

Dated _____ 2011

(1) **THE ICP PARTNERS LISTED IN SCHEDULE 1 TO THIS AGREEMENT**

- and -

(2) **KENSINGTON AND CHELSEA PRIMARY CARE TRUST**
acting as lead PCT on behalf of
the Inner North West London PCT Cluster

IT MANAGED SERVICE AGREEMENT
NHS North West London Integrated Care Pilot

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THIS AGREEMENT is made the day of 2011

BETWEEN:

- (1) **KENSINGTON AND CHELSEA PRIMARY CARE TRUST** (acting as lead PCT on behalf of the Inner North West London PCT cluster) whose principal office is at 15 Marylebone Road, London, NW1 5JD (the "**IT Managed Service Provider**"); and
- (2) **THE ICP PARTNERS** listed in Schedule 1 to this Agreement and any person who has executed a valid deed of adherence in accordance with clause 4.4 of the Establishment Agreement (together, the "**ICP Partners**").

1. BACKGROUND

- 1.1 The ICP Partners wish to participate in the ICP, a pilot of co-ordinated delivery of care for diabetes patients and the elderly commissioned within the area of NHS North West London. The aims of the ICP are to improve quality of patient care, create a richer professional experience and ensure the most efficient use of NHS funds.
- 1.2 The ICP Partners have entered into an establishment agreement dated on or around the date of this IT Managed Service Agreement, setting up the IMB and establishing the conditions on which each ICP Partner participates in the ICP (the "**Establishment Agreement**").
- 1.3 The ICP Partners and NHS North West London have entered into a memorandum of understanding dated on or around the date of this IT Managed Service Agreement, which provides for the allocation of funds for the ICP at the direction of the IMB ("the **MOU**").
- 1.4 The IMB is responsible for the ICP and is an unincorporated association and so may not enter into contracts in its own right. Each ICP Partner therefore enters into this contract and understands that all decisions to be taken on behalf of the ICP Partners may be taken by the ICP Director exercising authority delegated to him by the IMB.
- 1.5 The IMB wishes to receive on behalf of the ICP Partners and the IT Managed Service Provider wishes to provide certain data transfer and hosting services and certain support services in relation to the ICP.
- 1.6 The IT Managed Service Provider as a Data Processor under the DPA is responsible for providing the Services under this Agreement. The ICP Partners are Data Controllers and are responsible for the ICP Data under the provisions of the DPA.
- 1.7 The Parties understand that this Agreement is not an NHS contract within the meaning of section 9 of the National Health Service Act 2006.
- 1.8 This Agreement is supplementary to the information sharing protocol set out in Schedule 8 (Information Sharing Protocol) to the Establishment Agreement.

2. APPOINTMENT

- 2.1 The IT Managed Service Provider shall provide the Services to the ICP Partners from the Commencement Date unless and until terminated in accordance with clause 18.

3. DELEGATION BY ICP PARTNERS TO IMB

- 3.1 In respect of this IT Managed Service Agreement, each ICP Partner hereby acknowledges that subject to clause 3.2 any rights of any ICP Partner shall be exercised and any obligations of any ICP Partner shall be performed on behalf of the ICP Partners by the IMB, acting through the ICP Director. For the remainder of this

Agreement the ICP Partners shall be referred to collectively where the context allows as the “**IMB**”.

3.2 Clause 3.1 does not affect the liability of the ICP Partners to the IT Managed Service Provider or of the IT Managed Service Provider to the ICP Partners under this Agreement.

3.3 The IMB will inform the IT Managed Service Provider in the event that a current ICP Partner leaves the ICP or a new ICP Partner joins.

4. **DATA**

4.1 The IT Managed Service Provider shall manage and use ICP Data only for the purpose of providing the Services, and in accordance with (a) the Law, (b) the Standards, (c) Good Clinical Practice, and (d) Good Health and Social Care Practice.

5. **DATA INCIDENT MANAGEMENT**

5.1 If the IT Managed Service Provider becomes aware of an incident or issue in relation to the Services, it shall promptly (and in any event within 72 hours) notify the IMB SIRO (as specified in Schedule 9 (Agreement Management)) and shall provide details of that incident.

5.2 On receipt of any report under clause 5.1, the IMB SIRO shall promptly notify the ICP Partner or ICP Partners which is or are Data Controller(s) in respect of any ICP Data affected by the Services under this Agreement.

5.3 If there is an incident or issue in relation to any ICP Data not covered by clause 5.1, the Party that becomes aware of that incident or issue shall promptly (and in any event within 72 hours) notify the other Parties and shall provide details of that incident.

5.4 On receipt of any report under clause 5.3, the IMB SIRO is responsible for notifying the ICP Partner or ICP Partners which is or are Data Controller(s) in respect of any affected ICP Data.

5.5 As soon as reasonably practicable the IT Managed Service Provider, IMB SIRO and affected ICP Partner SIRO(s) (or other individuals nominated by the relevant SIROs) shall convene (whether in person or by other means) to discuss the incident and agree jointly what action to take. The IMB SIRO shall have responsibility for co-ordinating and managing the Parties' response to the incident.

5.6 In relation to clause 5.5 above, the IT Managed Service Provider will only have responsibility to convene and agree what action to take where the incident relates to the Services it is providing under this Agreement.

5.7 In respect of any other incident as described in 5.3 above, the IT Managed Service Provider will act only on the instructions of the Data Controller responsible for the ICP Data to which the incident relates.

5.8 The Parties will provide each other with regular updates when the incident is live and the IMB shall decide when the incident has been dealt with to the satisfaction of the affected ICP Partner(s) and be treated as 'closed'.

5.9 Investigations shall be carried out in accordance with then current Department of Health and National Patient Safety Agency guidance.

5.10 If any Party is not happy with the progress of an incident, that Party may escalate the incident to the Chief Executive of the IT Managed Service Provider (only in so far as the incident relates to the Services provided by the IT Managed Service Provider

under this Agreement), the ICP Director and the Chief Executive (or equivalent) of the relevant ICP Partner(s).

- 5.11 The IMB in consultation with affected ICP Partner(s) and the IT Managed Service Provider (where it relates to the Services) shall determine whether an incident or issue is escalated to other potentially notifiable bodies (including but not limited to the Information Commissioner's Office and NHS London).

6. SECONDARY DISCLOSURE OF ICP DATA

- 6.1 Subject to clause 6.2, the IT Managed Service Provider shall ensure that ICP Data shall not be disclosed to a third party without the IMB's prior written consent (which the IMB will ensure includes the consent of any relevant Data Controllers), except as required by law.
- 6.2 The IT Managed Service Provider may disclose ICP Data to ICP Partners in accordance with the provisions of this Agreement and the data sharing arrangements set out in Schedule 8 (Information Sharing Protocol) to the Establishment Agreement. It is the responsibility of the IMB and ICP Partners to ensure compliance with all legal obligations and guidance to enable the data sharing arrangements.

7. SERVICES

- 7.1 The IT Managed Service Provider shall provide:
- (a) the Data Transfer Services as set out in Schedule 3;
 - (b) the Hosting Services as set out in Schedule 4; and
 - (c) the Support Services as set out in Schedule 5.
- 7.2 The IT Managed Service Provider shall promptly notify the IMB in writing of any issue that is likely to or will affect its ability to perform the Services in accordance with the Performance Targets.
- 7.3 For the avoidance of doubt, each of the following is out of scope of the Services:
- (a) **Functionality** – the IT Managed Service Provider will have no responsibility for the functionality of the Software, and will not provide support relating to clinical or business process matters. Any requests for enhancements to the system should be managed by the IMB or a person nominated by the IMB.
 - (b) **Information** – the IT Managed Service Provider will not have any responsibility for the quality of data inputted into the Software or any ICP Partner's use of information. The Data Transfer Services will be limited to the secure transmission and loading of data files. No verification of data will be undertaken.
 - (c) **Business continuity** – while the current configuration is reasonably robust, there is no facility for any business continuity or disaster recovery.
 - (d) **User management** – each ICP Partner will be responsible for managing users and setting access rights for its staff.
 - (e) **Archiving and retrieval** – Data retained by the ICP project within the ICP system will not be archived during the course of the 12-month Pilot. If the IMB determines that the facility to archive and retrieve will be required in future, the IMB and the IT Managed Service Provider will work together to procure such facility.

8. SERVICE CHARGES AND CHARGING ARRANGEMENTS

- 8.1 The IMB shall, in accordance with Schedule 7 (Service Charges):
- (a) ensure payment of the Service Charges; and
 - (b) ensure the IT Managed Service Provider is reimbursed for any incidental costs incurred in accordance with paragraph 2 of Schedule 7 (Service Charges).
- 8.2 Except where otherwise stated in this Agreement, the Service Charges shall be exclusive of VAT.
- 8.3 The IT Managed Service Provider shall submit invoices in accordance with the Payment Timetable. Payment shall be made within 30 days of the receipt date of each valid invoice, either by cheque or into such bank account as the IT Managed Service Provider specifies to the IMB from time to time.

9. OBLIGATIONS

- 9.1 The IT Managed Service Provider warrants and represents that:
- (a) The Services shall be provided:
 - (i) with all reasonable skill and care and in accordance with good industry practice;
 - (ii) by personnel of appropriate skill and expertise for the performance of such Services and work, who are fully briefed in their responsibilities in respect of:
 - (A) the local IM & T security policy and operate under the good practice included therein (including in particular the provisions relating to Viruses); and
 - (B) the DPA as it relates to the processing of Personal Data or Sensitive Personal Data covering the obtaining, use, storage or disclosure of such Personal Data or Sensitive Personal Data;
 - (iii) in accordance with Schedule 8 (Standards and Policies);
 - (b) it has taken and will take all practical steps in accordance with good industry practice to prevent the introduction of any Virus into any of the Data and the IT Managed Service Provider Hosted Environment;
 - (c) the Services and any deliverables shall conform to the Law and Standards;
 - (d) it has full authority, power, and capacity to enter into this Agreement and all necessary actions have been taken to enable it to enter into this Agreement; and
 - (e) it has the authority to grant any rights to be granted under this Agreement and owns or has obtained valid licences to any IPR necessary for the fulfilment of all its obligations under this Agreement.
- 9.2 The IT Managed Service Provider will allow the IMB or any ICP Partner (acting in their capacity as a Data Controller) access to the ICP Data on reasonable notice.
- 9.3 The IMB will provide the IT Managed Service Provider with any co-operation, assistance, and access to such information, documentation and/or Data as may be

reasonably required by the IT Managed Service Provider in order to enable the IT Managed Service Provider to provide the Services.

- 9.4 Each ICP Partner warrants and represents that it has:
- (a) full authority, power and capacity to enter into this Agreement, and all necessary actions have been taken to enable it to enter into this Agreement; and
 - (b) the authority to grant to the IT Managed Service Provider any rights to be granted under this Agreement and owns or has obtained valid licences to any IPR necessary for the fulfilment of all its obligations under this Agreement.
- 9.5 The IT Managed Service Provider shall use robust methods, in accordance with good industry practice, to transfer, load and store ICP Data and correct any errors that are introduced by these actions.
- 9.6 For the avoidance of doubt, the IT Managed Service Provider is only responsible for correcting any errors that are a result of its actions and that relate to the Services carried out by the IT Managed Service Provider under this Agreement. All other inaccuracies relating to ICP Data are the responsibility of the individual ICP Partners.
- 9.7 If the IT Managed Service Provider produces outputs pursuant to this Agreement that are inaccurate using accurate ICP Data, the IT Managed Service Provider shall:
- (a) promptly notify the IMB on becoming aware of this fact; and
 - (b) correct any errors at its own expense within the timescales agreed between the Parties.
- 9.8 If outputs produced by the IT Managed Service Provider under this Agreement are:
- (a) not in accordance with the requirements set out in this Agreement; and/or
 - (b) delivered incomplete, the IMB will notify the IT Managed Service Provider and the IT Managed Service Provider shall rectify any defects at its own expense within the timescales agreed between the Parties.

10. **CONFIDENTIAL INFORMATION**

- 10.1 Each of the IMB and the IT Managed Service Provider undertakes to keep secret and strictly confidential and shall not use, copy or disclose Confidential Information to any third party, without the other's prior written consent provided that the provisions of this clause 10 shall not apply to any Confidential Information which:
- (a) is in or enters the public domain other than by breach of the Agreement; or
 - (b) is obtained from a third party who is lawfully authorised to disclose such information; or
 - (c) is authorised for release by the prior written consent of the disclosing party.
- 10.2 Nothing in this clause 10 shall prevent the IT Managed Service Provider or the IMB from disclosing Confidential Information where required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law. Where any disclosure has to be made under this clause the disclosing party will notify the other party as soon as reasonably practicable.

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- 10.3 Each Party shall take any steps necessary to ensure compliance with this clause 10 by its staff, contractors, subcontractors and agents.
- 10.4 In the event that the IT Managed Service Provider fails to comply with this clause 10, the IMB reserves the right to terminate this Agreement by notice in writing with immediate effect pursuant to clause 18.2(b).
- 10.5 This clause 10 shall remain in force without limit in time in respect of Confidential Information which comprises Personal Data or Sensitive Personal Data or Data which relates to a patient, his or her treatment and/or health records. Save as aforesaid and unless otherwise expressly set out in this Agreement, this clause 10 shall remain in force for a period of three years after the termination or expiry of this Agreement.

11. DATA BACK-UP AND SECURITY

- 11.1 The IT Managed Service Provider shall comply with Schedule 8 (Information Standards & Policies).

12. DATA PROTECTION

- 12.1 Each Party undertakes to comply with, and to procure that its employees, agents and contractors (and any other person acting on its behalf or under its instruction) comply with, the DPA and the Computer Misuse Act 1990.
- 12.2 The Parties intend that the ICP Partners shall be the Data Controllers of all Personal Data contained within any ICP Data processed under this Agreement and that the IT Managed Service Provider shall act as a Data Processor on behalf of the ICP Partners.
- 12.3 Where the IT Managed Service Provider is acting as a Data Processor on behalf of any ICP Partner, the IT Managed Service Provider agrees and acknowledges that:
- (a) the IT Managed Service Provider shall not, and that only the ICP Partner or the IMB on behalf of that ICP Partner shall, determine or seek to determine the purposes for which and the manner in which such Personal Data are, or are to be, processed;
 - (b) the IT Managed Service Provider shall process the Personal Data only to the extent, and in such a manner, as is necessary to undertake the Services and in accordance with the IMB's written instructions from time to time and shall not process such Personal Data for any other purpose;
 - (c) the IT Managed Service Provider shall promptly comply with any request from the IMB requiring the IT Managed Service Provider to amend, transfer or delete such Personal Data and shall promptly certify in writing to the IMB that it has complied with any such request;
 - (d) if the IT Managed Service Provider receives any complaint, notice or communication which relates directly or indirectly to the processing of such Personal Data or to either Party's compliance with the DPA, it shall immediately notify the IMB and it shall provide the IMB with full co-operation and assistance in relation to any such complaint, notice or communication;
 - (e) the IT Managed Service Provider shall not transfer or allow access to such Personal Data outside England without the prior written consent of the IMB; and
 - (f) the IT Managed Service Provider shall use all reasonable efforts to assist the IMB with complying with all obligations imposed on the IMB under the

DPA including providing the IMB with reasonable assistance in complying with any assessments carried out by any regulatory body to which any ICP Partner is subject.

- 12.4 The IT Managed Service Provider shall not authorise any third party or sub-contractor to process ICP Data unless the IMB has given its prior written consent to the IT Managed Service Provider.
- 12.5 The IT Managed Service Provider shall notify the IMB within three Working Days if it receives a request from a Data Subject for access to that person's Personal Data contained in any ICP Data and provide full co-operation and assistance to the IMB in relation to any such request. The IMB shall allocate the request to the appropriate Data Controller within three further Working Days.
- 12.6 The IT Managed Service Provider warrants that:
- (a) it shall transfer, load and store the ICP Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments; and
 - (b) all ICP Data is to be afforded the highest appropriate industry standards of security with regard to its transfer, loading and storage; and
 - (c) it shall take appropriate technical and organisational measures against the unauthorised or unlawful processing of Data and against the accidental loss or destruction of, or damage to, the ICP Data.
- 12.7 If the IT Managed Service Provider breaches this clause 12, the IMB may terminate this Agreement by notice in writing with immediate effect pursuant to clause 18.2(b).
- 12.8 Without prejudice to clause 12.7 and any other rights of the IMB under this Agreement, if the IT Managed Service Provider makes a non-material and unintentional disclosure of any Personal Data or Sensitive Personal Data that constitutes a breach of the IT Managed Service Provider's obligations under this clause 12 or clause 10, the IT Managed Service Provider shall promptly review the technical and organisational measures referred to in clause 12.1 and any other internal procedures and policies that it has in place to prevent such disclosures and, following such review, shall promptly implement any necessary changes to such measures, procedures and policies in order to prevent any further breaches of this clause 12 or clause 10 in respect of Personal Data or Sensitive Personal Data.

13. **FOIA**

- 13.1 Each Party acknowledges that each other Party is or may be subject to the Freedom of Information Act 2000 ("**FOIA**") and may be required to disclose information about this Agreement to ensure their compliance with the FOIA. Each Party notes and acknowledges the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under sections 45 and 46 of the FOIA respectively) as may be amended, updated or replaced from time to time. The parties will act in accordance with the FOIA and these Codes of Practice (and any other applicable codes of practice or guidance applicable from time to time) to the extent that they apply to the Parties' performance under the contract.
- 13.2 The parties agree that the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for the Party in receipt of the request (a "**Receiving Party**"). The other Parties shall co-operate with a Receiving Party if it so requests and shall respond within five Working Days of any request by it for assistance in determining how to respond to a request for disclosure.

14. CHANGE IN LAW OR STANDARDS

14.1 If there is a Change in Law and/or a Change in Standards, the IMB and the IT Managed Service Provider shall meet as soon as is practicable to consider the effect of any such Change in Law and/or Change in Standards and shall use all reasonable efforts to agree any necessary variation to the Services or Service Charges in accordance with clause 16.

15. AGREEMENT MANAGEMENT

15.1 The Parties shall appoint the Key Personnel. The Key Personnel shall be responsible for the day-to-day management of this Agreement (which will include, without limitation, monitoring the provision of the Services by the IT Managed Service Provider).

15.2 The Parties shall procure that the Key Personnel will meet in person or by telephone to discuss and minute the progress and provision of the Services and any deliverables, in accordance with any meeting schedule agreed between the parties, or once every calendar month, whichever is the more frequent.

15.3 The IT Managed Service Provider shall provide monthly reports to the IMB setting out details of unusual accesses to the Software during the preceding month. These reports will include, but not be limited to, accesses or attempted accesses by an authorised person from an ICP Partner to the record of a patient of another ICP Partner where that patient does not appear on the list of patients from the first ICP Partner, i.e., where there is no known legitimate relationship.

15.4 The IT Managed Service Provider shall apply the quality management system set out in Schedule 9 (Agreement Management) to all its operations.

16. VARIATION

16.1 No variation to this Agreement shall be effective unless a Change Form (including a privacy impact assessment) is completed and signed by an individual nominated for the purpose by the IMB and the IT Managed Service Provider. Each ICP Partner hereby authorises the variation of this Agreement in accordance with this clause 16.1.

16.2 If the IMB proposes a variation to the Services, the IT Managed Service Provider shall advise it within 28 days, as far as reasonably practicable, of the implications that such variation, if implemented, would have on the IT Managed Service Provider's obligations to the IMB under this Agreement.

16.3 If the IT Managed Service Provider recommends a variation to the Services or if a variation to the Services is required by operation of law, the IT Managed Service Provider shall advise the IMB within 28 days, as far as reasonably practicable, of the implications that such variation, if implemented, would have on the IT Managed Service Provider's obligations to the IMB under this Agreement.

16.4 The IT Managed Service Provider reserves the right to reject any changes which, in the reasonable opinion of the IT Managed Service Provider, might compromise safety or compliance with the standards of the Services as set out in this Agreement or which the IT Managed Service Provider cannot perform or, using reasonable endeavours, arrange for a subcontractor to perform.

16.5 If the IT Managed Service Provider and the IMB are unable to agree any variation to the Services pursuant to clauses 16.2 or 16.3, the dispute resolution procedure in clause 17 shall apply.

17. DISPUTE RESOLUTION

- 17.1 If a dispute arises out of this Agreement, the disputing Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure as published on the CEDR website from time to time. Unless otherwise agreed between the disputing Parties, the mediator will be nominated by CEDR. To initiate the mediation a Party must give notice in writing ("**ADR notice**") to the other Party(ies) involved in the dispute requesting a mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than 28 days after the date of the ADR notice.
- 17.2 The disputing Parties will co-operate with any person appointed as mediator, providing him with such information and other assistance as he shall require and will pay his costs as he shall determine or in the absence of such determination such costs will be shared equally.

18. TERMINATION

- 18.1 The IT Managed Service Provider may terminate this Agreement immediately by notice in writing if the IMB commits a material breach of this Agreement and (if capable of remedy) such default has not been remedied within 30 days of written notice of the breach being given by the IT Managed Service Provider.
- 18.2 The IMB may terminate this Agreement immediately by notice in writing if the IT Managed Service Provider:
- (a) commits a material breach of this Agreement and (if capable of remedy) such default has not been remedied within 30 days of written notice of the breach being given by the IMB; or
 - (b) breaches any clause of this Agreement which expressly entitles the IMB to terminate this Agreement under this clause 18.2(b).
- 18.3 This Agreement will terminate automatically on dissolution of the IMB and/or on termination of the Establishment Agreement. The IMB will give as much written notice as is reasonably possible to the IT Managed Service Provider of any such planned dissolution of the IMB or termination of the Establishment Agreement (as the case may be).
- 18.4 Either Party may terminate this Agreement on giving at least three months' notice to the other Party, such notice to expire fifteen calendar months after the Commencement Date.

19. ARRANGEMENTS ON TERMINATION

- 19.1 Termination or expiry of this Agreement for any reason shall be without prejudice to any right or remedy of any Party which may have accrued prior to such termination.
- 19.2 Upon expiry or earlier termination of this Agreement:
- (a) the IT Managed Service Provider shall continue to be entitled to receive, and the IMB shall pay to the IT Managed Service Provider, the Service Charges for any Services provided by the IT Managed Service Provider up to and including the date of termination or expiry; and
 - (b) the IMB will be entitled to a pro rata reimbursement of any fees paid in advance to the IT Managed Service Provider in respect of any Services which the IT Managed Service Provider has not performed.
- 19.3 The provisions of clauses 10, 11, 12, 13, 17 and 19 or which by their context should survive termination shall survive termination of this Agreement.

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- 19.4 The IT Managed Service Provider shall produce (subject to the IMB's satisfaction) an Exit Plan for the Transition Project within three months of the Commencement Date. For the purposes of the Transition Project, (a) the IT Managed Service Provider shall co-operate fully with the IMB and/or the IMB's replacement third-party service provider, and (b) the IMB shall reimburse the IT Managed Service Provider for such co-operation at the IT Managed Service Provider's standard rates. Upon notice of termination or three months prior to the expiry of the Agreement (as the case may be), the IT Managed Service Provider shall start performing the Transition Project according to the Exit Plan to ensure the orderly implementation of the Services by the IMB (or its replacement third-party service provider) that are equivalent to the Services provided by the IT Managed Service Provider under this Agreement. The period of transition will continue for a minimum of three months after expiry or termination of the Agreement.

20. LIABILITY

- 20.1 The IT Managed Service Provider shall use reasonable endeavours to ensure that each of its subcontractors under this Agreement accepts liability to the IT Managed Service Provider for any loss that may be incurred by any ICP Partner as a consequence of any act or omission of that subcontractor.
- 20.2 Where the IT Managed Service Provider is entitled to recover an amount in excess of the Relevant Amount from any subcontractor or subcontractors in respect of any claim under this Agreement, then the IT Managed Service Provider's liability in respect of that claim shall be limited to the amount that the IT Managed Service Provider is entitled to recover from such subcontractor or subcontractors.
- 20.3 Where the IT Managed Service Provider is not entitled to recover an amount in excess of the Relevant Amount from any subcontractor or subcontractors in respect of a claim under this Agreement, then the IT Managed Service Provider's liability in respect of that claim shall be limited to the Relevant Amount.
- 20.4 In respect of any claim other than a claim under clause 12 (Data Protection), the **Relevant Amount** shall be an amount equal to the Fixed Service Charges; and
- 20.5 In respect of a claim under clause 12 (Data Protection), the **Relevant Amount** shall be twice the total Fixed Service Charges.
- 20.6 Subject to clause 20.7 and paragraph 2.3.3 of Schedule 8 (Information Standards & Policies), the IT Managed Service Provider shall not be liable for:
- (a) any loss of profits, loss of revenue, loss of data, business interruption, loss of use, loss of contracts, loss of goodwill (whether direct or indirect), loss of management time, loss of anticipated savings;
 - (b) any indirect or consequential losses of any nature whatsoever, except for fines imposed by the Information Commissioner; or
 - (c) any failure of the Services due to any integration or interoperability issues arising with any third party or ICP Partner systems or legacy systems unless expressly set out to the contrary in this Agreement whether or not caused by or resulting from its negligence or a breach of its statutory duty or a breach of its obligations howsoever caused even if it is advised of the possibility of such loss.
- 20.7 Nothing in this Agreement shall be deemed to exclude, restrict or limit liability of any Party (or their respective agents or sub-contractors) for death or personal injury resulting from their negligence or any liability for fraudulent misrepresentation.

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- 20.8 Each Party accepts that the limitations and exclusions set out in this Agreement are reasonable having regard to all the circumstances.

21. ASSIGNMENT

- 21.1 The IT Managed Service Provider shall not be entitled to novate, assign, transfer or subcontract (or otherwise dispose of the whole or any part of) this Agreement or any rights or obligations under it without the IMB's prior written consent.
- 21.2 The IMB hereby consents to the IT Managed Service Provider engaging the list of sub-contractors as set out in Schedule 11.
- 21.3 The IT Managed Service Provider can engage alternative or additional sub-contractors to those in Schedule 11 as required subject to IMB's prior written consent, which shall not unreasonably be withheld or delayed.
- 21.4 The IT Managed Service Provider shall remain responsible for the acts and omissions of its subcontractors as though such acts or omissions were its own.

22. AUDIT

- 22.1 The IMB, or its representative, shall, within three months of the Commencement Date and thereafter on reasonable notice, audit the IT Managed Service Provider's compliance with its obligations under this Agreement on reasonable notice and/or, at the option of the IMB, require the IT Managed Service Provider to provide the IMB with evidence of compliance with its obligations under this Agreement.
- 22.2 The IMB shall, within three months of the Commencement Date and thereafter on reasonable notice, arrange for an independent audit of the adequacy of the network virus and malware protection arrangements of the IT Managed Service Provider (including any subcontractors of the IT Managed Service Provider).
- 22.3 Before the system is allowed to go live with patient information the parties shall ensure that an independent CESG approved third party has tested and certified the security and resilience of physical and virtual systems, networks and hardware (including the non-technical management and organisational processes necessary to limit the accessibility of the virtual environment) to CESG standards using the ISO27001 standard as a framework.
- 22.4 Any audit carried out under this clause 22 shall be at the IMB's expense. If any non-compliance is found the IT Managed Service Provider will rectify such non-compliance at its expense and will pay all reasonable expenses incurred by the IMB for such audit.

23. GENERAL PROVISIONS

- 23.1 **Costs & Expenses:** each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.
- 23.2 **Relationship:** nothing in this Agreement shall render any Party a partner or an agent of any other, and no Party shall purport to undertake any obligation on behalf of the other, nor expose the other to any liability nor pledge or purport to pledge the credit of the other.
- 23.3 **No corruption:** none of the IT Managed Service Provider, or any Person performing any Services on behalf of the IT Managed Service Provider, shall, in relation to this Agreement or any other agreement with the ICP Partners:

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- (a) offer, give or agree to give to any ICP Partner, its employees or subcontractors, any inducement or reward for doing or refraining from doing or having done or refrained from having done any act in relation to the execution of that agreement;
 - (b) show or refrain from showing any favour or disfavour to any Person;
 - (c) commit any offence under the Prevention of Corruption Acts 1889 to 1916; or
 - (d) give any fee or reward, the receipt of which is an offence under the Local Government Act 1972.

Any breach of this clause 23.3 (whether with or without the knowledge of the IT Managed Service Provider) shall entitle the IMB to terminate this Agreement with immediate effect pursuant to clause 18.2(b) and recover from the IT Managed Service Provider the amount of any loss resulting from such termination.

23.4 **Equal opportunities:** the IT Managed Service Provider shall:

- (a) have due regard to the need to eliminate unlawful discrimination and shall not unlawfully discriminate (directly or indirectly) within the meaning and the scope of the Law;
- (b) take all reasonable steps to ensure that its personnel and subcontractors do not unlawfully discriminate; and
- (c) provide the IMB with all reasonable assistance in respect of any issues concerning the IT Managed Service Provider's compliance with any anti-discrimination legislation and which relate in whole or in part to the acts, omissions or negligence of the IT Managed Service Provider during the performance of this Agreement.

23.5 **Publicity:** except as provided by law, neither the IT Managed Service Provider nor the IMB shall make any public announcements relating to any matter in connection with this Agreement without the prior written consent of the other (such consent not to be unreasonably withheld or delayed).

23.6 **Notices:** any notice or other document to be served on a Party under this Agreement shall either be delivered personally or sent by first class post, fax or email. The address for service for each Party will be its principal office or such other address as may be from time to time notified to the other Party. A notice or other document will be deemed to have been served:

- (a) if personally delivered, on the day that it is actually received;
- (b) if sent by first class post, two Working Days following the day of posting;
- (c) if sent by fax, on the day of transmission if transmitted before 4.00 pm on a Working Day but otherwise on the next Working Day; or
- (d) if sent by email, on the day of transmission if transmitted before 4:00 pm on a Working Day but otherwise on the next Working Day.

23.7 **Entire Agreement:** this Agreement constitutes the whole agreement and understanding between the Parties relating to the subject-matter of this Agreement and supersedes any previous arrangement, understanding or agreement between them relating to the subject-matter of this Agreement. Each Party acknowledges that, in entering into this Agreement, it does not rely on any statements, representations, assurances or warranties ("**Representations**") of any person (whether a Party to this

Agreement or not) other than expressly set out in this Agreement. Each Party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of this Agreement. Nothing in this clause 23.7 limits or excludes any liability for fraud or fraudulent misrepresentation.

- 23.8 **Waiver:** the failure by any Party to insist upon the strict performance of any provision, term or condition of this Agreement or to exercise any right or remedy consequent upon the breach thereof shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.
- 23.9 **Third parties:** a person who is not a Party to this Agreement shall have no right pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 23.10 **Counterparts:** This Agreement may be executed in any number of counterparts, and by the ICP Partners on separate counterparts, but shall not be effective until the Establishment Agreement is effective and the founding parties to the Establishment Agreement and the IT Managed Service Provider have each executed at least one counterpart. Each counterpart, when executed and delivered, shall constitute an original of this Agreement, and all the counterparts shall together constitute one and the same instrument.
- 23.11 **Law:** the parties submit to the exclusive jurisdiction of the English courts and agree that this Agreement is to be governed and construed according to English law.

SCHEDULE 1
Parties and Signatures

KENSINGTON AND CHELSEA PRIMARY CARE TRUST

THE COMMON SEAL of **KENSINGTON AND CHELSEA PRIMARY CARE TRUST** was hereunto affixed in the presence of:

.....
Signed (authorised officer)

.....
Name and position

.....
Date

.....
Signed (authorised officer)

.....
Name and position

.....
Date

ICP PARTNERS

SIGNED by
for and on behalf of

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(Signature)

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(Date)

SIGNED by
for and on behalf of

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SCHEDULE 2

Definitions

1. In the event of a conflict, inconsistency or ambiguity between the clauses and the Schedules, the clauses shall prevail.
2. In this Agreement (a) any terms in the singular shall include the plural and vice versa, (b) references to a clause and a Schedule are references to a clause and a schedule of this Agreement, (c) reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof, (d) headings are included for convenience only and may not be used in construing/interpreting this Agreement, and (e) writing or written includes faxes and email.
3. In this Agreement unless otherwise stated capitalised terms defined in the Establishment Agreement have the same meaning as given in the Establishment Agreement. Unless this Agreement otherwise requires, the words and expressions below have the following meaning:

Agreement	means this agreement concluded between the IMB and the IT Managed Service Provider including (a) the clauses contained herein, (b) the Schedules attached hereto, (c) any specifications, plans or other documents which are relevant to this agreement and expressly incorporated herein, and (d) such variations in writing as shall be agreed by the IMB and the IT Managed Service Provider;
Additional Services	means any additional services as agreed in writing between the Parties from time to time;
Authorised Officer	means the individual set out in Schedule 9, who is designated by each Party as its official representative for the purposes of liaison, communication and resolution of issues between them;
Change Form	means the change form in the prescribed form as attached in Schedule 10 (Change Form);
Change in Law	means the coming into effect or repeal (without re-enactment or consolidation) in England and Wales of any Law or judgment of a relevant court of law which changes binding precedent in England and Wales in each case after the Commencement Date;
Change Standards in	means the coming into effect or repeal or revision in England and Wales of any Standards after the Commencement Date;
Commencement Date	means the Commencement Date of the Establishment Agreement (as defined therein);
Commercially Sensitive Information	means information (a) which is a trade secret, or (b) commercial, financial, scientific, technical or other information (this includes but is not limited to formulae, processes, ideas and inventions, specifications, designs, financial or business information, customer details, market research and pricing strategies relating to or used in the business of either Party any knowledge which may be imparted or developed through examination, collation, analysis or working of such information whether or not such information is recorded in any form or medium) whose disclosure could reasonably be expected to result in a material financial loss or gain to the Party to whom the information relates, or could prejudice the competitive position of that Party in the conduct of its business, (c) whose disclosure could prejudice the conduct or

	outcome of contractual or other negotiations of the Party to whom the information relates;
Confidential Information	means information (a) which comprises Personal Data or Sensitive Personal Data or which relates to any patient of the IMB or his or her treatment or medical history, (b) which is Commercially Sensitive Information, or (c) which is a trade secret (including know-how);
Data	means data including person-identifiable data (whether Personal Data or Sensitive Personal Data or otherwise);
Data Controller	shall have the meaning set out in the DPA;
Data Processor	shall have the meaning set out in the DPA;
Data Subject	shall have the meaning set out in the DPA;
DPA	means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection and Privacy Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (21 2003/2426) and all other applicable laws and regulations relating to processing of Personal Data and privacy in effect in any relevant territory from time to time, including where applicable the guidance and codes of practice issued by the Information Commissioner;
Exit Plan	means the exit plan in Schedule 6;
Fixed Service Charges	means the fixed service charges specified in paragraph 1.1.4 of Schedule 7 (Service Charges);
FOIA	means the Freedom of Information Act 2000;
Good Clinical Practice	means using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced clinical services provider and a person providing services the same as or similar to the Services at the time the Services are provided;
Good Health and Social Care Practice	means using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced service provider and a person engaged in the provision of services the same as, or similar to, the Services at the time the Services are provided;
Hosting Services	means the hosting services set out in Schedule 4;
ICP Data	means all data (including Personal Data), information, text, drawings, statistics, analysis and other materials embodied in any form relating to any ICP Partner (and/or their respective patients/service users) and which may be supplied or inputted into the IT Managed Service Provider's systems by the IT Managed Service Provider, any ICP Partner and/or which the IT Managed Service Provider (and any permitted sub-contractors) generates, collects, processes, stores or transmits in connection with this Agreement;
Information	has the meaning set out in FOIA;
Information Sharing Protocol	means the information sharing protocol agreed by all ICP Partners and set out in Schedule 8 to the Establishment

	Agreement;
IT Managed Service Provider Hosted Environment	means the technical environment where ICP Data is hosted and is used by the IT Managed Service Provider to provide the Services - comprising the software (including its configuration), the hardware (including its configuration), the facilities (including their configuration), the internet and/or telecommunications links/network (including their configuration);
IT Managed Service Provider Data Centre	means the IT Managed Service Provider data centre where the IT Managed Service Provider Hosted Environment is located and which is at St. Charles Hospital, Exmoor Street, London, W10 6DZ;
IPR	means copyrights (including copyright in computer software and websites), database rights, rights in inventions, patent applications, patents, trademarks, trade names, know-how, service marks, design rights (whether registered or unregistered), trade secrets, rights in confidential information and all other industrial or intellectual property rights of whatever nature for the full duration of such rights, including any extensions or renewals;
ISN	means an Information Standard Notice (formerly known as a Data Set Change Notice) approved and issued by the Information Standards Board;
Key Personnel	means the key personnel of the Parties set out in Schedule 9;
Law	means (a) any applicable statute of proclamation or any delegated or subordinate legislation, (b) any enforceable community right within the meaning of section 2(1) European Communities Act 1972, (c) any applicable code of practice, guidance, order, rule (including local rules), circular, direction, determination, and (d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales - in each case to the extent applicable in England and Wales;
Party	means any ICP Partner, the IMB or the IT Managed Service Provider, and " Parties " shall be construed accordingly;
Performance Targets	means the standards of performance in relation to the Services which the IT Managed Service Provider is required to meet as set out in this Agreement;
Person	means a partnership, firm, corporation or association (whether incorporated or unincorporated) as well as a natural person;
Personal Data (and Sensitive Personal Data)	shall have the meaning set out in the DPA;
Service Charges	means the charges for the Services, and any other valid and undisputed charges as agreed in writing between the Parties from time to time under this Agreement;
Services	means the Data Transfer Services, the Hosting Services, the Support Services and any Additional Services;
Staff Service Charges	means the staff service charges specified in paragraph 1.1.5 of Schedule 7 (Service Charges);
Standards	means in relation to the services provided by the IT Managed Service Provider pursuant to this Agreement and any deliverables, (a) all mandatory NHS requirements and any similar requests, requirements and NHS standards and recommendations having similar status for the time being in force, but only to the extent the same are published and publicly available (whether on the Department of Health website, on the website of the IMB or otherwise) or the existence and contents

	have been notified to the IT Managed Service Provider by the IMB, (b) all technical, functional, quality and security standards relating to IT systems used by Health Service Bodies and published by NHS Connecting for Health, (c) any applicable Data Set Change Notices (published prior 1 April 2010) and/or any applicable ISNs (published by NHS Connecting for Health from 1 April 2010), and (e) the standards set out in Schedule 8;
Software	means the software developed for the ICP and hosted by the IT Managed Service Provider;
Term	means the period for which this Agreement is effective as defined in clause 2;
Transition Project	means the project to achieve the transfer of custody and responsibility (with minimum disruption) for the provision of the Services from the IT Managed Service Provider to the IMB or its third party replacement service provider in the event of expiry or termination of this Agreement;
Variable Service Charges	means the variable service charges specified in paragraph 1.1.6 of Schedule 7 (Service Charges);
Virus	means any thing or device (including without limitation, software, code, file or programme) which may (a) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service equipment or network or any other service or device, or (b) prevent, impair, or otherwise adversely affect access to or operation of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part of otherwise), or (c) prevent, impair or otherwise adversely affect the user experience;
Working Day	means Monday to Friday excluding English public holidays; and
Year	means a period of 12 months starting on the Commencement Date and each subsequent period of 12 months starting on an anniversary of such date during the Term.

SCHEDULE 3**Data Transfer Services**

1. The IT Managed Service Provider shall ensure that the ICP Data specified in the Appendix to the Information Sharing Protocol is securely transferred from each Provider specified in that Appendix to the IT Managed Service Provider Hosted Environment. Transfers shall take place at the intervals specified in that Appendix. So long as the specified ICP Data is transferred from each specified Provider at the specified interval to the IT Managed Service Provider Hosted Environment, the IT Managed Service Provider shall be free to agree the exact arrangements for such transfer with each relevant Provider.
2. The IT Managed Service Provider may also be required to ensure that Data is transferred from certain third parties to the IT Managed Service Provider. Any such new requirement will be agreed using the procedure set out in clause 16 (Variation).
3. The IT Managed Service Provider may subcontract the Data Transfer Services to any of the sub-contractors listed in Schedule 11.
4. The IT Managed Service Provider shall not be responsible for the accuracy of any ICP Data.
5. The IT Managed Service Provider shall be responsible for the safe custody and security of the ICP Data from the point at which the secure FTP process commences, up to the point it is loaded into the MDG database.
6. The Data to be transferred is specified in the Appendix to the Information Sharing Protocol between each ICP Partner. Any amendment to the Information Sharing Protocol that imposes a new obligation on the IT Managed Service Provider shall be subject to the IT Managed Service Provider's consent, to be sought in accordance with the procedure set out in clause 16 (Variation).

SCHEDULE 4

Hosting Services

1. Hosting Services Description

- 1.1 The servers will be hosted in the IT Managed Service Provider Hosted Environment, a secure environment, within the IT Managed Service Provider Data Centre.
- 1.2 The IT Managed Service Provider shall host and be responsible for the security and custody of ICP Data transferred to the IT Managed Service Provider Hosted Environment under Schedule 3 (Data Transfer Services) and/or the Information Sharing Protocol, from the point at which the transfer process is complete, until the point at which such ICP Data has been disposed of as specified in the Appendix to the Information Sharing Protocol.
- 1.3 Physical access to the equipment will be limited to the IT Managed Service Provider's technical team, and secured using a mag-lock system, with card key access. The Operational Manager for the IT Managed Service Provider will manage the access list for the environment room. Remote access for technical support will be provided to the main technology supplier (Concentra), subject to the IT Managed Service Provider's supplier access protocols.
- 1.4 The equipment will be installed in racks, and will receive power via a UPS system to ensure a consistent supply. The environment will be cooled to ensure that the servers' operating temperature remains within manufacturer's specifications at all times.
- 1.5 The IT Managed Service Provider Hosted Environment will be secured in accordance with good industry practice.

2. Specification

- 2.1 The hardware and software specification shall be as set out in the Annex to this Schedule.

ANNEX TO Schedule 4 (Hosting Services) – Hardware and Software Specification**1. Server specifications****1.1 Production Web Server**

- HP Proliant DL380 (G7) Rack Server.
- Intel Xeon quad core (E5640) 2.66 GHz 6GB
- HP 146 GB (15,000 RPM) 2.5 Dual Port Enterprise Hard Disk Drive
- HP Slim 12.7 mm SATA DVD Optical Drive
- HP 460W HE 12V Hot Plug Power Supply Kit

1.2 Production Database Server

- HP DL380 G7 Xeon X5650 Six-Core 3 x 4GB RDIMMS
- 1 X 750W PSU
- DVD
- HP 4GB PC3-10600 Registered CAS 9 Dual Rank X4 DRAM Memory Kit
- HP 300GB 6G 10K SAS 2.5 HDD
- HP 146GB 6G (15,000 RPM) 2.5 Inch SAS Dual Port Enterprise HDD

1.3 Virtual Host for Staging/Test

- HP DL380 G7 Xeon X5650 Six-Core 3 x 4GB RDIMMS
- 1 X 750W PSU
- DVD

SCHEDULE 5
Support Services

1. The IT Managed Service Provider shall ensure that the Support Services specified in the Annex to this Schedule 5 are provided throughout the Term.
2. The IT Managed Service Provider may subcontract some or all of the Support Services to Concentra.

ANNEX TO SCHEDULE 5 (SUPPORT SERVICES) – Specification of Support Services

1. First line support

- 1.1 The IT Managed Service Provider will provide a first line support service, which will involve logging the call on its service management system and attempting to resolve the problem there and then. The support service will run from 9.00 am until 5.00 pm Monday to Friday.

2. Second and third line support

- 2.1 The IT Managed Service Provider will also provide a second and third line support service for the following technology elements:
- (a) Networking - this will include all internal cabling, N3 access, firewall and router settings, network security and remote access to the system.
 - (b) Hardware - this will include capacity (disk space) management.
 - (c) VM Software - this will include licensing, configuration, patches and updates.
 - (d) Operating System software - this will include licensing, configuration, patches and updates.
 - (e) Database Management System software (DBMS) - this will include licensing and software patches etc, but will exclude any configuration or parameters which are specific to the application.

3. Other technical support

- 3.1 The IT Managed Service Provider will ensure that other technical support is provided according to the following specification:

SCOPE & DELIVERABLES

Support Effective Date	1 st June 2011
Initial Period	12 months
Initial Fee (setup)	£0 (waived)
Monthly Fee	£3,428 per month
Inclusive hours	20 hours per month For all tier 1 and tier 2 work (client support team)
Additional Contracted Hours	16 hours per month For all tier 3 work (development or infrastructure management teams), including defects fixes outside warranty, minor enhancements and general software maintenance for the MDG Tool and Datawarehouse. Unused hours rollover up to 3 months.
Additional Un-contracted Hours	Client support team (tier 1 and tier 2) - £90 per hour Development team (tier 3) resources - £108 per hour
Billing schedule	Monthly fee: Monthly in advance. Additional Uncontracted Hours: Monthly in arrears.
Support hours	09:00 – 18:00 Mon-Fri excludes public holidays

Location	Support is provided by the Concentra Client Support team located at Concentra offices in London. On-site support is not included.
Email and phone contact	servicedesk@concentra.co.uk 020 7099 6909
Electronic case logging	By email to servicedesk@concentra.co.uk

All costs are exclusive of VAT

RESPONSE TIMES

Priority	Defect or Fault		Incident		Change		Request For Service or Advice	
	Initial Response	Target Time To Resolve	Initial Response	Target Time To Resolve	Initial Response	Target Time To Resolve	Initial Response	Target Time To Resolve
Priority 1	1hrs	8hrs	1hrs	8hrs	4hrs	None	4hrs	None
Priority 2	2hrs	10hrs	2hrs	10hrs	4hrs	None	6hrs	None
Priority 3	4hrs	3 days	4hrs	3 days	8hrs	None	8hrs	None
Priority 4	8hrs	4 days	8hrs	4 days	2 days	None	2 days	None
Priority 5	8hrs	7 days	8hrs	7 days	3 days	None	3 days	None

SUPPORTED SOFTWARE AND SUPPORT SERVICES PROVIDED

Supported Software	INWL Integrated Care Pilot – MDG Tool and Datawarehouse
Supported Services	Databases (Cube and Data Warehouse) ETL SSRS SSIS SSAS SQL Agent Tasks Maintenance Scripts (for back-ups)
Software and Services Excluded	Data sources FTP service for data sources Internet connectivity SMTP server SQL Server Network OS IIS VM's Backups

Support Services Provided	<p>1. 1st & 2nd Tier Service Desk Support covering Faults, Defects, Incidents and Requests. Assumptions:</p> <ul style="list-style-type: none"> • Secure remote access to Staging and controlled access to Production environments • Super user application access to replicate user issues on Staging and Production • Support access available via support link in Application and contact number for end users • Concentra front all support requests • Ability to receive email alerts for ETL and Package functions <p>2. Change & Release Management covering upgrades, enhancements and software patches. Assumptions:</p> <ul style="list-style-type: none"> • CAB (to be defined) to authorise any RFC raised • Procedure in place for Standard and Emergency changes • Weekly release window available <p>3. Requests for Service – information, passwords and user accounts. Assumptions:</p> <ul style="list-style-type: none"> • New users are processed by Organisation Administrators • New Organisation approvals submitted and approved via Regulation Authority <p>4. Report/Dashboard data queries Assumptions:</p> <ul style="list-style-type: none"> • Access to view all data at Application and DB level in order resolve user queries <p>5. System functionality queries 6. Technical advice – primarily for INWL Managed Service Team 7. Database Administrator for DB tuning and performance 8. Logging of enhancement requests. To be fed into ICP Board for consideration of future development. 9. 3rd Tier Development (additional contracted hours) for defects, maintenance and minor enhancements</p>
Dedicated support extranet	http://servicedesk.concentra.co.uk/portal (for Managed Service Team)
Dedicated named support contact	No
Service Level Management Function	SLA Monitored and reported on Service breaches and follow ups Service Level improvements Review Meetings – monthly initially
Reports provided	Standard report will be provided monthly detailing summary of Cases, statistics on Initial Response, Time To Resolve

SCHEDULE 6
Transition & Exit Plan

1. TRANSITION

Transition Project

- 1.1 The IT Managed Service Provider and the IMB shall each appoint an exit manager and provide written notice of such appointment within three months of the Commencement Date. The exit manager of each Party shall liaise with the other in relation to all issues relevant to the Transition Project and the Exit Plan. The IT Managed Service Provider shall ensure that its exit manager has the requisite authority to arrange and procure any of the IT Managed Service Provider resources as are necessary to enable the IT Managed Service Provider to undertake the Transition Project.
- 1.2 Upon notice of termination or three months prior to the expiry of the Agreement, the Exit Plan shall come into effect, and the Parties shall comply with its provisions. The period of transition shall commence on notice of termination or three months prior to the expiry of the Agreement, and shall continue for a minimum period of three months after termination or expiry of the Agreement ("Transition Period").
- 1.3 The IT Managed Service Provider shall, if requested by the IMB, continue to provide the Services (or such Services as the IMB selects) for a period of up to 12 months from the date of termination or expiry of the Agreement on the same terms as applied to the provision of the Services immediately prior to the termination or expiry of the Agreement.
- 1.4 The IT Managed Service Provider shall co-operate fully with the IMB, the IMB's replacement service provider contractor ("Replacement Service Provider"), and any other relevant third parties in order to ensure an orderly transfer of the Services to the IMB or to the Replacement Service Provider.
- 1.5 The IT Managed Service Provider shall liaise with the IMB, making available for such purpose such of the IT Managed Service Provider liaison staff as the IMB may reasonably require, and shall act to ensure an accurate and effective handover to the IMB or to the Replacement Service Provider.
- 1.6 The IT Managed Service Provider shall:
- 1.6.1 provide information in respect of the Services to the level of detail required by the IMB;
 - 1.6.2 allow the IMB or the Replacement Service Provider to conduct a due diligence process in respect of the Services;
 - 1.6.3 promptly answer questions about the Services which may be asked by the IMB or the Replacement Service Provider, and provide such information,

records and documents required by the IMB or the Replacement Service Provider; and

- 1.6.4 permit any agent or personnel (including employees, consultants and contractors) of the Replacement Service Provider or of the IMB access (during business and upon reasonable prior written notice) to the IT Managed Service Provider Data Centre, including work shadowing and any other reasonable means by which to effect a prompt knowledge transfer to ensure an orderly handover of the Services.
- 1.7 The IT Managed Service Provider shall repay forthwith to the IMB any advance payments made by the IMB relating to any Services not performed by the IT Managed Service Provider in accordance with the Agreement.
- 1.8 The IT Managed Service Provider shall provide to the IMB or the Replacement Service Provider any ICP Data resident in the IT Managed Service Provider Hosted Environment (including any copies) either in its then current format or in a format nominated by the IMB (in which case the IMB shall reimburse the IT Managed Service Provider's reasonable data conversion expenses) within 20 Working Days of the termination or expiry of the Agreement.
- 1.9 The IT Managed Service Provider shall provide any technical advice in respect of the Services and the ICP Data as may be required by the Replacement Service Provider or the IMB to ensure the provision of the Services to commensurate performance targets and standards to those required by this Agreement.
- 1.10 The IMB understands that the IT Managed Service Provider Hosted Environment (or any part thereof) will not transfer to the IMB or the Replacement Service Provider.

2. EXIT PLAN

- 2.1 The IT Managed Service Provider shall produce (subject to the IMB's reasonable satisfaction) the Exit Plan for the Transition Project within three months of the Commencement Date.
- 2.2 During the Term of the Agreement, the Parties shall review and update the Exit Plan from time to time to take into account Additional Services or material changes to the Services. When the Exit Plan comes into effect, the Parties shall apply the most recently updated Exit Plan, unless at that point of time the Parties agree in writing to further review and update the aforementioned Exit Plan.
- 2.3 The Parties shall perform their respective tasks and activities shown in the Exit Plan by the dates set out in the Exit Plan.
- 2.4 The Exit Plan shall include without limitation the following:
 - 2.4.1 a programme for the transition process, including details of the means of ensuring continuing provision of the Services throughout the transition process;

- 2.4.2 plans for communicating between the IMB, the IT Managed Service Provider, and the Replacement Service Provider (and any other relevant third parties) to avoid detriment to the IMB as a result of the transfer;
- 2.4.3 a list of any necessary security tasks, including but not limited to the transfer or certified destruction of all data in whatever form, including current data, archived data, back-up data and data held by any subcontractors, all of which should, where necessary, include certified hardware destruction;
- 2.4.4 processes and procedures used in the performance and monitoring of the Services;
- 2.4.5 details of the contracts relating to the software and other intellectual property, whether of the IT Managed Service Provider or any other third party, entered into in the course of providing the Services;
- 2.4.6 documentation and source code for any software developed by the IT Managed Service Provider in the course of providing the Services; and
- 2.4.7 up-to-date documentation used in the delivery of the Services.

SCHEDULE 7

Service Charges

1. SERVICE CHARGES

1.1 Service Charges

- 1.1.1 Service Charges will be charged by the IT Managed Service Provider in respect of the Services.
- 1.1.2 The Service Charges in any one Year will be calculated by the IT Managed Service Provider using the costs incurred by the IT Managed Service Provider in providing the Services for that Year.
- 1.1.3 The Service Charges in the first Year shall comprise the Fixed Service Charges, the Staff Service Charges and the Variable Service Charges.
- 1.1.4 The Fixed Service Charges will be £151,435.36 plus VAT and comprise the following:
- (a) IT Managed Service Provider fixed charge for provision of the Services: £50,000;
 - (b) Data Transfer Services fixed costs: £28,295 (which comprises the fixed costs payable to subcontractors in relation to Data Transfer Services);
 - (c) Hosting Services fixed costs: £32,004.36 (which comprises the fixed costs incurred procuring hardware);
 - (d) Support Services fixed costs: £41,136 (which comprises the Concentra monthly fee of £3,428 x 12)
- 1.1.5 The Staff Service Charges will be £112,789 plus VAT and comprise the following:
- (a) 1 x Band 8a plus oncosts at £61,596; and
 - (b) 1 x Band 7 plus oncosts at £51,193.
- 1.1.6 The Variable Service Charges will be calculated on the following basis:
- (a) Data Transfer Services: £12 per extraction from each GP Provider; and
 - (b) Any additional Support Services: £90 per hour or £108 per hour in accordance with the specification set out at paragraph 3 of the Annex to Schedule 5 (Support Services)

1.2 Any other valid and undisputed charges

Any other valid and undisputed charges as agreed in writing between the Parties from time to time under this Agreement will be charged by the IT Managed Service Provider. Such charges may be charged following agreement between the parties in accordance with the provisions of clause 16.

2. **INCIDENTAL COSTS**

In addition to the Charges, the IMB shall reimburse the IT Managed Service Provider for any reasonable incidental costs properly incurred by the IT Managed Service Provider in its performance of the Agreement, provided that any such incidental costs are authorised in advance by the IMB Authorised Officer and receipts are supplied to the IMB. The amount payable by the IMB in respect of any such incidental costs in any one Year shall be capped at £2,000 on any single item and £10,000 in aggregate ("Cap"). The IT Managed Service Provider shall promptly notify the IMB at a point when £8,000 has been exceeded. The IMB shall agree with the IT Managed Service Provider what course of action is to be taken to address this matter, if there is a strong likelihood that there will be an over-spend on the Cap.

3. **PAYMENT SCHEDULE**

3.1 The IMB will ensure payment of the Fixed Service Charges and Staff Service Charged is made to the IT Managed Service Provider by way of four equal payments, to be made on or before the last working day of the third, sixth, ninth and twelfth month after the Commencement Date (where the first month is the month including the Commencement Date). The IT Managed Service Provider will invoice the IMB sufficiently in advance of the payment dates to allow such payments to be processed.

3.2 The IT Managed Service Provider will invoice the IMB monthly in arrears for any Variable Service Charges.

4. **FORM OF INVOICE**

Invoices will be submitted for the attention of A Steeden, NHS North West London, 15 Marylebone Road, London NW1 5JD. Every invoice shall contain an itemised summary of the Service Charges being charged.

SCHEDULE 8

Information Standards & Policies

1. STANDARDS

1.1 Each Party is responsible for:

- 1.1.1 ensuring it has adequate information governance management support and resources to perform its obligations under this Agreement;
- 1.1.2 maintaining adequate information governance policies and associated strategies to support its performance of its obligations under this Agreement;
- 1.1.3 ensuring that any employee, contractor or any other person who accesses any ICP Data on behalf of that party (or any contractor or subcontractor of that party):
 - (a) is bound by contract with the party to adhere to; and
 - (b) has received appropriate training and information in respect of, the provisions of this Agreement (or no less onerous provisions) generally, and in particular those relating to Confidentiality and Data Protection and that the party can ensure compliance with such provisions by that person;
- 1.1.4 ensuring it is lawfully entitled to share Personal Data of which it is the Data Controller for the purposes identified under this Agreement;
- 1.1.5 maintaining access to information security personnel with qualifications at least equal to those set out in the Department of Health guidance in the Information Governance Toolkit version 8 requirement 8-300;
- 1.1.6 determining the suitability and security of methods to facilitate their own staff's access to the ICP systems.

1.2 Each Party must comply with:

- 1.2.1 Information Security Management: NHS Code of Practice
- 1.2.2 Confidentiality: NHS Code of Practice (http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4069253)
- 1.2.3 Guidelines on encryption to protect person identifiable and other sensitive information (<http://www.connectingforhealth.nhs.uk/systemsandservices/infogov/security/encryption.pdf>)
- 1.2.4 Guidelines on transfer of bulk person identifiable information (<https://www.igt.connectingforhealth.nhs.uk/WhatsNewDocuments/GPG%20for%20the%20transfer%20of%20batched%20patient-identifiable%20data.doc>)

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- 1.2.5 Health Data: Use and Disclosure
(http://www.ico.gov.uk/upload/documents/library/data_protection/practical_application/health_data_-_use_and_disclosure001.pdf)

2. POLICIES

2.1 Data in transit

- 2.1.1 All data transfers must be via secure means and be encrypted in transit to at least AES-128, although AES-256 is preferred.
- 2.1.2 If email is used, flows should occur only when both parties use NHSmail, or domains identified as secure for email communication from or to the NHSmail domain.
- 2.1.3 If files larger than 5mb are moved individually, the NHS Secure File Transfer system should be used.
- 2.1.4 If data is to be extracted, transported, accessed and/or transmitted by other means, for three months after Commencement, this may be done remotely via an encrypted tunnel, with such remote access subject to authentication by 3-factor RSA token (or similar). Thereafter, this must be entirely within the NHS N3 network or connected and approved secure domain.
- 2.1.5 Security of end points is the responsibility of end point owner.

2.2 Back-up and disaster recovery

- 2.2.1 The IT Managed Service Provider shall manage the data backup process, and shall be responsible for implementing an appropriate recovery process, should this become necessary. Data restorations will be undertaken as part of recovery, with the agreement of the ICP Partners. The ICP Partners will retain responsibility for any data/information verification processes.
- (a) The integrity and security of the Data shall be the responsibility of the IT Managed Service Provider once it leaves the provider's system.
- (b) The backup infrastructure will be subject to all processes and performance targets within this Agreement where the live infrastructure is replaced or subsumed following a major incident or disaster.
- (c) The IT Managed Service Provider shall take all necessary steps to ensure that the ICP Data which it is hosting is routinely and frequently backed up in accordance with industry best practice.
- (d) There is no provision as part of this agreement for disaster recovery infrastructure to be maintained. In the event of a catastrophic event, the IT Managed Service Provider will liaise with the IMB in accordance with clause 5 and seek to resume service as soon as possible, by purchasing new servers if necessary. It is anticipated

that in the event of a major incident, the service could be resumed within 3 weeks, but no guarantees are offered.

2.2.2 Performance Targets: the following Performance Targets apply to Service continuity:

- (a) Daily back-up of data: 99.9% first time success.

2.3 Data at Rest

2.3.1 Data at rest shall be protected in accordance with industry standard best practice. The suitability of the IT Managed Service Provider's practice will be determined by independent audit in accordance with clause 22.

2.3.2 In particular, the IT Managed Service Provider shall:

- (a) ensure Data managed under this Agreement is not used or reproduced, in whole or in part, in any form except as may be required by this Agreement or by law;
- (b) prevent disclosure to any third party not authorised by the IMB to receive it; and
- (c) prevent alteration, deletion, addition or otherwise interference with such Data save where expressly required to do so by the terms of this Agreement or by law.

2.3.3 The IT Managed Service Provider shall use its best endeavours to ensure that no loss or corruption occurs of any of the Data for which it has responsibility under this Agreement and shall remedy any loss or corruption at its own expense.

2.4 Data management

2.4.1 The following specific 'housekeeping' and routine maintenance activities will take place:

- (a) Weekly checking of database. Following checking, extend table space, storage allocation and roll-back segments as required;
- (b) Writing of backup scripts;
- (c) Daily checking of log files to verify backups are processed;
- (d) Monthly backup restoration tests including test restore up to the point of last cold backup.

SCHEDULE 9

Agreement Management

1. IMB AUTHORISED OFFICER

The IMB Authorised Officer for the purposes of this Agreement (including for the purposes of executing amendments to this Agreement) is the IMB Chair, Professor Elisabeth Paice.

2. THE IT MANAGED SERVICE PROVIDER AUTHORISED OFFICER

The IT Managed Service Provider Authorised Officer for the purposes of this Agreement (including for the purposes of executing amendments to this Agreement) is the IT Managed Service Provider Caldicott Guardian, namely Melanie Smith of 15 Marylebone Road, London NW1 5JD.

3. IMB ADDRESS FOR COMMUNICATIONS

The IMB address for communications is Integrated Care Pilot c/o NHS North West London, 15 Marylebone Road, London NW1 5JD.

4. THE IT MANAGED SERVICE PROVIDER ADDRESS FOR COMMUNICATIONS

The IT Managed Service Provider address for communications is INWL, 15 Marylebone Road, London, NW1 5JD.

5. KEY PERSONNEL

The IMB Key Personnel are as follows:

Role	Person fulfilling the role as at the Commencement Date
Senior Information Risk Owner	Chair of the IMB Information and IT Governance Committee – individual to be confirmed
Caldicott Guardian	Dr Andrew Steedon
Operational Management	Pilot Operations Director – individual to be appointed

The IT Managed Service Provider Key Personnel are as follows:

Role	Person fulfilling the role as at the Commencement Date
Senior Information Risk Owner	Miles Freeman
Caldicott Guardian	Melanie Smith
Operational	Owen Powell

Management	
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6. **QUALITY MANAGEMENT SYSTEM**

The IT Managed Service Provider shall apply the ITIL quality management system, and will use the Prince 2 methodology for any project related activity.

SCHEDULE 10
Change Form

Change Form

CF Number:		Date of Request:	
Originator:			
Reason For Change:			
Details of Change:			
Date Change Effective From:			
Contract Price Change	YES/NO (if "YES" provide full details)		

Effect on the Agreement		YES/NO (if "YES" provide full details)
Amendment Text to clauses And Relevant Schedules/Annexe Implement Change	to	
Privacy Impact Assessment completed and attached		YES (required for all variations)

The IT Managed Service Provider Authorised Officer	The IMB Authorised Officer
SIGNATURE:	SIGNATURE:
DATE:	DATE:

SCHEDULE 11

List of Sub-contractors

- Apollo Medical, of Camilla Court, Nacton, Ipswich, IP10 0EU, in respect of Data Transfer Services
- Concentra Consulting Limited (Company No. 05454622) of Harben House, Harben Parade, London NW3 6LH in respect of Support Services;
- Health Analytics Ltd, of 11 Porson Road, Cambridge, CB2 8ET, in respect of Data Transfer Services.
- iSOFT plc, of Daventry Road, Banbury, Oxon, OX16 3JT in respect of Data Transfer Services
- Quantum Enterprises Ltd, of Carpenter's Court, 4a Lewes Rd, Bromley, BR1 2RN, in respect of Data Transfer Services