of God, fire, flood, storm, earthquake; (c) war, riot, civil commotion, terrorism; (d) nuclear, chemical or biological contamination or sonic boom; provided that the mere shortage of material, equipment, labour or supplies and any event or other consequences arising as a result of or in connection with the full or partial withdrawal of the United Kingdom from the European Union will not constitute a Force Majeure Event unless this shortage is caused by events or circumstances which are themselves a Force Majeure Event;
Framework Agreement	means any framework agreement that the Supplier is a party to that links to the Catalogue, which shall include the clauses together with the schedules and any appendices and annexes to the same;
Framework Authority	means the party (other than the Supplier) to a Framework Agreement;
General Data Protection Regulation	shall have the same meanings as in the Data Protection Laws definition;
Intellectual Property Rights or "IPR"	means all intellectual property rights, including: (a) patents, utility models, supplementary protection certificates, petty patents, rights in trade secrets and other confidential or undisclosed information (such as inventions (whether patentable or not) or know how), plant variety

OFFICIAL - SENSITIVE - COMMERCIAL

Commercial Standard & Model Interface Licence

	<p>rights, registered designs, rights in copyright (including authors' and neighbouring or related rights and moral rights), database rights, design rights, semiconductor topography rights, mask work rights, trade marks and service marks;</p> <p>(b) all registrations or applications to register any of the items referred to in paragraph (a); and</p> <p>(c) all rights in the nature of any of the items referred to in paragraphs (a) or (b) including extensions, continuations, continuations in part and divisional applications, rights in the nature of reputation, personality or image, trade names, business names, brand names, get up, logos, domain names and URLs, rights in unfair competition rights and, without prejudice to anything set out elsewhere in this definition, rights to sue for passing off, and all rights having equivalent or similar effect to, and the right to apply for any of, the rights referred to in this definition in any jurisdiction;</p>
Interface	means the open application programming interfaces (APIs) and other system interfaces mandated by the Interoperability Standard;
Interface Licence	means the terms to govern the making and fulfilment of a connection request relating to the transactional services over Interfaces;
Interoperability Standard	means the mandatory standards for supplier to supplier system interfaces, set by the Catalogue Authority as a condition of the contractual arrangements connected with the catalogue managed by the Catalogue Authority, to support the opening up of access to NHS data across clinical services;
NHS Data	has the meaning given in clause [16] of the Commercial Standard;
NHS Digital	means the Health and Social Care Information Centre or any successor or replacement body;
Personal Data	shall have the meaning given to it in the Data Protection Laws and shall mean Personal Data which may be shared and/or processed via the interface(s) to which this Licence relates;
Provider Supplier's Interface	means an open application programming interface (API) or other methods for system interfaces mandated by the Catalogue Authority's Interoperability Standard, which is a condition of contractual arrangements connected with the catalogue managed by the Catalogue Authority;
Recommendation To Connect	the notice of authority to proceed by the Catalogue Authority at the relevant point in Connection Applications;
Supplier Conformance Assessment List or "SCAL"	means the Supplier Conformance Assessment List set out in Schedule 3 to this Agreement;

SCHEDULE 2: INTERFACE SERVICES

INTERFACE	CONNECTED [Y/N]	LIVE USAGE DATE
IM1 (Desktop)		
IM1 (PFS)		
IM1 (Bulk)		

SCHEDULE 3: SUPPLIER CONFORMANCE ASSESSMENT LIST (SCAL)

[Drafting Note: SCAL to be inserted. Currently under construction.]

- 1. Purpose of Supplier Conformance Assessment List (SCAL)**
- 2. Entity and Commercial Purpose Assessment**
- 3. Technical Assessment**
- 4. Information Governance, Security & Clinical Safety Management**
- 5. Witness Test**

SCHEDULE 4: CHARGES

[Not Used]

or

[As negotiated between the parties]

SCHEDULE 5: FAIR USAGE POLICY

6. Scope and Purpose

6.1 This Fair Usage Policy covers each of the interfaces listed below;

6.1.1 IM1 Bulk Interface

6.1.2 IM1 Desktop Interface

6.1.3 IM1 PFS Interface

6.2 It describes the reasonable expectations of the Provider Supplier in respect of the implementation, behaviour and request load associated with a Consumer Supplier connection.

6.3 The purpose of this Fair Usage Policy is to protect the experience of

6.3.1 the clinical and business application users of the Provider Supplier Catalogue Solution; and

6.3.2 other Consumer Suppliers connected to an interface

from service deterioration as a result of incorrectly implemented interfaces or interface exhibiting problematic call volume or behaviour.

7. Good Practice in Implementation

7.1 Consumer Suppliers must abide by the implementation guidance documentation in respect of each connected interface, [reference implementation documentation on portal]

8. Behaviour of the Interface

8.1 In respect of IM1 Bulk Interface;

8.1.1 [location of guidance

8.1.2 Any specific listable constraints in interface behaviour]

8.2 In respect of IM1 Desktop Interface;

8.2.1 [location of guidance

8.2.2 Any specific listable constraints in interface behaviour]

8.3 In respect of IM1 PFS Interface;

8.3.1 [location of guidance

8.3.2 Any specific listable constraints in interface behaviour]

9. Call Volume Restrictions

9.1 In respect of IM1 Bulk Interface;

9.2 In respect of IM1 Desktop Interface;

9.3 In respect of IM1 PFS Interface;