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## FORM OF CONTRACT

### UKHSA\_Science - Purchase of CL3-contained cell sorter – (Contract ref: C102529)

This Contract is made between:

The Secretary of State for Health and Social Care as part of the Crown through the **UK Health Security Agency** (the "**Authority**")

and

**Beckman Coulter United Kingdom Limited** of Oakley Court, Kingsmead Business Park, London Road, High Wycombe BUCKS. HP11 1JU (the "**Supplier**")

The following is agreed:

1. The Contract is made up of the following documents:

- (a) this Form of Contract for invitation to tender reference number C66444 - UKHSA\_Scientific\_Purchase of CL3-contained cell sorter;
- (b) Schedule 8 - Specification and Tender Response (but only in respect of the Authority's requirements, including any clarifications of the requirements agreed by the Authority as part of the tender process);
- (c) Schedule 1: Optional Provisions, if any;
- (d) Schedule 2: General Terms and Conditions;
- (e) Schedule 7: Commercial Schedule;
- (f) Schedule 3: Information Governance Provisions;
- (g) Schedule 4: Definitions and Interpretations;
- (h) the order in which all subsequent schedules appear, if any;
- (i) the Specification and Tender Response (other than those parts referred to in (b) above;
- (j) any other documentation forming part of the Contract in the date order in which such documentation was created with the more recent documentation taking precedence over older documentation to the extent only of any conflict.

(all of the above documents taken together (as amended in accordance with this Contract) being referred to as the "**Contract**")

2. Subject always to Clause 1.10 of Schedule 4, if there is an inconsistency between any of the documents listed above, the order of priority for construction purposes shall be that a higher listed document shall prevail over a lower listed document, i.e. document (a) shall prevail over all other documents; document (b) shall prevail over document (c).

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3. The Commencement Date of this Contract shall be 26<sup>th</sup> September 2022 and shall unless terminated earlier, or extended, in accordance with its terms, expire on 31<sup>st</sup> January 2023 (the “**Term**”).

4. The Authority requires, and the Supplier shall provide, the Goods and Services as stated in Table a) in Schedule 7: Commercial Schedule.

Subject to Schedule 7, the maximum value of Goods that can be ordered under this Contract is **£237,000.00** (two hundred and thirty seven pounds only) excluding VAT (the “**Contract Price**”). Full details of the Contract Price are contained in Schedule 7 of this Contract. For the avoidance of doubt, the Authority is not committed to pay the full Contract Price.

5. Any Purchase Order issued by the Authority in respect of this Contract does not form part of this Contract.

For and on behalf of the Authority

DocuSigned by:  


Full Name: 

Job Title/Role: 

Date Signed: 22 September 2022

For and on behalf of the Supplier

DocuSigned by:  


Full Name: 

Job Title/Role: 

Date Signed: 26 September 2022

## UKHSA TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS

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### Schedule 1

#### Optional Provisions

These optional provisions and Schedules shall only apply to the Contract where they have been checked and any information required is completed.

#### ☒ **1: Installation and Commissioning Services**

The Supplier shall provide the Installation and Commissioning Services in accordance with the terms set out in Schedule 5. The installation service shall include, but not limited to:

- a) Installation and commissioning (including testing) of the Goods including:
  - i. all peripheral equipment including PC and Monitor,
  - ii. all software as per the Schedule 8 and necessary testing service to ensure that the Goods are operational.

#### ☐ **2: Maintenance Services**

The Supplier shall provide the Maintenance Services in accordance with the terms set out in Schedule 6.

#### ☐ **3: Time of the essence**

Time is of the essence as to any delivery dates under this Contract and if the Supplier fails to meet any delivery date this shall be deemed to be a breach incapable of remedy for the purposes of Clause 15.4(i) of Schedule 2.

#### ☒ **4: Quality assurance standards**

The following quality assurance standards shall apply, as appropriate, to the manufacture, supply, and/or installation of the Goods:

- ISO 9001: 2015 certified which shall be maintained and valid for the Contract Term.
  - All the Goods and Services including equipment used to provide a service supplied by the Supplier shall be accredited to ISO 9001:2015 (Annex A).
  - The Goods shall meet all the requirements of Provision and Use of Work Equipment Regulations 1998 (PUWER), fully described in Schedule 8 – Question H&S 09.
  - The Supplier shall follow the Sustainability standards set in the Danaher Sustainability Policy 2021 for the full duration of the contract (Annex A)
  - The Installation and Training shall be provided as per the quality standards described in Schedule 8 – Questions 2.28, 2.32, 2.36, 2.37.
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☐ **5: Supplier as Data Processor**

The Parties acknowledge that the Authority is the Controller and the Supplier is the Processor in respect of Personal Data Processed under this Contract and that paragraph 2.2 of Schedule 3 and the provisions of the Data Protection Protocol must be complied with by the Parties as a term of this Contract.

☐ **6: Guarantee**

Promptly following the execution of this Contract, the Supplier shall, if it has not already delivered an executed deed of guarantee to the Authority, deliver the executed deed of guarantee to the Authority as required by the procurement process followed by the Authority. Failure to comply with this Optional Provision shall be an irremediable breach of this Contract.

☐ **7: Purchase Orders**

The Authority shall issue a Purchase Order to the Supplier in respect of any Goods to be supplied to the Authority under this Contract. The Supplier shall comply with the terms of such Purchase Order as a term of this Contract. For the avoidance of doubt, any actions or work undertaken by the Supplier under this Contract prior to the receipt of a Purchase Order covering the relevant Goods shall be undertaken at the Supplier's risk and expense and the Supplier shall only be entitled to invoice for Goods covered by a valid Purchase Order

☐ **8: Termination for convenience**

8.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier at any time on one (1) month written notice.

☒ **9: Extra Optional Provisions**

**9.1 Delivery, Acceptance and Risk**

9.1.1 The Supplier shall deliver the Goods and perform the installation & training services at the following location (the "**Premises and Locations**"):

UKHSA  
Porton Main Stores  
Manor Farm Road  
Salisbury  
SP4 0JG

9.1.3 Risk in the Goods shall be passed to the Authority as per Schedule 2 – Clause 3.1

9.1.4 Ownership of the Goods shall be passed to the Authority as per Schedule 2 – Clause 3.2.

9.1.5 The following criteria for the acceptance of the Goods and the Services performed by the Supplier to the Authority ("**Acceptance**") must be met:

- a) The Goods are delivered to the Premises and Locations.
  - b) The Goods, including all peripheral equipment and software, required to operate the Goods, are installed at the Premises and Locations and the Primary Contact
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has signed the necessary documentation presented by the Supplier for the Authority's Confirmation.

- c) The Training, as stated within clause 9.2 below, has been successfully performed and the Authority's Primary Contact has confirmed as such.

## **9.2 Training**

- 9.2.1 The Supplier shall arrange for the training session/s as described in Schedule 8 – Questions 2.36, 2.37 (“the **“Training”**”), no later than 2 weeks after the installation, as defined in schedule 8 – Questions 2.28, 2.32 (the **“Installation”**) of the Goods has been completed, unless otherwise agreed in writing with the Authority.
- 9.2.2 Supplier shall agree with the Primary Contact stated in clause 9.6.3 of Schedule of this Contract, when the Training shall take place. This shall be agreed between the Parties at least 10 (ten) Business Days prior to the delivery of the Goods.
- 9.2.3 The Supplier shall issue a training certificate after the Training is performed. The certificate shall confirm that the Authority's staff who attended the Training meet the required competency standards in order to safely use the Goods. The certificate shall be issued after Primary Contact provides the Authority's Confirmation in writing, by either signing the certification or any other documentation provided by the Supplier upon completion of the Training, stating that they are satisfied with the Training performed.

## **9.3 Preventative Maintenance**

- 9.3.1 The Supplier shall provide a preventative maintenance (“the PM”) visit during the warranty period as described in Schedule 8 – Questions 2.23, 2.38a, 2.38b, 2.38h, H&S 09.
- 9.3.2 Supplier to agree with Primary Contact when the PM will take at least 10 (ten) Business Days prior to the PM being performed.

## **9.4 Invoicing Terms**

- 9.4.1 Payment terms are net 30 days from receipt of a valid invoice.
- 9.4.2 Following receipt of the Supplier's countersigned copy of the Contract, the Authority will send a unique PO number. The Supplier must be in receipt of a valid PO number before submitting an invoice.
- 9.4.3 The Supplier's first invoice shall be submitted after the Acceptance.
- 9.4.4 All invoices must be sent for approval and shall include the proof of Acceptance, to the Authority's designated finance mailbox e-mail: [REDACTED] before being submitted for payment.
- 9.4.5 The Authority's billing address that must be stated on all invoices is as follows:

Accounts Payable,  
UK Health Security Agency,  
Manor Farm Road,  
Porton Down,  
Salisbury,

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SP4 0JG.

VAT No: [REDACTED]

- 9.4.6 All invoices must be sent quoting a valid PO number. The Supplier shall provide a current statement of accounts on a monthly basis; this is a standard commercial process and should show all invoices raised and amounts outstanding.
- 9.4.7 The Supplier shall provide compliant invoices that include, as a minimum, a valid PO number, PO line item number (if applicable), PO line description, and the details (name and telephone number) of the Authority's authorised representative. Non-compliant invoices will be sent back to the Supplier, which may lead to a delay in a payment.
- 9.4.8 In support of Goods delivered and the Services provided, the Supplier shall provide to the Authority a signed delivery note confirming receipt of the Goods and provision of the Services at the Authority's nominated Delivery Locations.
- 9.4.9 Supplier queries regarding payment must be forwarded to the Authority's Accounts Payable section by email [REDACTED]

## **9.5 Authority Obligations**

- 9.5.2 The Authority shall ensure access to Premises and Locations by the Supplier is provided for the provision of the Installation and Training services.
- 9.5.3 The Authority shall (where relevant) provide Policies, site guidelines/instructions in advance of the Supplier attending site including the provision of any protective material such as PPE.
- 9.5.4 The Authority reserves the right to immediately remove from the Authority's site any Staff who do not conform to the reasonable instructions, policies, rules and regulations of the Authority.

## **9.6 Contacts**

### **9.6.1 Contract Managers**

The Supplier's Contract Manager is:

Name: [REDACTED]  
Email: [REDACTED]  
Phone: [REDACTED]

The Authority's Contract Manager is:

Name: [REDACTED]  
E-mail: [REDACTED]

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### 9.6.2 Notices Contacts

#### Name and Address For Notices

For the Authority:

Name: [REDACTED]

Address:

UK Health Security Agency  
Nobel House, 17 Smith Square,  
London SW1P

E-mail: [REDACTED]

For the Supplier:

Name: [REDACTED]

Address:

Beckman Coulter  
Oakley Court, Kingsmead Business Park,  
London Road, High Wycombe,  
Bucks, HP11 1JU

Email: [REDACTED]

Phone: [REDACTED]

### 9.6.3 Authority's Primary Contact

The Authority's primary contact ("**Primary Contact**"), unless otherwise advised, shall be:

Name: [REDACTED]

Email: [REDACTED]

Phone: [REDACTED]

## 9.7 Warranty

9.7.1 The Supplier shall provide a 12-month warranty for the Goods which shall commence on Acceptance.

9.7.2 In the event of Goods are deemed to be Defective Goods by the Authority, the Authority, at its sole discretion, shall provide a written request or written notice to the Supplier in accordance with Schedule 2, clause 4.6 this Contract.

9.7.3 In the event of Services are deemed not to be Accepted by the Authority, the Supplier shall reperform the Services at their own cost.

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## **9.8 Return Conditions**

The Return Conditions shall be as follows:

9.8.1 The Supplier is responsible for collecting the Goods.

9.8.2 The Supplier is responsible for the costs of returning/collecting the Goods.

Return Conditions shall be in accordance with Schedule 2 - clause 4 (Inspection, rejection, return and recall of the Goods) of the Call Off Terms and Conditions.

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## UKHSA STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS

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### Schedule 2

#### General Terms and Conditions

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## **1 Supply of Goods**

- 1.1 The Supplier shall supply the Goods ordered by the Authority under this Contract:
- 1.1.1 promptly and in any event within any time limits as may be set out in this Contract;
  - 1.1.2 in accordance with all other provisions of this Contract;
  - 1.1.3 using reasonable skill and care in their delivery;
  - 1.1.4 using reasonable skill and care in their installation, associated works and training to the extent that such installation, works or training is a requirement of this Contract;
  - 1.1.5 in accordance with any quality assurance standards as set out in the Optional Provisions and/or the Specification and Tender Response Document;
  - 1.1.6 in accordance with the Law and with Guidance;
  - 1.1.7 in accordance with Good Industry Practice;
  - 1.1.8 in accordance with the Policies; and
  - 1.1.9 in a professional and courteous manner.
- 1.2 The Supplier shall comply fully with its obligations set out in the Specification and Tender Response Document (to include, without limitation, the KPIs and all obligations in relation to the quality, performance characteristics, supply, delivery and installation and training in relation to use of the Goods).
- 1.3 Unless otherwise agreed by the Parties in writing, the Goods shall be new, consistent with any sample, and shall comply with any applicable specification set out in this Contract (to include, without limitation, the provisions of the Authority's requirements set out in the Specification and Tender Response Document and the Supplier's response to such requirements) and any applicable manufacturers' specifications.
- 1.4 The Supplier shall ensure that all relevant consents, authorisations, licences and accreditations required to supply the Goods are in place prior to the delivery of any Goods to the Authority.
- 1.5 If there are any incidents that in any way relate to or involve the use of the Goods by the Authority, the Supplier shall cooperate fully with the Authority in relation to the Authority's application of the Policies on reporting and responding to all incidents, including serious incidents requiring investigation, and shall respond promptly to any reasonable and proportionate queries, questions and/or requests for information that the Authority may have in this context in relation to the Goods.
- 1.6 If there are any quality, performance and/or safety related reports, notices, alerts or other communications issued by the Supplier or any regulatory or other body in relation to the Goods, the Supplier shall promptly provide the Authority with a copy of any such reports, notices, alerts or other communications.

- 1.7 Upon receipt of any such reports, notices, alerts or other communications pursuant to Clause 1.6 of this Schedule 2, the Authority shall be entitled to request further information from the Supplier and/or a meeting with the Supplier, and the Supplier shall cooperate fully with any such request.

## **2 Delivery**

- 2.1 The Supplier shall deliver the Goods in accordance with any delivery timescales, delivery dates and delivery instructions (to include, without limitation, as to delivery location and delivery times) set out in the Specification and Tender Response Document, a Purchase Order or as otherwise agreed with the Authority in writing.
- 2.2 Delivery shall be completed when the Goods have been unloaded at the location specified by the Authority and such delivery has been received by a duly authorised agent, employee or location representative of the Authority. The Authority shall procure that such duly authorised agent, employee or location representative of the Authority is at the delivery location at the agreed delivery date and times in order to accept such delivery. Any arrangement by which the Goods are collected by the Authority in return for a discount on the Contract Price shall be agreed by the Parties in writing (where due to an emergency such arrangements cannot be committed to writing prior to collection, the Parties shall confirm such arrangements in writing as soon as possible following collection). Where the Authority collects the Goods, collection is deemed delivery for the purposes of the Contract.
- 2.3 The Supplier shall ensure that a delivery note shall accompany each delivery of the Goods. Such delivery note shall contain the information specified in the Specification and Tender Response Document or as otherwise agreed with the Authority in writing. Where such information requirements as to the content of delivery notes are not specified or separately agreed, such delivery notes shall, as a minimum, contain the Authority's order number, the name and address of the Authority, a description and quantity of the Goods, and shall show separately any extra agreed charges for containers and/or any other item not included in the Contract Price or, where no charge is made, whether the containers are required to be returned.
- 2.4 Part deliveries and/or deliveries outside of the agreed delivery times/dates may be refused unless the Authority has previously agreed in writing to accept such deliveries. Where delivery of the Goods is refused by the Authority in accordance with this Clause 2.4 of this Schedule 2, the Supplier shall be responsible for all risks, costs and expenses associated with the re-delivery of the Goods in accordance with the agreed delivery times/dates. Where the Authority accepts delivery more than five (5) days before the agreed delivery date, the Authority shall be entitled to charge the Supplier for the costs of insurance and storage of the Goods until the agreed date for delivery.
- 2.5 Unless otherwise set out in the Specification and Tender Response Document or agreed with the Authority in writing, the Supplier shall be responsible for carriage, insurance, transport, all relevant licences, all related costs, and all other costs associated with the delivery of the Goods to the delivery location and unloading of the Goods at that location. Without limitation to the foregoing provision of this Clause 2.5 of this Schedule 2, unless otherwise stated in the Specification and Tender Response Document or agreed with the Authority in writing, the Supplier shall be responsible for obtaining all export and import licences for the Goods and shall be responsible for any delays to the delivery time due to such licences not being available when required. In the case of any Goods supplied from outside the United Kingdom, the Supplier shall ensure that accurate information is provided to the Authority as to the country of origin of the Goods and shall be liable to the Authority for

any extra duties or taxes for which the Authority may be accountable should the country of origin prove to be different from that set out in the Specification and Tender Response Document.

- 2.6 All third party carriers engaged to deliver the Goods shall at no time be an agent of the Authority and accordingly the Supplier shall be liable to the Authority for the acts and omissions of all third party carriers engaged to deliver the Goods to the Authority.

### **3 Passing of risk and ownership**

- 3.1 Risk in the Goods shall pass to the Authority when the Goods are delivered as specified in this Contract or, in the case of Goods which require installation and training by the Supplier, when that installation process is complete.

- 3.2 Ownership of the Goods shall pass to the Authority on the earlier of:

3.2.1 full payment for such Goods; or

3.2.2 where the goods are consumables or are non-recoverable, at the point such Goods are taken into use. For the avoidance of doubt, where ownership passes in accordance with this Clause 3.2.2 of this Schedule 2, then the full Contract Price for such Goods shall be recoverable by the Supplier from the Authority as a debt if there is non-payment of a valid undisputed invoice issued by the Supplier to the Authority in relation to such Goods.

- 3.3 All tools, equipment and materials of the Supplier required in the performance of the Supplier's obligations under this Contract shall be and remain at the sole risk of the Supplier, whether or not they are situated at a delivery location.

### **4 Inspection, rejection, return and recall**

- 4.1 As relevant and proportionate to the Goods in question and subject to reasonable written notice, the Supplier shall permit any person authorised by the Authority, to inspect work being undertaken in relation to the Goods and/or the storage facilities used in the storage of the Goods at all reasonable times at the Supplier's premises or at the premises of any Sub-contractor or agent of the Supplier in order to confirm that the Goods are being manufactured and/or stored in accordance with Good Industry Practice and in compliance the requirements of this Contract and/or that stock holding and quality assurance processes are in accordance with the requirements of this Contract.

- 4.2 Without prejudice to the provisions of Clause 4.6 of this Schedule 2 and subject to Clause 4.7 of this Schedule 2, the Authority shall visually inspect the Goods within a reasonable time following delivery and may by written notice reject any Goods found to be damaged or otherwise not in accordance with the requirements of this Contract ("**Rejected Goods**"). The whole of any delivery may be rejected if a reasonable sample of the Goods taken indiscriminately from that delivery is found not to conform in all material respects to the requirements of the Contract.

- 4.3 Without prejudice to the provisions of Clause 4.5 of this Schedule 2, upon the rejection of any Goods in accordance with Clauses 4.2 and/or 4.6 of this Schedule 2, the Supplier shall at the Authority's written request:

4.3.1 collect the Rejected Goods at the Supplier's risk and expense within ten (10) Business Days of issue of written notice from the Authority rejecting the Goods; and

4.3.2 without extra charge, promptly (and in any event within twenty (20) Business Days or such other time agreed by the Parties in writing acting reasonably) supply replacements for the Rejected Goods to the Authority subject to the Authority not cancelling its purchase obligations in accordance with Clause 4.5 of this Schedule 2.

If the Supplier requests and the Authority accepts that the Rejected Goods should be disposed of by the Authority rather than returned to the Supplier, the Authority reserves the right to charge the Supplier for the costs associated with the disposal of the Rejected Goods and the Supplier shall promptly pay any such costs.

4.4 Risk and title in respect of any Rejected Goods shall pass to the Supplier on the earlier of: (a) collection by the Supplier in accordance with Clause 4.3 of this Schedule 2; or (b) immediately following the expiry of ten (10) Business Days from the Authority issuing written notification rejecting the Goods. If Rejected Goods are not collected within ten (10) Business Days of the Authority issuing written notification rejecting the Goods, the Authority may return the Rejected Goods at the Supplier's risk and expense and charge the Supplier for the cost of storage from the expiry of ten (10) Business Days from the date of notification of rejection.

4.5 Where the Authority rejects any Goods in accordance with Clauses 4.2 and/or 4.6 of this Schedule 2 and the Authority no longer requires replacement Goods, the Authority may by written notice cancel its purchase obligations in relation to such quantity of Rejected Goods. Should the Authority have paid for such Rejected Goods the Supplier shall refund such payment to the Authority within thirty (30) days of the Authority cancelling such purchase obligations and informing the Supplier that the Authority does not require replacements for such Rejected Goods.

4.6 Without prejudice to any other provisions of this Contract or any other warranties or guarantees applicable to the Goods supplied and subject to Clause 4.7 of this Schedule 2, if at any time following the date of the delivery of any Goods, all or any part of such Goods are found to be defective or otherwise not in accordance with the requirements of this Contract ("**Defective Goods**"), the Supplier shall, at the Authority's discretion:

4.6.1 upon written request and without charge, promptly (and in any event within twenty (20) Business Days or such other time agreed by the Parties in writing acting reasonably) remedy the deficiency by repairing such Defective Goods; or

4.6.2 upon written notice of rejection from the Authority, treat such Defective Goods as Rejected Goods in accordance with Clauses 4.2 to 4.5 of this Schedule 2.

4.7 The Supplier shall be relieved of its liabilities under Clauses 4.2 to 4.5 (inclusive) and/or Clause 4.6 of this Schedule 2 to the extent only that the Goods are damaged,

there are defects in the Goods and/or the Goods fail to comply with the requirements of this Contract due, in each case, to any acts or omissions of the Authority.

4.8 The Authority's rights and remedies under Clause 4.6 of this Schedule 2 shall cease within a reasonable period of time from the date on which the Authority discovers or might reasonably be expected to discover that the Goods are Defective Goods. For the avoidance of doubt, Goods not used before their expiry date shall in no event be considered Defective Goods following the date of expiry provided that at the point such Goods were delivered to the Authority they met any shelf life requirements set out in the Specification and Tender Response Document.

4.9 Where the Supplier is required by Law, Guidance, and/or Good Industry Practice to order a product recall ("**Requirement to Recall**") in respect of the Goods, the Supplier shall:

4.9.1 promptly (taking into consideration the potential impact on the Authority of the continued use of the Goods as well as compliance by the Supplier with any regulatory requirements) notify the Authority in writing of the recall together with the circumstances giving rise to the recall;

4.9.2 from the date of the Requirement to Recall treat the Goods the subject of such recall as Defective Goods in accordance with Clause 4.6 of this Schedule 2;

4.9.3 consult with the Authority as to the most efficient method of executing the recall of the Goods and use its reasonable endeavours to minimise the impact on the Authority of the recall; and

4.9.4 indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the Authority as a result of such Requirement to Recall.

## **5      Staff**

5.1 The Supplier will employ sufficient Staff to ensure that it complies with its obligations under this Contract. This will include, but not be limited to, the Supplier providing a sufficient reserve of trained and competent Staff during Staff holidays or absence.

5.2 The Supplier shall ensure that all Staff are aware of, and at all times comply with, the Policies.

5.3 The Supplier shall employ only such persons as are careful, skilled and experienced in the duties required of them, and will ensure that every such person is properly and sufficiently trained and instructed and shall maintain throughout the Term all appropriate licences and registrations with any relevant bodies (at the Supplier's expense) and has the qualifications to carry out their duties.

5.4 The Supplier shall comply with the Authority's staff vetting procedures and other staff protocols, as may be relevant to this Contract and which are notified to the Supplier by the Authority in writing.

5.5 Unless otherwise confirmed by the Authority in writing, the Supplier shall ensure full compliance (to include with any implementation timelines) with any Guidance issued

by the Department of Health and Social Care and/or any requirements and/or Policies issued by the Authority (to include as may be set out as part of any procurement documents leading to the award of this Contract) in relation to the adoption of, and compliance with, any scheme or schemes to verify the credentials of Supplier representatives that visit the Premises. Once compliance with any notified implementation timelines has been achieved by the Supplier, the Supplier shall, during the Term, maintain the required level of compliance in accordance with any such Guidance, requirements and Policies.

## **6 Business continuity**

- 6.1 The Supplier shall use reasonable endeavours to ensure its Business Continuity Plan operates effectively alongside the Authority's business continuity plan where relevant to the supply of the Goods. The Supplier shall also ensure that its Business Continuity Plan complies on an ongoing basis with any specific business continuity requirements, as may be set out in the Specification and Tender Response Document.
- 6.2 Throughout the Term, the Supplier will ensure its Business Continuity Plan provides for continuity during a Business Continuity Event. The Supplier confirms and agrees such Business Continuity Plan details and will continue to detail robust arrangements that are reasonable and proportionate to:
- 6.2.1 the criticality of this Contract to the Authority; and
  - 6.2.2 the size and scope of the Supplier's business operations,
- regarding continuity of the supply of Goods during and following a Business Continuity Event.
- 6.3 The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Contract to the Authority and the size and scope of the Supplier's business operations. The Supplier shall promptly provide to the Authority, at the Authority's written request, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that the Supplier tests its Business Continuity Plan in accordance with the requirements of this Clause 6.3 of this Schedule 2 and reasonable and proportionate information regarding the outcome of such tests. The Supplier shall provide to the Authority a copy of any updated or revised Business Continuity Plan within fourteen (14) Business Days of any material update or revision to the Business Continuity Plan.
- 6.4 The Authority may suggest reasonable and proportionate amendments to the Supplier regarding the Business Continuity Plan at any time. Where the Supplier, acting reasonably, deems such suggestions made by the Authority to be relevant and appropriate, the Supplier will incorporate into the Business Continuity Plan all such suggestions made by the Authority in respect of such Business Continuity Plan. Should the Supplier not incorporate any suggestion made by the Authority into such Business Continuity Plan it will explain the reasons for not doing so to the Authority.
- 6.5 Should a Business Continuity Event occur at any time, the Supplier shall implement and comply with its Business Continuity Plan and provide regular written reports to the Authority on such implementation.

- 6.6 During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to supply the Goods in accordance with this Contract.

## **7 The Authority's obligations**

- 7.1 Subject to the Supplier supplying the Goods in accordance with this Contract, the Authority will pay the Supplier for the Goods in accordance with Clause 9 of this Schedule 2.
- 7.2 The Authority shall, as appropriate, provide copies of or give the Supplier access to such of the Policies that are relevant to the supply and delivery of the Goods.
- 7.3 The Authority shall comply with the Authority's Obligations, as may be referred to in the Specification and Tender Response Document.
- 7.4 The Authority shall provide the Supplier with any reasonable and proportionate cooperation necessary to enable the Supplier to comply with its obligations under this Contract. The Supplier shall at all times provide reasonable advance written notification to the Authority of any such cooperation necessary in circumstances where such cooperation will require the Authority to plan for and/or allocate specific resources in order to provide such cooperation.

## **8 Contract management**

- 8.1 Each Party shall appoint and retain a Contract Manager who shall be the primary point of contact for the other Party in relation to matters arising from this Contract. Should the Contract Manager be replaced, the Party replacing the Contract Manager shall promptly inform the other Party in writing of the name and contact details for the new Contract Manager. Any Contract Manager appointed shall be of sufficient seniority and experience to be able to make decisions on the day to day operation of the Contract. The Supplier confirms and agrees that it will be expected to work closely and cooperate fully with the Authority's Contract Manager.
- 8.2 Each Party shall ensure that its representatives (to include, without limitation, its Contract Manager) shall attend review meetings on a regular basis to review the performance of the Supplier under this Contract and to discuss matters arising generally under this Contract. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day to day operation of the Contract. Review meetings shall take place at the frequency specified in the Specification and Tender Response Document. Should the Specification and Tender Response Document not state the frequency, then the first such meeting shall take place on a date to be agreed on or around the end of the first month after the Commencement Date. Subsequent meetings shall take place at monthly intervals or as may otherwise be agreed in writing between the Parties.
- 8.3 Two weeks prior to each review meeting (or at such time and frequency as may be specified in the Specification and Tender Response Document) the Supplier shall provide a written contract management report to the Authority regarding the supply of the Goods and the operation of this Contract. Unless otherwise agreed by the Parties in writing, such contract management report shall contain:
- 8.3.1 details of the performance of the Supplier when assessed in accordance with the KPIs since the last such performance report;



- 8.3.2 details of any complaints by the Authority in relation to the supply of Goods, their nature and the way in which the Supplier has responded to such complaints since the last review meeting written report;
  - 8.3.3 the information specified in the Specification and Tender Response Document;
  - 8.3.4 a status report in relation to the implementation of any current Remedial Proposals by either Party; and
  - 8.3.5 such other information as reasonably required by the Authority.
- 8.4 Unless specified otherwise in the Specification and Tender Response Document, the Authority shall take minutes of each review meeting and shall circulate draft minutes to the Supplier within a reasonable time following such review meeting. The Supplier shall inform the Authority in writing of any suggested amendments to the minutes within five (5) Business Days of receipt of the draft minutes. If the Supplier does not respond to the Authority within such five (5) Business Days the minutes will be deemed to be approved. Where there are any differences in interpretation of the minutes, the Parties will use their reasonable endeavours to reach agreement. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the Dispute Resolution Procedure.
- 8.5 The Supplier shall provide such management information as the Authority may request from time to time within seven (7) Business Days of the date of the request. The Supplier shall supply the management information to the Authority in such form as may be specified by the Authority and, where requested to do so, the Supplier shall also provide such management information to another Contracting Authority, whose role it is to analyse such management information in accordance with UK government policy (to include, without limitation, for the purposes of analysing public sector expenditure and planning future procurement activities) ("**Third Party Body**"). The Supplier confirms and agrees that the Authority may itself provide the Third Party Body with management information relating to the Goods purchased, any payments made under this Contract, and any other information relevant to the operation of this Contract.
- 8.6 Upon receipt of management information supplied by the Supplier to the Authority and/or the Third Party Body, or by the Authority to the Third Party Body, the Parties hereby consent to the Third Party Body and the Authority:
- 8.6.1 storing and analysing the management information and producing statistics; and
  - 8.6.2 sharing the management information or any statistics produced using the management information with any other Contracting Authority.
- 8.7 If the Third Party Body and/or the Authority shares the management information or any other information provided under Clause 8.6 of this Schedule 2, any Contracting Authority receiving the management information shall, where such management information is subject to obligations of confidence under this Contract and such management information is provided direct by the Authority to such Contracting Authority, be informed of the confidential nature of that information by the Authority and shall be requested by the Authority not to disclose it to any body that is not a Contracting Authority (unless required to do so by Law).

- 8.8 The Authority may make changes to the type of management information which the Supplier is required to supply and shall give the Supplier at least one (1) month's written notice of any changes.

## **9 Price and payment**

- 9.1 The Contract Price shall be calculated as set out in the Commercial Schedule.

- 9.2 Unless otherwise stated in the Commercial Schedule the Contract Price:

9.2.1 shall remain fixed during the Term; and

9.2.2 is the entire price payable by the Authority to the Supplier in respect of the provision of the Goods and includes, without limitation:

- (i) packaging, packing materials, addressing, labelling, loading, delivery to and unloading at the delivery location, the cost of any import or export licences, all appropriate taxes (excluding VAT), duties and tariffs, any expenses arising from import and export administration, any installation costs and associated works, the costs of all associated documentation and information supplied or made accessible to the Authority in any media, and any training in relation to the use, storage, handling or operation of the Goods;
- (ii) any royalties, licence fees or similar expenses in respect of the making, use or exercise by the Supplier of any Intellectual Property Rights for the purposes of performing this Contract, and any licence rights granted to the Authority in accordance with Clause 11 of this Schedule 2; and
- (iii) costs and expenses in relation to supplies and materials used by the Supplier or any third party in the manufacture of the Goods, and any other costs incurred by the Supplier in association with the manufacture, supply or installation of the Goods.

- 9.3 Unless stated otherwise in the Commercial Schedule, the Supplier shall invoice the Authority, within fourteen (14) days of the delivery of Goods ordered by the Authority using a Purchase Order, quoting on the invoice the relevant Purchase Order number. Each invoice shall contain such information and be addressed to such individual as the Authority may inform the Supplier from time to time.

- 9.4 Each invoice shall contain such information and be addressed to such individual as the Authority may inform the Supplier from time to time.

- 9.5 The Contract Price is exclusive of VAT, which, if properly chargeable, the Authority shall pay at the prevailing rate subject to receipt from the Supplier of a valid and accurate VAT invoice. Such VAT invoices shall show the VAT calculations as a separate line item.

- 9.6 Where the Contract Price is or may become subject to any pricing requirements of any voluntary and/or statutory pricing regulation schemes, the Parties shall comply with such pricing requirements as required by Law from time to time and specifically as required by the statutory pricing regulation scheme (and any future regulation) or to the extent applicable to the Supplier from time to time as an industry member of a voluntary scheme, including any reductions in price by reason of the application of such schemes.

- 9.7 The Authority shall verify and pay each valid and undisputed invoice received in accordance with Clause 9.3 of this Schedule 2 within thirty (30) days of receipt of such invoice at the latest. However, the Authority shall use its reasonable endeavours to pay such undisputed invoices sooner in accordance with any applicable government prompt payment targets. If there is undue delay in verifying the invoice in accordance with this Clause 9.7 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purposes this Clause 9.7 after a reasonable time has passed.
- 9.8 Where the Authority raises a query with respect to an invoice the Parties shall liaise with each other and agree a resolution to such query within thirty (30) days of the query being raised. If the Parties are unable to agree a resolution within thirty (30) days the query shall be referred to dispute resolution in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, the Authority shall not be in breach of any of any of its payment obligations under this Contract in relation to any queried or disputed invoice sums unless the process referred to in this Clause 9.7 of this Schedule 2 has been followed and it has been determined that the queried or disputed invoice amount is properly due to the Supplier and the Authority has then failed to pay such sum within a reasonable period following such determination.
- 9.9 The Supplier shall pay to the Authority any service credits and/or other sums and/or deductions (to include, without limitation, deductions relating to a reduction in the Contract Price) that may become due in accordance with the provisions of the Specification and Tender Response Document. For the avoidance of doubt, the Authority may invoice the Supplier for such sums or deductions at any time in the event that they have not automatically been credited to the Authority in accordance with the provisions of the Specification and Tender Response Document. Such invoice shall be paid by the Supplier within 30 days of the date of such invoice.
- 9.10 The Authority reserves the right to set-off:
- 9.10.1 any monies due to the Supplier from the Authority as against any monies due to the Authority from the Supplier under this Contract; and
  - 9.10.2 any monies due to the Authority from the Supplier as against any monies due to the Supplier from the Authority under this Contract.
- 9.11 Where the Authority is entitled to receive any sums (including, without limitation, any costs, charges or expenses) from the Supplier under this Contract, the Authority may invoice the Supplier for such sums. Such invoices shall be paid by the Supplier within 30 days of the date of such invoice.
- 9.12 If a Party fails to pay any undisputed sum properly due to the other Party under this Contract, the Party due such sum shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

## **10 Warranties**

- 10.1 The Supplier warrants and undertakes that:
- 10.1.1 the Goods shall be suitable for the purposes and/or treatments as referred to in the Specification and Tender Response Document, be of satisfactory quality,

fit for their intended purpose and shall comply with the standards and requirements set out in this Contract;

- 10.1.2 unless otherwise confirmed by the Authority in writing (to include, without limitation, as part of the Specification and Tender Response Document), it will ensure that the Goods comply with requirements five (5) to eight (8), as set out in Annex 1 of the Cabinet Office Procurement Policy Note - Implementing Article 6 of the Energy Efficiency Directive (Action Note 07/14 3rd June 2014), to the extent such requirements apply to the relevant Goods;
- 10.1.3 it shall ensure that prior to actual delivery to the Authority the Goods are manufactured, stored and/or distributed using reasonable skill and care and in accordance with Good Industry Practice;
- 10.1.4 without prejudice to the generality of the warranty at 10.1.3 of this Schedule 2, it shall ensure that, the Goods are manufactured, stored and/or distributed in accordance with good manufacturing practice and/or good warehousing practice and/or good distribution practice, as may be defined under any Law, Guidance and/or Good Industry Practice relevant to the Goods, and in accordance with any specific instructions of the manufacturer of the Goods;
- 10.1.5 it shall ensure that all facilities used in the manufacture, storage and distribution of the Goods are kept in a state and condition necessary to enable the Supplier to comply with its obligations in accordance with this Contract;
- 10.1.6 it has, or the manufacturer of the Goods has, manufacturing and warehousing capacity sufficient to comply with its obligations under this Contract;
- 10.1.7 it will ensure sufficient stock levels to comply with its obligations under this Contract;
- 10.1.8 it shall ensure that the transport and delivery of the Goods mean that they are delivered in good and useable condition;
- 10.1.9 where the Goods are required to be stored at a certain temperature, it shall provide, or shall procure the provision of, complete and accurate temperature records for each delivery of the Goods during the period of transport and/or storage of the Goods from the point of manufacture to the point of delivery to the Authority;
- 10.1.10 where there is any instruction information, including without limitation patient information leaflets, that accompany the Goods, it shall provide a sufficient number of copies to the Authority and provide updated copies should the instruction information change at any time during the Term;
- 10.1.11 all Goods delivered to the Authority shall comply with any shelf life requirements set out in the Specification and Tender Response Document;
- 10.1.12 it has and shall maintain a properly documented system of quality controls and processes covering all aspects of its obligations under this Contract and/or under Law and/or Guidance and shall at all times comply with such quality controls and processes;
- 10.1.13 it shall not make any significant changes to its system of quality controls and processes in relation to the Goods without notifying the Authority in writing at least twenty one (21) days in advance of such change (such notice to include

the details of the consequences which follow such change being implemented);

- 10.1.14 it shall not make any significant changes to the Goods without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed;
- 10.1.15 any equipment it uses in the manufacture, delivery, or installation of the Goods shall comply with all relevant Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification;
- 10.1.16 where any act of the Supplier requires the notification to and/or approval by any regulatory or other competent body in accordance with any Law and Guidance, the Supplier shall comply fully with such notification and/or approval requirements;
- 10.1.17 it has and shall as relevant maintain all rights, consents, authorisations, licences and accreditations required to supply the Goods;
- 10.1.18 receipt of the Goods by or on behalf of the Authority and use of the Goods or of any other item or information supplied, or made available, to the Authority will not infringe any third party rights, to include without limitation any Intellectual Property Rights;
- 10.1.19 it will comply with all Law, Guidance, Policies and the Supplier Code of Conduct in so far as is relevant to the supply of the Goods;
- 10.1.20 it will promptly notify the Authority of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the Goods and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;
- 10.1.21 it shall: (i) comply with all relevant Law and Guidance and shall use Good Industry Practice to ensure that there is no slavery or human trafficking in its supply chains; and (ii) notify the Authority immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains;
- 10.1.22 it shall at all times conduct its business in a manner that is consistent with any anti-slavery Policy of the Authority and shall provide to the Authority any reports or other information that the Authority may request as evidence of the Supplier's compliance with this Clause 10.1.22 and/or as may be requested or otherwise required by the Authority in accordance with its antislavery Policy.
- 10.1.23 it will fully and promptly respond to all requests for information and/or requests for answers to questions regarding this Contract, the Goods, any complaints and any Disputes at the frequency, in the timeframes and in the format as requested by the Authority from time to time (acting reasonably);
- 10.1.24 all information included within the Supplier's responses to any documents issued by the Authority as part of the procurement relating to the award of this Contract (to include, without limitation, as referred to in the Specification

and Tender Response Document and Commercial Schedule) and all accompanying materials is accurate;

- 10.1.25 it has the right and authority to enter into this Contract and that it has the capability and capacity to fulfil its obligations under this Contract;
  - 10.1.26 it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Contract and the documents referred to in this Contract;
  - 10.1.27 all necessary actions to authorise the execution of and performance of its obligations under this Contract have been taken before such execution;
  - 10.1.28 there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Supplier;
  - 10.1.29 there are no material agreements existing to which the Supplier is a party which prevent the Supplier from entering into or complying with this Contract;
  - 10.1.30 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Contract; and
  - 10.1.31 it has satisfied itself as to the nature and extent of the risks assumed by it under this Contract and has gathered all information necessary to perform its obligations under this Contract and all other obligations assumed by it.
- 10.2 Where the sale, manufacture, assembly, importation, storage, distribution, supply, delivery, or installation of the Goods under this Contract relates to medical devices and/or medicinal products (both as defined under any relevant Law and Guidance), the Supplier warrants and undertakes that it will comply with any such Law and Guidance relating to such activities in relation to such medical devices and/or medicinal products. In particular, but without limitation, the Supplier warrants that:
- 10.2.1 at the point such Goods are supplied to the Authority, all such Goods which are medical devices shall have valid CE marking as required by Law and Guidance and that all relevant marking, authorisation, registration, approval and documentation requirements as required under Law and Guidance relating to the sale, manufacture, assembly, importation, storage, distribution, supply, delivery, or installation of such Goods shall have been complied with. Without limitation to the foregoing provisions of this Clause 10.2 of this Schedule 2, the Supplier shall, upon written request from the Authority, make available to the Authority evidence of the grant of such valid CE marking, and evidence of any other authorisations, registrations, approvals or documentation required;
  - 10.2.2 at the point such Goods are supplied to the Authority, all such Goods which are medicinal products shall have a valid marketing authorisation as required by Law and Guidance in order to supply the Goods to the Authority and that all relevant authorisation, labelling, registration, approval and documentation requirements as required under Law and Guidance relating to the sale, manufacture, assembly, importation, storage, distribution, supply or delivery of such Goods shall have been complied with. Without limitation to the foregoing provisions of this Clause 10.2 of this Schedule 2, the Supplier shall, upon written request from the Authority, make available to the Authority evidence of the grant of any required valid marketing authorisation, and

evidence of any other authorisations, labelling, registrations, approvals or documentation required; and

- 10.2.3 it shall maintain, and no later than any due date when it would otherwise expire, obtain a renewal of, any authorisation, registration or approval (including without limitation CE marking and/or marketing authorisation) required in relation to the Goods in accordance with Law and Guidance until such time as the Goods expire or the Authority notifies the Supplier in writing that it has used or disposed of all units of the Goods supplied under this Contract.
- 10.3 If the Supplier is in breach of Clause 10.2 of this Schedule 2, then, without prejudice to any other right or remedy of the Authority, the Authority shall be entitled to reject and/or return the Goods and the Supplier shall, subject to Clause 13.2 of this Schedule 2, indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the Authority as a result of such breach.
- 10.4 The Supplier agrees to use reasonable endeavours to assign to the Authority upon request the benefit of any warranty, guarantee or similar right which it has against any third party manufacturer or supplier of the Goods in full or part.
- 10.5 The Supplier warrants that all information, data and other records and documents required by the Authority as set out in the Specification and Tender Response Document shall be submitted to the Authority in the format and in accordance with any timescales set out in the Specification and Tender Response Document.
- 10.6 The Supplier warrants and undertakes to the Authority that it shall comply with any eProcurement Guidance as it may apply to the Supplier and shall carry out all reasonable acts required of the Supplier to enable the Authority to comply with such eProcurement Guidance.
- 10.7 The Supplier warrants and undertakes to the Authority that, as at the Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance. If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 10.7.1 notify the Authority in writing of such fact within five (5) Business Days of its occurrence; and
- 10.7.2 promptly provide to the Authority:
- (i) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
  - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- 10.8 The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that any of the warranties set out in Clause 10 of this Schedule 2 have been breached or there is a risk that any warranties may be breached.

- 10.9 Any warranties provided under this Contract are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.

## **11 Intellectual property**

- 11.1 Unless specified otherwise in the Specification and Tender Response Document, the Supplier hereby grants to the Authority, for the life of the use of Goods by the Authority, an irrevocable, royalty-free, non-exclusive licence of any Intellectual Property Rights required for the purposes of receiving and using, and to the extent necessary to receive and use, the Goods (to include any associated technical or other documentation and information supplied or made accessible to the Authority in any media) in accordance with this Contract.

## **12 Indemnity**

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

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

12.1.2 any loss of or damage to property (whether real or personal); and/or

12.1.3 any breach of Clause 10.1.18 and/or Clause 11 of this Schedule 2;  
that arise or result from the Supplier's negligent acts or omissions or breach of contract in connection with the performance of this Contract including the supply of the Goods, except to the extent that such loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings have been caused by any act or omission by, or on behalf of, or in accordance with the instructions of, the Authority.

- 12.2 Liability under Clauses 12.1.1 and 12.1.3 of this Schedule 2 and Clause 2.5 of Schedule 3 shall be unlimited. Liability under Clauses 4.9.4, 10.3, and 12.1.2 of this Schedule 2 shall be subject to the limitation of liability set out in Clause 13 of this Schedule 2.

- 12.3 In relation to all third party claims against the Authority, which are the subject of any indemnity given by the Supplier under this Contract, the Authority shall use its reasonable endeavours, upon a written request from the Supplier, to transfer the conduct of such claims to the Supplier unless restricted from doing so. Such restrictions may include, without limitation, any restrictions:

12.3.1 relating to any legal, regulatory, governance, information governance, or confidentiality obligations on the Authority; and/or

12.3.2 relating to the Authority's membership of any indemnity and/or risk pooling arrangements.

Such transfer shall be subject to the Parties agreeing appropriate terms for such conduct of the third party claim by the Supplier (to include, without limitation, the right of the Authority to be informed and consulted on the ongoing conduct of the claim following



such transfer and any reasonable cooperation required by the Supplier from the Authority).

### **13 Limitation of liability**

13.1 Nothing in this Contract shall exclude or restrict the liability of either Party:

13.1.1 for death or personal injury resulting from its negligence;

13.1.2 for fraud or fraudulent misrepresentation; or

13.1.3 in any other circumstances where liability may not be limited or excluded under any applicable law.

13.2 Subject to Clauses 12.2, 13.1, 13.3 and 13.5 of this Schedule 2, the total liability of each Party to the other under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to: one hundred and twenty five percent (125%) of the total Contract Price paid or payable by the Authority to the Supplier for the Goods.

13.3 There shall be no right to claim losses, damages and/or other costs and expenses under or in connection with this Contract whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged. For the avoidance of doubt, without limitation, the Parties agree that for the purposes of this Contract the following costs, expenses and/or loss of income shall be direct recoverable losses (to include under any relevant indemnity) provided such costs, expenses and/or loss of income are properly evidenced by the claiming Party:

13.3.1 extra costs incurred purchasing replacement or alternative goods;

13.3.2 costs incurred in relation to any product recall;

13.3.3 costs associated with advising, screening, testing, treating, retreating or otherwise providing healthcare to patients;

13.3.4 the costs of extra management time; and/or

13.3.5 loss of income due to an inability to provide health care services,

in each case to the extent to which such costs, expenses and/or loss of income arise or result from the other Party's breach of contract, negligent act or omission, breach of statutory duty, and/or other liability under or in connection with this Contract.

13.4 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which that Party is entitled to bring a claim against the other pursuant to this Contract.

13.5 If the total Contract Price paid or payable by the Authority to the Supplier over the Term:

13.5.1 is less than or equal to one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 shall be replaced with one million pounds (£1,000,000);

13.5.2 is less than or equal to three million pounds (£3,000,000) but greater than one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 shall be replaced with three million pounds (£3,000,000);

13.5.3 is equal to, exceeds or will exceed ten million pounds (£10,000,000), but is less than fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 shall be replaced with ten million pounds (£10,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 13.2 of this Schedule 2 shall be deemed to have been deleted and replaced with one hundred and fifteen percent (115%); and

13.5.4 is equal to, exceeds or will exceed fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 shall be replaced with fifty million pounds (£50,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 13.2 of this Schedule 2 shall be deemed to have been deleted and replaced with one hundred and five percent (105%).

13.6 Clause 13 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.

## **14 Insurance**

14.1 Subject to Clauses 14.2 and 14.3 of this Schedule 2 and unless otherwise confirmed in writing by the Authority, as a minimum level of protection, the Supplier shall put in place and/or maintain in force at its own cost with a reputable commercial insurer, insurance arrangements in respect of employer's liability, public liability and product liability in accordance with Good Industry Practice with the minimum cover per claim of the greater of five million pounds (£5,000,000) or any sum as required by Law unless otherwise agreed with the Authority in writing. These requirements shall not apply to the extent that the Supplier is a member and maintains membership of each of the indemnity schemes run by the NHS Litigation Authority.

14.2 Without limitation to any insurance arrangements as required by Law, the Supplier shall put in place and/or maintain the different types and/or levels of indemnity arrangements explicitly required by the Authority.

14.3 Provided that the Supplier maintains all indemnity arrangements required by Law, the Supplier may self insure in order to meet other relevant requirements referred to at Clauses 14.1 and 14.2 of this Schedule 2 on condition that such self insurance arrangements offer the appropriate levels of protection and are approved by the Authority in writing prior to the Commencement Date.

14.4 The amount of any indemnity cover and/or self insurance arrangements shall not relieve the Supplier of any liabilities under this Contract. It shall be the responsibility of the Supplier to determine the amount of indemnity and/or self insurance cover that will be adequate to enable it to satisfy its potential liabilities under this Contract. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover and/or self insurance arrangement is insufficient to cover the settlement of any claim.

- 14.5 The Supplier warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which its insurance cover may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances repayable in whole or in part.
- 14.6 The Supplier shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to the Authority that insurance arrangements taken out by the Supplier pursuant to Clause 14 of this Schedule 2 are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
- 14.7 Upon the expiry or earlier termination of this Contract, the Supplier shall ensure that any ongoing liability it has or may have arising out of this Contract shall continue to be the subject of appropriate indemnity arrangements for the period of twenty one (21) years from termination or expiry of this Contract or until such earlier date as that liability may reasonably be considered to have ceased to exist.

## **15 Term and termination**

- 15.1 This Contract shall commence on the Commencement Date and, unless terminated earlier in accordance with the terms of this Contract or the general law, shall continue until the end of the Term.
- 15.2 The Authority shall be entitled to extend the Term on one or more occasions by giving the Supplier written notice no less than three (3) months prior to the date on which this Contract would otherwise have expired, provided that the duration of this Contract shall be no longer than the total term specified in the Form of Contract.
- 15.3 In the case of a breach of any of the terms of this Contract by either Party that is capable of remedy (including, without limitation any breach of any KPI and, subject to Clause 9.8 of this Schedule 2, any breach of any payment obligations, under this Contract), the non-breaching Party may, without prejudice to its other rights and remedies under this Contract, issue a Breach Notice and shall allow the Party in breach the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Party in breach ("**Remedial Proposal**") before exercising any right to terminate this Contract in accordance with Clause 15.4(ii) of this Schedule 2. Such Remedial Proposal must be agreed with the non-breaching Party (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Party in breach in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Party in breach to:
- 15.3.1 put forward and agree a Remedial Proposal with the non-breaching Party in relation to the relevant default or breach within a period of ten (10) Business Days (or such other period as the non-breaching Party may agree in writing) from written notification of the relevant default or breach from the nonbreaching Party;
  - 15.3.2 comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be thirty (30) days unless otherwise agreed between the Parties); and/or

- 15.3.3 remedy the default or breach notwithstanding the implementation of such Remedial Proposal in accordance with the agreed timescales for implementation,

shall be deemed, for the purposes of Clause 15.4(ii) of this Schedule 2, a material breach of this Contract by the Party in breach not remedied in accordance with an agreed Remedial Proposal.

- 15.4 Either Party may terminate this Contract by issuing a Termination Notice to the other Party if such other Party commits a material breach of any of the terms of this Contract which is:

- (i) not capable of remedy; or
- (ii) in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal.

- 15.5 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier:

- 15.5.1 if the Supplier, or any third party guaranteeing the obligations of the Supplier under this Contract, ceases or threatens to cease carrying on its business; suspends making payments on any of its debts or announces an intention to do so; is, or is deemed for the purposes of any Law to be, unable to pay its debts as they fall due or insolvent; enters into or proposes any composition, assignment or arrangement with its creditors generally; takes any step or suffers any step to be taken in relation to its winding-up, dissolution, administration (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) otherwise than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation; has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed (in each case, whether out of court or otherwise) in respect of it or any of its assets; has any security over any of its assets enforced; or any analogous procedure or step is taken in any jurisdiction;
- 15.5.2 if the Supplier undergoes a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 (other than for an intra-group change of control) without the prior written consent of the Authority and the Authority shall be entitled to withhold such consent if, in the reasonable opinion of the Authority, the proposed change of control will have a material impact on the performance of this Contract or the reputation of the Authority;
- 15.5.3 if the Supplier purports to assign, Sub-contract, novate, create a trust in or otherwise transfer or dispose of this Contract in breach of Clause 28.1 of this Schedule 2;
- 15.5.4 pursuant to and in accordance with the Optional Provisions and Clauses 15.6, 23.8; 25.2; 25.4 and 29.2 of this Schedule 2; or
- 15.5.5 if the warranty given by the Supplier pursuant to Clause 10.7 of this Schedule 2 is materially untrue, the Supplier commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non- Compliance as required by Clause 10.7 of this Schedule 2, or the Supplier fails to provide details of proposed mitigating factors as required by Clause

10.7 of this Schedule 2 that in the reasonable opinion of the Authority are acceptable.

15.6 If the Authority, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Supplier and/or any third party guaranteeing the obligations of the Supplier under this Contract and/or any material Sub-contractor of the Supplier when compared to any information provided to and/or assessed by the Authority as part of any procurement process or other due diligence leading to the award of this Contract to the Supplier or the entering into a Sub-contract by the Supplier, the following process shall apply:

- 15.6.1 the Authority may (but shall not be obliged to) give notice to the Supplier requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Contract on such reasonable and proportionate terms as the Authority may require within a reasonable time period as specified in such notice;
- 15.6.2 a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 15.6 of this Schedule 2 in accordance with any reasonable timescales specified in any such notice issued by the Authority shall be deemed a breach of this Contract by the Supplier and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and
- 15.6.3 a failure to resolve such breach in accordance with such Dispute Resolution Procedure by the end of the escalation stage of such process shall entitle, but shall not compel, the Authority to terminate this Contract in accordance with Clause 15.4(i) of this Schedule 2.

In order that the Authority may act reasonably in exercising its discretion in accordance with this Clause 15.6 of this Schedule 2, the Supplier shall provide the Authority with such reasonable and proportionate up-to-date financial or other information relating to the Supplier or any relevant third party entity upon request.

15.7 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier where:

- 15.7.1 the Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure;
- 15.7.2 the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract;
- 15.7.3 the Contract should not have been awarded to the Supplier in view of a serious infringement of obligations under European law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU; or
- 15.7.4 there has been a failure by the Supplier and/or one of its Sub-contractors to comply with legal obligations in the fields of environmental, social or labour Law. Where the failure to comply with legal obligations in the fields of environmental, social or labour Law is a failure by one of the Supplier's Subcontractors, the Authority may request the replacement of such Sub-

contractor and the Supplier shall comply with such request as an alternative to the Authority terminating this Contract under this Clause 15.7.4.

- 15.8 If the Authority novates this Contract to any body that is not a Contracting Authority, from the effective date of such novation, the rights of the Authority to terminate this Contract in accordance with Clause 15.5.1 to Clause 15.5.3 of this Schedule 2 shall be deemed mutual termination rights and the Supplier may terminate this Contract by issuing a Termination Notice to the entity assuming the position of the Authority if any of the circumstances referred to in such Clauses apply to the entity assuming the position of the Authority.

## **16 Consequences of expiry or early termination of this Contract**

- 16.1 Upon expiry or earlier termination of this Contract, the Authority agrees to pay the Supplier for the Goods which have been supplied by the Supplier and not rejected by the Authority in accordance with this Contract prior to expiry or earlier termination of this Contract.
- 16.2 The Supplier shall cooperate fully with the Authority or, as the case may be, any replacement supplier during any re-procurement and handover period prior to and following the expiry or earlier termination of this Contract. This cooperation shall extend to providing access to all information relevant to the operation of this Contract, as reasonably required by the Authority to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements. Any Personal Data Processed by the Supplier on behalf of the Authority shall be returned to the Authority or destroyed in accordance with the relevant provisions of the Data Protection Protocol.
- 16.3 The expiry or earlier termination of this Contract for whatever reason shall not affect any rights or obligations of either Party which accrued prior to such expiry or earlier termination.
- 16.4 The expiry or earlier termination of this Contract shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.

## **17 Packaging, identification and end of use**

- 17.1 The Supplier shall comply with all obligations imposed on it by Law relevant to the Goods in relation to packaging, identification, and obligations following end of use by the Authority.
- 17.2 Unless otherwise specified in the Specification and Tender Response Document or otherwise agreed with the Authority in writing, the Goods shall be securely packed in trade packages of a type normally used by the Supplier for deliveries of the same or similar goods in the same quantities within the United Kingdom.
- 17.3 The Supplier shall comply with any labelling requirements in respect of the Goods: (a) specified in the Specification and Tender Response Document; (b) agreed with the Authority in writing; and/or (c) required to comply with Law or Guidance.
- 17.4 The Supplier shall ensure that all Goods that are required by Law or Guidance to bear any safety information, environmental information, any mark, tab, brand, label, serial numbers or other device indicating place of origin, inspection by any government or

other body or standard of quality at the point such Goods are delivered shall comply with such requirements at the point of delivery.

- 17.5 Unless otherwise set out in the Specification and Tender Response Document or agreed with the Authority in writing, the Supplier shall collect without charge any returnable containers and/or packages (including pallets) within twenty one (21) days of the date of the relevant delivery. Empty containers and/or packages not so removed may be returned by the Authority at the Supplier's expense or otherwise disposed of at the Authority's discretion. The Supplier shall credit the Authority in full for any containers for which the Authority has been charged upon their collection, return and/or disposal by the Authority in accordance with this Clause 17.5 of this Schedule 2.

## **18 Coding requirements**

- 18.1 If requested by the Authority in writing and subject to Clause 18.2 of this Schedule 2, the Supplier shall ensure full compliance with any Guidance issued by the Department of Health & Social Care in relation to the adoption of GS1 and PEPPOL standards (to include, without limitation, any supplier compliance timeline and other policy requirements published by the Department of Health & Social Care in relation to the adoption of GS1 and PEPPOL standards for master data provision and exchange, barcode labelling and purchase to pay transacting).
- 18.2 Once compliance with any published timelines has been achieved by the Supplier pursuant to Clause 18.1 of this Schedule 2, the Supplier shall, during the Term, maintain the required level of compliance relating to the Goods in accordance with any such requirements and Guidance referred to as part of this Contract.
- 18.3 Once product information relating to Goods is placed by the Supplier into a GS1 certified data pool, the Supplier shall, during the Term, keep such information updated with any changes to the product data relating to the Goods.

## **19 Sustainable development**

- 19.1 The Supplier shall comply in all material respects with applicable environmental and social and labour Law requirements in force from time to time in relation to the Goods. Where the provisions of any such Law are implemented by the use of voluntary agreements, the Supplier shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Specification and Tender Response Document. Without prejudice to the generality of the foregoing, the Supplier shall:
- 19.1.1 comply with all Policies and/or procedures and requirements set out in the Specification and Tender Response Document in relation to any stated environmental and social and labour requirements, characteristics and impacts of the Goods and the Supplier's supply chain;
- 19.1.2 maintain relevant policy statements documenting the Supplier's significant labour, social and environmental aspects as relevant to the Goods being supplied and as proportionate to the nature and scale of the Supplier's business operations; and
- 19.1.3 maintain plans and procedures that support the commitments made as part of the Supplier's significant labour, social and environmental policies, as referred to at Clause 19.1.2 of this Schedule 2.

- 19.2 The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier's compliance with the provisions of Clause 19 of this Schedule 2.

## **20 Electronic product information**

- 20.1 Where requested by the Authority, the Supplier shall provide the Authority the Product Information in such manner and upon such media as agreed between the Supplier and the Authority from time to time for the sole use by the Authority.
- 20.2 The Supplier warrants that the Product Information is complete and accurate as at the date upon which it is delivered to the Authority and that the Product Information shall not contain any data or statement which gives rise to any liability on the part of the Authority following publication of the same in accordance with Clause 20 of this Schedule 2.
- 20.3 If the Product Information ceases to be complete and accurate, the Supplier shall promptly notify the Authority in writing of any modification or addition to or any inaccuracy or omission in the Product Information.
- 20.4 The Supplier grants the Authority a perpetual, non-exclusive, royalty free licence to use and exploit the Product Information and any Intellectual Property Rights in the Product Information for the purpose of illustrating the range of goods and services (including, without limitation, the Goods) available pursuant to the Authority's contracts from time to time. Subject to Clause 20.5 of this Schedule 2, no obligation to illustrate or advertise the Product Information is imposed on the Authority, as a consequence of the licence conferred by this Clause 20.4 of this Schedule 2.

20.5 The Authority may reproduce for its sole use the Product Information provided by the Supplier in the Authority's product catalogue from time to time which may be made available on any NHS communications networks in electronic format and/or made available on the Authority's external website and/or made available on other digital media from time to time.

- 20.6 Before any publication of the Product Information (electronic or otherwise) is made by the Authority, the Authority will submit a copy of the relevant sections of the Authority's product catalogue to the Supplier for approval, such approval not to be unreasonably withheld or delayed. For the avoidance of doubt the Supplier shall have no right to compel the Authority to exhibit the Product Information in any product catalogue as a result of the approval given by it pursuant to this Clause 20.6 of this Schedule 2 or otherwise under the terms of this Contract.
- 20.7 If requested in writing by the Authority, and to the extent not already agreed as part of the Specification and Tender Response Document, the Supplier and the Authority shall discuss and seek to agree in good faith arrangements to use any Electronic Trading System.

## **21 Change management**

- 21.1 The Supplier acknowledges to the Authority that the Authority's requirements for the Goods may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification and Tender Response Document, as may be requested by the Authority from time to time.



- 21.2 Subject to Clause 21.3 of this Schedule 2, any change to the Goods or other variation to this Contract shall only be binding once it has been agreed in writing and signed by an authorised representative of both Parties.
- 21.3 Any change to the Data Protection Protocol shall be made in accordance with the relevant provisions of that protocol.

## **22 Dispute resolution**

- 22.1 During any Dispute, including a Dispute as to the validity of this Contract, it is agreed that the Supplier shall continue its performance of the provisions of the Contract (unless the Authority requests in writing that the Supplier does not do so).
- 22.2 In the case of a Dispute arising out of or in connection with this Contract the Supplier and the Authority shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the Dispute by negotiation.
- 22.3 If the procedure set out in Clause 22.2 of this Schedule 2 above has been exhausted and fails to resolve such Dispute, as part of the Dispute Resolution Procedure, the Parties will attempt to settle it by mediation. The Parties shall, acting reasonably, attempt to agree upon a mediator. In the event that the Parties fail to agree a mediator within five (5) Business Days, the mediator shall be nominated and confirmed by the Centre for Effective Dispute Resolution, London.
- 22.4 The mediation shall commence within twenty eight (28) days of the confirmation of the mediator in accordance with Clause 22.3 of this Schedule 2 or at such other time as may be agreed by the Parties in writing. Neither Party will terminate such mediation process until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour or one Party has failed to participate in the mediation process. After this time, either Party may terminate the mediation process by notification to the other Party (such notification may be verbal provided that it is followed up by written confirmation). The Authority and the Supplier will cooperate with any person appointed as mediator providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine, or in the absence of such determination such costs will be shared equally.
- 22.5 Nothing in this Contract shall prevent:
- 22.5.1 the Authority taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with supply of the Goods; or
- 22.5.2 either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party or that relates to the safety of patients or the security of Confidential Information, pending resolution of the relevant Dispute in accordance with the Dispute Resolution Procedure.
- 22.6 Clause 22 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.

## **23      Force majeure**

- 23.1 Subject to Clause 23.2 of this Schedule 2 neither Party shall be liable to the other for any failure to perform all or any of its obligations under this Contract nor liable to the other Party for any loss or damage arising out of the failure to perform its obligations to the extent only that such performance is rendered impossible by a Force Majeure Event.
- 23.2 The Supplier shall only be entitled to rely on a Force Majeure Event and the relief set out in Clause 23 of this Schedule 2 and will not be considered to be in default or liable for breach of any obligations under this Contract if:
- 23.2.1 the Supplier has fulfilled its obligations pursuant to Clause 6 of this Schedule 2;
- 23.2.2 the Force Majeure Event does not arise directly or indirectly as a result of any wilful or negligent act or default of the Supplier; and
- 23.2.3 the Supplier has complied with the procedural requirements set out in Clause 23 of this Schedule 2.
- 23.3 Where a Party is (or claims to be) affected by a Force Majeure Event it shall use reasonable endeavours to mitigate the consequences of such a Force Majeure Event upon the performance of its obligations under this Contract and to resume the performance of its obligations affected by the Force Majeure Event as soon as practicable.
- 23.4 Where the Force Majeure Event affects the Supplier's ability to perform part of its obligations under the Contract the Supplier shall fulfil all such contractual obligations that are not so affected and shall not be relieved from its liability to do so.
- 23.5 If either Party is prevented or delayed in the performance of its obligations under this Contract by a Force Majeure Event, that Party shall as soon as reasonably practicable serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.
- 23.6 Subject to service of such notice, the Party affected by such circumstances shall have no liability for its failure to perform or for any delay in performance of its obligations affected by the Force Majeure Event only for so long as such circumstances continue and for such time after they cease as is necessary for that Party, using its best endeavours, to recommence its affected operations in order for it to perform its obligations.
- 23.7 The Party claiming relief shall notify the other in writing as soon as the consequences of the Force Majeure Event have ceased and of when performance of its affected obligations can be resumed.
- 23.8 If the Supplier is prevented from performance of its obligations as a result of a Force Majeure Event, the Authority may at any time if the Force Majeure Event subsists for thirty (30) days or more, terminate this Contract by issuing a Termination Notice to the Supplier.
- 23.9 Following such termination in accordance with Clause 23.8 of this Schedule 2 and subject to Clause 23.10 of this Schedule 2, neither Party shall have any liability to the other.

- 23.10 Any rights and liabilities of either Party which have accrued prior to such termination in accordance with Clause 23.8 of this Schedule 2 shall continue in full force and effect unless otherwise specified in this Contract.

## **24 Records retention and right of audit**

- 24.1 Subject to any statutory requirement and Clause 24.2 of this Schedule 2, the Supplier shall keep secure and maintain for the Term and six (6) years afterwards, or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to this Contract.
- 24.2 Where any records could be relevant to a claim for personal injury such records shall be kept secure and maintained for a period of twenty one (21) years from the date of expiry or earlier termination of this Contract.
- 24.3 The Authority shall have the right to audit the Supplier's compliance with this Contract. The Supplier shall permit or procure permission for the Authority or its authorised representative during normal business hours having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records reasonably required to audit the Supplier's compliance with its obligations under this Contract.
- 24.4 Should the Supplier Sub-contract any of its obligations under this Contract, the Authority shall have the right to audit and inspect such third party. The Supplier shall procure permission for the Authority or its authorised representative during normal business hours no more than once in any twelve (12) months, having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records used in the performance of the Supplier's obligations under this Contract that are Sub-contracted to such third party. The Supplier shall cooperate with such audit and inspection and accompany the Authority or its authorised representative if requested.
- 24.5 The Supplier shall grant to the Authority or its authorised representative, such access to those records as they may reasonably require in order to check the Supplier's compliance with this Contract for the purposes of:
- 24.5.1 the examination and certification of the Authority's accounts; or
- 24.5.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economic efficiency and effectiveness with which the Authority has used its resources.
- 24.6 The Comptroller and Auditor General may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to provide such oral and/or written explanations as they consider necessary. Clause 24 of this Schedule 2 does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Supplier under sections 6(3)(d) and 6(5) of the National Audit Act 1983.
- 24.7 The Supplier shall provide reasonable cooperation to the Authority, its representatives and any regulatory body in relation to any audit, review, investigation or enquiry carried out in relation to the subject matter of this Contract.

- 24.8 The Supplier shall provide all reasonable information as may be reasonably requested by the Authority to evidence the Supplier's compliance with the requirements of this Contract.

## **25 Conflicts of interest and the prevention of fraud**

- 25.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Contract. The Supplier will disclose to the Authority full particulars of any such conflict of interest which may arise.
- 25.2 The Authority reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Contract. The actions of the Authority pursuant to this Clause 25.2 of this Schedule 2 shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the Authority.
- 25.3 The Supplier shall take all reasonable steps to prevent Fraud by Staff and the Supplier (including its owners, members and directors). The Supplier shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 25.4 If the Supplier or its Staff commits Fraud the Authority may terminate this Contract and recover from the Supplier the amount of any direct loss suffered by the Authority resulting from the termination.

## **26 Equality and human rights**

- 26.1 The Supplier shall:
- 26.1.1 ensure that (a) it does not, whether as employer or as supplier of the Goods and any associated services, engage in any act or omission that would contravene the Equality Legislation, and (b) it complies with all its obligations as an employer or supplier of the Goods and any associated services as set out in the Equality Legislation and take reasonable endeavours to ensure its Staff do not unlawfully discriminate within the meaning of the Equality Legislation;
  - 26.1.2 in the management of its affairs and the development of its equality and diversity policies, cooperate with the Authority in light of the Authority's obligations to comply with its statutory equality duties whether under the Equality Act 2010 or otherwise. The Supplier shall take such reasonable and proportionate steps as the Authority considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age; and
  - 26.1.3 the Supplier shall impose on all its Sub-contractors and suppliers, obligations substantially similar to those imposed on the Supplier by Clause 26 of this Schedule 2.

- 26.2 The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier's compliance with the provisions of Clause 26 of this Schedule 2.

## **27 Notice**

- 27.1 Subject to Clause 22.5 of Schedule 2, any notice required to be given by either Party under this Contract shall be in writing quoting the date of the Contract and shall be delivered by hand or sent by prepaid first class recorded delivery or by email. The address for service of notices for each Party shall be its registered office or such other address as either Party may previously have notified to the other Party in writing from time to time and to such person as one Party may inform the other Party in writing from time to time.
- 27.2 A notice shall be treated as having been received:
- 27.2.1 if delivered by hand within normal business hours when so delivered or, if delivered by hand outside normal business hours, at the next start of normal business hours; or
- 27.2.2 if sent by first class recorded delivery mail on a normal Business Day, at 9.00 am on the second Business Day subsequent to the day of posting, or, if the notice was not posted on a Business Day, at 9.00 am on the third Business Day subsequent to the day of posting; or
- 27.2.3 if sent by email, if sent within normal business hours when so sent or, if sent outside normal business hours, at the next start of normal business hours provided the sender has either received an electronic confirmation of delivery or has telephoned the recipient to inform the recipient that the email has been sent.

## **28 Assignment, novation and Sub-contracting**

- 28.1 The Supplier shall not, except where Clause 28.2 of this Schedule 2 applies, assign, Sub-contract, novate, create a trust in, or in any other way dispose of the whole or any part of this Contract without the prior consent in writing of the Authority, such consent not to be unreasonably withheld or delayed. If the Supplier Sub-contracts any of its obligations under this Contract, every act or omission of the Sub-contractor shall for the purposes of this Contract be deemed to be the act or omission of the Supplier and the Supplier shall be liable to the Authority as if such act or omission had been committed or omitted by the Supplier itself.
- 28.2 Notwithstanding Clause 28.1 of this Schedule 2, the Supplier may assign to a third party ("**Assignee**") the right to receive payment of any sums due and owing to the Supplier under this Contract for which an invoice has been issued. Any assignment under this Clause 28.2 of this Schedule 2 shall be subject to:
- 28.2.1 the deduction of any sums in respect of which the Authority exercises its right of recovery under Clause 9.10 of this Schedule 2;
- 28.2.2 all related rights of the Authority in relation to the recovery of sums due but unpaid;

- 28.2.3 the Authority receiving notification of the assignment and the date upon which the assignment becomes effective together with the Assignee's contact information and bank account details to which the Authority shall make payment;
- 28.2.4 the provisions of Clause 9 of this Schedule 2 continuing to apply in all other respects after the assignment which shall not be amended without the prior written approval of the Authority; and
- 28.2.5 payment to the Assignee being full and complete satisfaction of the Authority's obligation to pay the relevant sums in accordance with this Contract.
- 28.3 Any authority given by the Authority for the Supplier to Sub-contract any of its obligations under this Contract shall not impose any duty on the Authority to enquire as to the competency of any authorised Sub-contractor. The Supplier shall ensure that any authorised Sub-contractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such Sub-contractor are fully in accordance with this Contract.
- 28.4 Where the Supplier enters into a Sub-contract in respect of any of its obligations under this Contract relating to the manufacture, supply, delivery or installation of or training in relation to the Goods, the Supplier shall include provisions in each such Subcontract, unless otherwise agreed with the Authority in writing, which:
  - 28.4.1 contain at least equivalent obligations as set out in this Contract in relation to such manufacture, supply, delivery or installation of or training in relation to the Goods to the extent relevant to such Sub-contracting;
  - 28.4.2 contain at least equivalent obligations as set out in this Contract in respect of confidentiality, information security, data protection, Intellectual Property Rights, compliance with Law and Guidance and record keeping;
  - 28.4.3 contain a prohibition on the Sub-contractor Sub-contracting, assigning or novating any of its rights or obligations under such Sub-contract without the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed);
  - 28.4.4 contain a right for the Authority to take an assignment or novation of the Subcontract (or part of it) upon expiry or earlier termination of this Contract;
  - 28.4.5 requires the Supplier or other party receiving goods under the contract to consider and verify invoices under that contract in a timely fashion;
  - 28.4.6 provides that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 28.4.5 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purpose of Clause 28.4.7 after a reasonable time has passed;
  - 28.4.7 requires the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
  - 28.4.8 permitting the Supplier to terminate, or procure the termination of, the relevant Sub-contract in the event the Sub-contractor fails to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour Law where the Supplier is required to

replace such Sub-contractor in accordance with Clause 15.7.4 of this Schedule 2;

- 28.4.9 permitting the Supplier to terminate, or to procure the termination of, the relevant Sub-contract where the Supplier is required to replace such Sub-contractor in accordance with Clause 28.5 of this Schedule 2; and
- 28.4.10 requires the Sub-contractor to include a clause to the same effect as this Clause 28.4 of this Schedule 2 in any Sub-contract which it awards.
- 28.5 Where the Authority considers that the grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015 apply to any Sub-contractor, then:
- 28.5.1 if the Authority finds there are compulsory grounds for exclusion, the Supplier shall ensure, or shall procure, that such Sub-contractor is replaced or not appointed; or
- 28.5.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to ensure, or to procure, that such Sub-contractor is replaced or not appointed and the Supplier shall comply with such a requirement.
- 28.6 The Supplier shall pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed. Where the Authority pays the Supplier's valid and undisputed invoices earlier than thirty (30) days from verification in accordance with any applicable government prompt payment targets, the Supplier shall use its reasonable endeavours to pay its relevant Subcontractors within a comparable timeframe from verifying that an invoice is valid and undisputed.
- 28.7 The Authority shall upon written request have the right to review any Sub-contract entered into by the Supplier in respect of the provision of the Goods and the Supplier shall provide a certified copy of any Sub-contract within five (5) Business Days of the date of a written request from the Authority. For the avoidance of doubt, the Supplier shall have the right to redact any confidential pricing information in relation to such copies of Sub-contracts.
- 28.8 The Authority may at any time transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract and the Supplier warrants that it will carry out all such reasonable further acts required to effect such transfer, assignment, novation, sub-contracting or disposal. If the Authority novates this Contract to any body that is not a Contracting Authority, from the effective date of such novation, the party assuming the position of the Authority shall not further transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed by the Supplier.

## **29 Prohibited Acts**

- 29.1 The Supplier warrants and represents that:
- 29.1.1 it has not committed any offence under the Bribery Act 2010 or done any of the following ("**Prohibited Acts**"):

- (i) offered, given or agreed to give any officer or employee of the Authority any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with the Authority or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the Authority; or
- (ii) in connection with this Contract paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Authority; and

29.1.2 it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.

29.2 If the Supplier or its Staff (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Supplier in relation to this or any other agreement with the Authority:

29.2.1 the Authority shall be entitled:

- (i) to terminate this Contract and recover from the Supplier the amount of any loss resulting from the termination;
- (ii) to recover from the Supplier the amount or value of any gift, consideration or commission concerned; and
- (iii) to recover from the Supplier any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;

29.2.2 any termination under Clause 29.2.1 of this Schedule 2 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Authority; and

29.2.3 notwithstanding the Dispute Resolution Procedure, any Dispute relating to:

- (i) the interpretation of Clause 29 of this Schedule 2; or
- (ii) the amount or value of any gift, consideration or commission,

shall be determined by the Authority, acting reasonably, and the decision shall be final and conclusive.

### **30 General**

30.1 Each of the Parties is independent of the other and nothing contained in this Contract shall be construed to imply that there is any relationship between the Parties of partnership or of principal/agent or of employer/employee nor are the Parties hereby engaging in a joint venture and accordingly neither of the Parties shall have any right



or authority to act on behalf of the other nor to bind the other by agreement or otherwise, unless expressly permitted by the terms of this Contract.

- 30.2 Failure or delay by either Party to exercise an option or right conferred by this Contract shall not of itself constitute a waiver of such option or right.
- 30.3 The delay or failure by either Party to insist upon the strict performance of any provision, term or condition of this Contract or to exercise any right or remedy consequent upon such breach shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.
- 30.4 Any provision of this Contract which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Contract and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.
- 30.5 Each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this Contract and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in this Contract or unless such representation, undertaking or warranty was made fraudulently.
- 30.6 Each Party shall bear its own expenses in relation to the preparation and execution of this Contract including all costs, legal fees and other expenses so incurred.
- 30.7 The rights and remedies provided in this Contract are independent, cumulative and not exclusive of any rights or remedies provided by general law, any rights or remedies provided elsewhere under this Contract or by any other contract or document. In this Clause 30.7 of this Schedule 2, right includes any power, privilege, remedy, or proprietary or security interest.
- 30.8 A person who is not a party to this Contract shall have no right to enforce any terms of it which confer a benefit on such person. No such person shall be entitled to object to or be required to consent to any amendment to the provisions of this Contract.
- 30.9 This Contract, any variation in writing signed by an authorised representative of each Party and any document referred to (explicitly or by implication) in this Contract or any variation to this Contract, contain the entire understanding between the Supplier and the Authority relating to the supply of the Goods to the exclusion of all previous agreements, confirmations and understandings and there are no promises, terms, conditions or obligations whether oral or written, express or implied other than those contained or referred to in this Contract. Nothing in this Contract seeks to exclude either Party's liability for Fraud. Any tender conditions and/or disclaimers set out in the Authority's procurement documentation leading to the award of this Contract shall form part of this Contract.
- 30.10 This Contract, and any Dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.

30.11 Subject to Clause 22 of this Schedule 2, the Parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any Dispute or claim that arises out of or in connection with this Contract or its subject matter.

30.12 All written and oral communications and all written material referred to under this Contract shall be in English.

### Schedule 3

#### Information and Data Provisions

#### **1 Confidentiality**

- 1.1 In respect of any Confidential Information it may receive directly or indirectly from the other Party ("**Discloser**") and subject always to the remainder of Clause 1 of this Schedule 3, each Party ("**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser's prior written consent provided that:
- 1.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date;
  - 1.1.2 the provisions of Clause 1 of this Schedule 3 shall not apply to any Confidential Information:
    - (i) which is in or enters the public domain other than by breach of this Contract or other act or omissions of the Recipient;
    - (ii) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
    - (iii) which is authorised for disclosure by the prior written consent of the Discloser;
    - (iv) which the Recipient can demonstrate was in its possession without any obligation of confidentiality prior to receipt of the Confidential Information from the Discloser; or
    - (v) which the Recipient is required to disclose purely to the extent to comply with the requirements of any relevant stock exchange.
- 1.2 Nothing in Clause 1 of this Schedule 3 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Freedom of Information Act 2000 ("**FOIA**"), Codes of Practice on Access to Government Information, on the Discharge of Public Authorities' Functions or on the Management of Records ("**Codes of Practice**") or the Environmental Information Regulations 2004 ("**Environmental Regulations**").
- 1.3 The Authority may disclose the Supplier's Confidential Information:
- 1.3.1 on a confidential basis, to any Contracting Authority (the Parties agree that all Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority);

- 1.3.2 on a confidential basis, to any consultant, contractor or other person engaged by the Authority and/or the Contracting Authority receiving such information;
- 1.3.3 to any relevant party for the purpose of the examination and certification of the Authority's accounts;
- 1.3.4 to any relevant party for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- 1.3.5 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirements; or
- 1.3.6 on a confidential basis, to a proposed successor body in connection with any proposed or actual, assignment, novation or other disposal of rights, obligations, liabilities or property in connection with this Contract;

and for the purposes of this Contract, references to disclosure "on a confidential basis" shall mean the Authority making clear the confidential nature of such information and that it must not be further disclosed except in accordance with Law or this Clause 1.3 of this Schedule 3.

- 1.4 The Supplier may only disclose the Authority's Confidential Information, and any other information provided to the Supplier by the Authority in relation to this Contract, to the Supplier's Staff or professional advisors who are directly involved in the performance of or advising on the Supplier's obligations under this Contract. The Supplier shall ensure that such Staff or professional advisors are aware of and shall comply with the obligations in Clause 1 of this Schedule 3 as to confidentiality and that all information, including Confidential Information, is held securely, protected against unauthorised use or loss and, at the Authority's written discretion, destroyed securely or returned to the Authority when it is no longer required. The Supplier shall not, and shall ensure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of performing the Supplier's obligations in this Contract.
- 1.5 For the avoidance of doubt, save as required by Law or as otherwise set out in this Schedule 3, the Supplier shall not, without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed), announce that it has entered into this Contract and/or that it has been appointed as a Supplier to the Authority and/or make any other announcements about this Contract.
- 1.6 Clause 1 of this Schedule 3 shall remain in force:
  - 1.6.1 without limit in time in respect of Confidential Information which comprises Personal Data or which relates to national security; and
  - 1.6.2 for all other Confidential Information for a period of three (3) years after the expiry or earlier termination of this Contract unless otherwise agreed in writing by the Parties.

## **2 Data protection**

- 2.1 The Parties acknowledge their respective duties under Data Protection Legislation and shall give each other all reasonable assistance as appropriate or necessary to enable each other to comply with those duties. For the avoidance of doubt, the Supplier shall take reasonable steps to ensure it is familiar with the Data Protection Legislation and any obligations it may have under such Data Protection Legislation and shall comply with such obligations.
- 2.2 Where the Supplier is Processing Personal Data under or in connection with this Contract, the Parties shall comply with the Data Protection Protocol.
- 2.3 The Supplier and the Authority shall ensure that Personal Data is safeguarded at all times in accordance with the Law, and this obligation will include (if transferred electronically) only transferring Personal Data (a) if essential, having regard to the purpose for which the transfer is conducted; and (b) that is encrypted in accordance with any international data encryption standards for healthcare, and as otherwise required by those standards applicable to the Authority under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).
- 2.4 Where any Personal Data is Processed by any Sub-contractor of the Supplier in connection with this Contract, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 2 of this Schedule 3, as if such Sub-contractor were the Supplier.
- 2.5 The Supplier shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings whatsoever or howsoever arising from the Supplier's unlawful or unauthorised Processing, destruction and/or damage to Personal Data in connection with this Contract.

## **3 Freedom of Information and Transparency**

- 3.1 The Parties acknowledge the duties of Contracting Authorities under the FOIA, Codes of Practice and Environmental Regulations and shall give each other all reasonable assistance as appropriate or necessary to enable compliance with those duties.
- 3.2 The Supplier shall assist and cooperate with the Authority to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Supplier agrees:
- 3.2.1 that this Contract and any recorded information held by the Supplier on the Authority's behalf for the purposes of this Contract are subject to the obligations and commitments of the Authority under the FOIA, Codes of Practice and Environmental Regulations;
  - 3.2.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA, Codes of Practice and Environmental Regulations is a decision solely for the Authority;
  - 3.2.3 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier itself is subject to the FOIA, Codes of Practice and Environmental Regulations it will

liaise with the Authority as to the contents of any response before a response to a request is issued and will promptly (and in any event within two (2) Business Days) provide a copy of the request and any response to the Authority;

- 3.2.4 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier is not itself subject to the FOIA, Codes of Practice and Environmental Regulations, it will not respond to that request (unless directed to do so by the Authority) and will promptly (and in any event within two (2) Business Days) transfer the request to the Authority;
- 3.2.5 that the Authority, acting in accordance with the Codes of Practice issued and revised from time to time under both section 45 of FOIA, and regulation 16 of the Environmental Regulations, may disclose information concerning the Supplier and this Contract; and
- 3.2.6 to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA and the Environmental Regulations) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of FOIA, and providing copies of all information requested by the Authority within five (5) Business Days of that request and without charge.
- 3.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations, the content of this Contract is not Confidential Information.
- 3.4 Notwithstanding any other term of this Contract, the Supplier consents to the publication of this Contract in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations.
- 3.5 In preparing a copy of this Contract for publication under Clause 3.4 of this Schedule 3, the Authority may consult with the Supplier to inform decision making regarding any redactions but the final decision in relation to the redaction of information will be at the Authority's absolute discretion.
- 3.6 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Contract.
- 3.7 Where any information is held by any Sub-contractor of the Supplier in connection with this Contract, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 3 of this Schedule 3, as if such Sub-contractor were the Supplier.

#### **4 Information Security**

- 4.1 Without limitation to any other information governance requirements set out in this Schedule 3, the Supplier shall:
  - 4.1.1 notify the Authority forthwith of any information security breaches or near misses (including without limitation any potential or actual breaches of confidentiality

or actual information security breaches) in line with the Authority's information governance Policies; and

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

**Schedule 4****Definitions and Interpretations****1 Definitions**

- 1.1 In this Contract the following words shall have the following meanings unless the context requires otherwise:

<b>“Authority”</b>	means the authority named on the Form of Contract;
<b>“Authority Confirmation”</b>	means the written confirmation provided (or deemed to be provided) by the Authority that the Goods appear to have been correctly supplied, installed and commissioned ready for use;
<b>“Authority’s Obligations”</b>	means the Authority’s further obligations, if any, referred to in the Contract;
<b>“Breach Notice”</b>	means a written notice of breach given by one Party to the other, notifying the Party receiving the notice of its breach of this Contract;
<b>“Business Continuity Event”</b>	means any event or issue that could impact on the operations of the Supplier and its ability to supply the Goods including an influenza pandemic and any Force Majeure Event;
<b>“Business Continuity Plan”</b>	means the Supplier’s business continuity plan which includes its plans for continuity of the supply of the Goods during a Business Continuity Event;
<b>“Business Day”</b>	means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales;
<b>“Codes of Practice”</b>	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
<b>“Commencement Date”</b>	means the date of this Contract;
<b>“Commercial Schedule”</b>	means the document set out at Schedule 7;
<b>“Confidential Information”</b>	means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the Contract including any procurement process which is: <ul style="list-style-type: none"> <li>(a) Personal Data;</li> <li>(b) designated as confidential by either party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored); and/or</li> </ul>



	(c) Policies and such other documents which the Supplier may obtain or have access to through the Authority's intranet;
<b>"Contract"</b>	means the contract comprising the documents detailed on the Form of Contract;
<b>"Contracting Authority"</b>	means any contracting authority as defined in regulation 3 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than the Authority;
<b>"Contract Manager"</b>	means for the Authority and for the Supplier the individuals specified in the Specification and Tender Response Document or such other person notified by a Party to the other Party from time to time in accordance with Clause 8.1 of Schedule 2;
<b>"Contract Price"</b>	means the price exclusive of VAT that is payable to the Supplier by the Authority under the Contract for the full and proper performance by the Supplier of its obligations under the Contract;
<b>"Controller"</b>	shall have the same meaning as set out in the GDPR;
<b>"Data Protection Legislation"</b>	means (i) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Law as amended from time to time; and (iii) all applicable Law about the processing of personal data and privacy;
<b>"Data Protection Protocol"</b>	means any document of that name as provided to the Supplier by the Authority (as amended from time to time in accordance with its terms), which shall include, without limitation, any such document appended to Schedule 3 (Information and Data Provisions) of this Contract;
<b>"Defective Goods"</b>	has the meaning given under Clause 4.6 of Schedule 2;
<b>"Dispute(s)"</b>	means any dispute, difference or question of interpretation or construction arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Goods and/or Installation and Commissioning Services and/or Maintenance Services, any matters of contractual construction and interpretation relating to the Contract, or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
<b>"Dispute Notice"</b>	means a written notice served by one Party to the other stating that the Party serving the notice believes there is a Dispute;
<b>"Dispute Resolution Procedure"</b>	means the process for resolving Disputes as set out in Clause 22 of Schedule 2 and, for avoidance of doubt, is subject to

	Clause 29.2.3 of Schedule 2;
<b>“DOTAS”</b>	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
<b>“Electronic Trading System(s)”</b>	means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as the Authority may specify from time to time;
<b>“Environmental Regulations”</b>	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
<b>“eProcurement Guidance”</b>	means the NHS eProcurement Strategy available via: <a href="http://www.gov.uk/government/collections/nhs-procurement">http://www.gov.uk/government/collections/nhs-procurement</a> together with any further Guidance issued by the Department of Health & Social Care in connection with it;
<b>“Equality Legislation”</b>	means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998;
<b>“FOIA”</b>	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
<b>“Force Majeure Event”</b>	means any event beyond the reasonable control of the Party in question to include, without limitation: <ul style="list-style-type: none"> <li>(a) war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict materially affecting either Party’s ability to perform its obligations under this Contract;</li> <li>(b) acts of terrorism;</li> <li>(c) flood, storm or other natural disasters;</li> <li>(d) fire;</li> <li>(e) unavailability of public utilities and/or access to transport</li> </ul>

	<p>networks to the extent no diligent supplier could reasonably have planned for such unavailability as part of its business continuity planning;</p> <p>(f) government requisition or impoundment to the extent such requisition or impoundment does not result from any failure by the Supplier to comply with any relevant regulations, laws or procedures (including such laws or regulations relating to the payment of any duties or taxes) and subject to the Supplier having used all reasonable legal means to resist such requisition or impoundment;</p> <p>(g) compliance with any local law or governmental order, rule, regulation or direction applicable outside of England and Wales that could not have been reasonably foreseen;</p> <p>(h) industrial action which affects the ability of the Supplier to supply the Goods, but which is not confined to the workforce of the Supplier or the workforce of any Sub-contractor of the Supplier; and</p> <p>(i) a failure in the Supplier's and/or Authority's supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties;</p> <p>but excluding, for the avoidance of doubt, the withdrawal of the United Kingdom from the European Union and any related circumstances, events, changes or requirements;</p>
<b>"Form of Contract"</b>	means the form of contract signed by the Parties;
<b>"Fraud"</b>	means any offence under any law in respect of fraud in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the government, parliament or any Contracting Authority;
<b>GDPR</b>	means the General Data Protection Regulation (Regulation (EU) 2016/679);
<b>"General Anti-Abuse Rule"</b>	<p>means</p> <p>(a) the legislation in Part 5 of the Finance Act 2013; and</p> <p>(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;</p>
<b>"Good Industry Practice"</b>	means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier engaged in the manufacture and/or supply of goods similar to the Goods under the same or similar

	circumstances as those applicable to this Contract, including in accordance with any codes of practice published by relevant trade associations;
<b>“Goods”</b>	means all goods, materials or items that the Supplier is required to supply to the Authority under this Contract (including, without limitation, the Specification which sets out the requirements of the Authority as issued to tenderers as part of the procurement process and the Supplier’s response to these requirements);
<b>“Guidance”</b>	means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Goods, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Authority and/or have been published and/or notified to the Supplier by the Department of Health & Social Care, Monitor, NHS England, the Medicines and Healthcare Products Regulatory Agency, the European Medicine Agency the European Commission, the Care Quality Commission and/or any other regulator or competent body;
<b>“Halifax Abuse Principle”</b>	means the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>“Installation and Commissioning Services”</b>	means, if applicable, the installation and commissioning services set out this Contract (including, without limitation the Specification and Tender Response Document and Schedule 5);
<b>“Intellectual Property Rights”</b>	means all patents, copyright, design rights, registered designs, trade marks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trade marks and registered designs;
<b>“KPI”</b>	means the key performance indicators as set out in the Specification and Tender Response Document;



<b>“Law”</b>	<p>means any applicable legal requirements including, without limitation,:</p> <ul style="list-style-type: none"> <li>(a) any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument as applicable in England and Wales;</li> <li>(b) any applicable European Union obligation, directive, regulation, decision, law or right (including any such obligations, directives, regulations, decisions, laws or rights that are incorporated into the law of England and Wales or given effect in England and Wales by any applicable statute, proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument);</li> <li>(c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;</li> <li>(d) any applicable judgment of a relevant court of law which</li> </ul>
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	<p>is a binding precedent in England and Wales;</p> <ul style="list-style-type: none"> <li>(e) requirements set by any regulatory body as applicable in England and Wales;</li> <li>(f) any relevant code of practice as applicable in England and Wales; and</li> <li>(g) any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above);</li> </ul>
<b>“Maintenance Inventory”</b>	means the maintenance inventory as referred to at Clause 4.1.1 of Schedule 6;
<b>“Maintenance Services”</b>	means, if applicable, the maintenance services set out in this Contract (including, without limitation the Specification and Tender Response Document and Schedule 6);
<b>“NHS”</b>	means the National Health Service;
<b>“Non-performed Services”</b>	has the meaning give under Clause 11.1 of Schedule 6;

<b>“Occasion of Tax Non-Compliance”</b>	<p>means:</p> <p>(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:</p> <p>(i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</p> <p>(ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or</p> <p>(b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;</p>
<b>“Optional Provisions”</b>	means the optional provisions set out in Schedule 1;
<b>“Party”</b>	means the Authority or the Supplier as appropriate and Parties means both the Authority and the Supplier;
<b>“Personal Data”</b>	shall have the same meaning as set out in the GDPR;
<b>“Policies”</b>	means the policies, rules and procedures of the Authority as notified to the Supplier from time to time;

<b>“Premises and Locations”</b>	means the Authority's premises and locations where the Goods are to be installed, commissioned and located.
<b>“Pre-Acquisition Questionnaire”</b>	means any pre-acquisition questionnaire or documents with a similar title or purpose issued by the Authority and completed by the Supplier relevant to the Goods;
<b>“Process”</b>	shall have the same meaning as set out in the GDPR. “Processing” and “Processed” shall be construed accordingly;
<b>“Processor”</b>	shall have the same meaning as set out in the GDPR;
<b>“Product Information”</b>	means information concerning the Goods as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 20 of Schedule 2 for inclusion in the Authority's product catalogue from time to time;
<b>“Purchase Order”</b>	means the purchase order required by the Authority's financial systems;
<b>“Rejected Goods”</b>	has the meaning given under Clause 4.2 of Schedule 2;

<b>“Relevant Tax Authority”</b>	means HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
<b>“Remedial Proposal”</b>	has the meaning given under Clause 15.3 of Schedule 2;
<b>“Requirement to Recall”</b>	has the meaning given under Clause 4.9 of Schedule 2;
<b>“Specification and Tender Response Document”</b>	means the Authority’s requirements in the form of its specification and other statements and requirements, the Supplier’s responses, proposals and/or method statements to meet those requirements, and any clarifications to the Supplier’s responses, proposals and/or method statements. Should there be a conflict between these parts of the Specification and Tender Response Document, the order of priority for construction purposes shall be (1) the Authority’s requirements; (2) any clarification to the Supplier’s responses, proposals and/or method statements, and (3) the Supplier’s responses, proposals and/or method statements;
<b>“Staff”</b>	means all persons employed or engaged by the Supplier to perform its obligations under this Contract including any Sub-contractors and person employed or engaged by such Sub-contractors;
<b>“Sub-contract”</b>	means a contract between two or more suppliers, at any stage of remoteness from the Supplier in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract;

<b>“Sub-contractor”</b>	means a party to a Sub-contract other than the Supplier;
<b>“Supplier”</b>	means the supplier named on the Form of Contract;
<b>“Supplier Code of Conduct”</b>	means the code of that name published by the Government Commercial Function originally dated September 2017, as may be amended, restated, updated, re-issued or re-named from time to time;
<b>“Term”</b>	means the term as set out in the Form of Contract;
<b>“Termination Notice”</b>	means a written notice of termination given by one Party to the other notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;
<b>“Third Party Body”</b>	has the meaning given under Clause 8.5 of Schedule 2; and
<b>“VAT”</b>	means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax.

- 1.2 References to any Law shall be deemed to include a reference to that Law as amended, extended, consolidated, re-enacted, restated, implemented or transposed from time to time.
- 1.3 References to any legal entity shall include any body that takes over responsibility for the functions of such entity.
- 1.4 References in this Contract to a "Schedule", "Appendix", "Paragraph" or to a "Clause" are to schedules, appendices, paragraphs and clauses of this Contract.
- 1.5 References in this Contract to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.
- 1.6 Unless set out in the Commercial Schedule as a chargeable item and subject to Clause 30.6 of Schedule 2, the Supplier shall bear the cost of complying with its obligations under this Contract.
- 1.7 The headings are for convenience only and shall not affect the interpretation of this Contract.
- 1.8 Words denoting the singular shall include the plural and vice versa.
- 1.9 Where a term of this Contract provides for a list of one or more items following the word "including" or "includes" then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.
- 1.10 Where there is a conflict between the Supplier's responses to the Authority's requirements and any other part of this Contract, such other part of this Contract shall prevail.



- 1.11 Where a document is required under this Contract, the Parties may agree in writing that this shall be in electronic format only.
- 1.12 Any Breach Notice issued by a Party in connection with this Contract shall not be invalid due to it containing insufficient information. A Party receiving a Breach Notice ("**Receiving Party**") may ask the Party that issued the Breach Notice ("**Issuing Party**") to provide any further information in relation to the subject matter of the Breach Notice that it may reasonably require to enable it to understand the Breach Notice and/or to remedy the breach. The Issuing Party shall not unreasonably withhold or delay the provision of such further information as referred to above as may be requested by the Receiving Party but no such withholding or delay shall invalidate the Breach Notice.
- 1.13 Any terms defined as part of a Schedule or other document forming part of this Contract shall have the meaning as defined in such Schedule or document.

## **Schedule 5**

### **Installation and Commissioning Services**

#### **1 Installation and Commissioning Services**

1.1 The Goods shall be installed and commissioned at the relevant Premises and Locations by the Supplier as set out in the Specification and Tender Response Document or as otherwise agreed by the Authority in writing.

1.2 The Supplier shall provide the Installation and Commissioning Services:

1.2.1 promptly and in any event within any time limits as may be set out in this Contract;

1.2.2 in accordance with all other provisions of this Contract;

1.2.3 using reasonable skill and care;

1.2.4 in accordance with any quality assurance standards as set out in the Contract;

1.2.5 in accordance with the Law and with Guidance;

1.2.6 in accordance with Good Industry Practice;

1.2.7 in accordance with the original manufacture's guidelines and recommendations relating to the Goods being installed and commissioned;

1.2.8 in accordance with the Policies;

1.2.9 in a professional and courteous manner; and

1.2.10 using appropriately skilled, trained and experienced Staff.

1.3 The Supplier will promptly notify the Authority of any health and safety hazard which arises, or the Supplier is aware may arise, in connection with the Installation and Commissioning Services and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards.

#### **2 Inspection and Testing**

2.1 Once the Goods have been installed and commissioned, the Supplier shall inform the Authority in writing that the Goods are ready for use. The following process will then apply:

2.1.1 within five (5) Business Days of receipt of such written confirmation from the Supplier that the Goods are ready to use, the Authority may carry out any such reasonable inspections and testing of the Goods as the Authority deems appropriate (in accordance with the relevant manufacturers' technical manuals relating to the Goods and/or as otherwise set out in the Specification

and Tender Response Document and/or as otherwise agreed by the Parties in writing) to confirm that the Goods comply with the requirements of this Contract and are ready for use;

2.1.2 as part of the Contract Price, the Supplier shall provide the Authority with all reasonable assistance and/or information requested by the Authority in relation to any such reasonable inspections and testing of the Goods;

2.1.3 if the Authority on inspection and testing is of the view that the Goods have been supplied, installed and commissioned (as appropriate) in conformance with the requirements of this Contract and are ready for use, it shall issue an Authority Confirmation to this effect to the Supplier;

2.1.4 if the Authority on inspection and testing is not of the view that the Goods have been supplied, installed and commissioned (as appropriate) in conformance with the requirements of this Contract and are ready for use, it shall inform the Supplier in writing and Clauses 2.3 and 2.4 of Schedule 5 shall apply; and

2.1.5 if the Authority chooses not to inspect and/or test the Goods, then the Authority shall be deemed to have provided an Authority Confirmation in relation to such Goods on the sixth (6<sup>th</sup>) Business Day following receipt by the Authority of the written confirmation from the Supplier in accordance with Clause 2.1.1 of this Schedule 5 that the Goods are ready to use.

2.2 The issue by the Authority of any Authority Confirmation shall be a confirmation that the correct Goods appear to have been supplied and reasonable installation and commissioning procedures look to have been followed by the Supplier in accordance with the requirements and standards of this Contract. It does not imply any acceptance of such Goods or any endorsement of such installation and commissioning procedures. Responsibility for supplying the Goods in accordance with the requirements and standards of the Contract and the appropriateness of any installation and commissioning procedures shall remain with the Supplier notwithstanding any such Authority Confirmation.

2.3 Without prejudice to any other rights and remedies of the Authority under this Contract, in relation to any failure by the Supplier to supply, install or commission the correct Goods in accordance with the requirements and standards of this Contract, the Supplier shall, at its own expense as part of the Contract Price, forthwith re-supply, re-install and/or re-commission the Goods until such time as Goods in compliance with the requirements of this Contract are delivered, installed, and commissioned to the reasonable satisfaction of the Authority and the Authority has provided an Authority Confirmation to the Supplier to this effect. The Contract Price payable by the Authority under this Contract may be withheld by the Authority in full or part (to be determined at the Authority's sole discretion) until the Goods are supplied, installed and commissioned in accordance with the requirements and standards of this Contract to the reasonable satisfaction of the Authority and the Authority has provided its Authority Confirmation to this effect.

2.4 In the event of any Dispute between the Authority and the Supplier regarding the issue of an Authority Confirmation, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure.

2.5 In the event that the Specification and Tender Response Document states that Goods shall be installed and commissioned on a phased basis and/or upon request,

then the process for the inspection and testing of Goods set out in Clauses 2.1 to 2.4 (inclusive) of this Schedule 5 shall apply to the Goods within each phase and/or instance of supply.

- 2.6 In the event that the Specification and Tender Response Document stipulates a refresh programme and/or that substitute or replacement Goods shall otherwise be installed in accordance with the requirements of this Contract (to include, without limitation, in connection with any Maintenance Services), then, following the installation and commissioning of the replacement Goods, the process for the inspection and testing of Goods set out in Clauses 2.1 to 2.4 (inclusive) of this Schedule 5 shall apply in relation to the inspection and testing of any substitute or replacement Goods.

### **3 Relocation of Goods**

- 3.1 Upon reasonable written notice from the Authority, the Supplier shall, as part of the Installation and Commissioning Services, relocate such Goods within the Premises and Locations or to another location and the process for the inspection and testing of Goods set out in Clauses 2.1 to 2.4 (inclusive) of this Schedule 5 shall apply in relation to the inspection and testing of any relocated Goods.

- 3.2 The Authority shall meet the Supplier's reasonable charges and expenses incurred in complying with Clause 3.1 of this Schedule 5 provided that such reasonable charges and expenses are approved in writing by the Authority prior to being incurred by the Supplier.

### **4 Supplier's obligation to make good any damage**

- 4.1 The Supplier shall make good at the Supplier's expense any damage to any property or equipment caused by the installation, commissioning, removal and/or relocation of the Goods by the Supplier.

**Schedule 6**

**Maintenance Services**

**NOT USED**

**Schedule 7****Commercial Schedule**

Table a) – Goods and Services

Pos.	Item Nr	Qty.	Product Description	List Price (Unit)	Total Price
				GBP	GBP
1	C71883	1	CytoFLEX SRT V5-B2-Y5-R3 (15 Detectors, 4 Lasers)		
2	B68560	1	CytoFLEX Service Installation		
				List Price Total, GBP	
				Discount, GBP	
				Shipping & Handling, GBP	
				Grand Total, GBP	236,214.42

## Comments:

- .....
- Quote includes 12 months warranty
  - Quote includes CytExpert license free acquisition and analysis software
  - Quotation includes 1 day of on-site training on the use and set up of the instrument
  - Quote includes Beckman Connect - remote service support

1. The Contract Price shall be firm, fixed and delivered.

**Schedule 8**  
Specification and Tender Response



eSourcing Response Document  
8 September 2022

Project Ref and Name:	<b>C66444 UKHSA_Scientific_Purchase of CL3-contained cell sorter</b>
Section:	<b>2. Technical Envelope</b>
Supplier Name:	<b>BECKMAN COULTER UNITED KINGDOM LIMITED</b>

Note

2.01

UK Health Security Agency (UKHSA) is seeking to purchase a cell sorter to be used in a high containment laboratory. The maximum acceptable delivery time is 12 weeks after receipt of purchase order. The Authority shall not be obliged to appoint any of the Bidders and always reserves the right not to proceed with the procurement at any given time during the process. Each question in these technical requirements will identified as: 1 - a note for Suppliers (Note); 2 - a mandatory requirement (Mandatory); 3 - a request for information (Information) Any questions about the procurement MUST be submitted directly to the Authority using the online messaging facility on the Atamis e-Sourcing portal. If the Authority considers any question or request for clarification to be of significant interest, relevance or importance, both the query and the response will be communicated anonymously, to all Suppliers who have expressed an interest. All responses received and any communication from Suppliers will be treated in confidence and if shared with other Suppliers will be anonymously. The "Tips for Completing your Response" section in the Qualification Envelope also applies to this and all other sections of the invitation to tender (ITT). Please note that you must provide a full response to the questions and do not refer to attachments unless you are invited to do so by the question or to provide additional information. Please ensure that any relevant document or its section are clearly specified in your response. When more than one attachment is requested, please compress the files and upload as zip folder. Please ensure that the ATTACHED FILES' NAMES are short and include the QUESTION NUMBER." "If any Bidder wishes to propose more than one solution meeting the requirements, please contact UKHSA via the messaging function for instructions on how to upload the additional responses. Please note that all responses will be marked using the same evaluation and scoring methodology.

Type: Optional  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

Note

2.02

This is a one-off purchase, however it is intended that service, support and supply of bespoke consumables (if applicable) will be covered by this agreement for the lifetime of the equipment or until UKHSA re-tenders the requirement.

Type: Optional  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00



Note

2.03a

This tender will use the most economically advantageous (MEAT) criterion to enable UKHSA to take account of qualitative, technical, sustainable and financial aspects of the tender submission when reaching an award decision. Tenders will be evaluated using a combination of Technical (Quality) and Commercial (Price) criteria in accordance with a pre-determined evaluation model and scoring methodology. The Technical envelope will account for 70% of the tender and the Commercial envelope will account for 30% of the tender. See details of scoring methodology in the supplier documents. Failure to meet a mandatory pass/fail requirement will result in the tender response being automatically rejected. Mandatory Scored requirements will obtain a score depending on the response; the marks available will be shown at the end of the question. Information requests will not be scored but will be used to obtain further details or to validate your other responses. The tender with the highest score representing the most economically advantageous submission will be recommended for contract award.

Type: Optional  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00



Note

2.03b

Indicative procurement timescales: Invitation to Tender published - 09/06/2022 Clarification period - 09/06/2022 - 05/07/2022 Tender return time and date - 11/07/2022 at 12:00 Evaluation - w/c 11/07/2022 Internal governance and approvals completed - 15/08/2022 Notification of contract award and standstill commencement - 15/08/2022 Purchase order and contract start date - 26/09/2022

Type: Optional  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00



Note

2.04

This tender will be evaluated by a panel of evaluators. The Authority reserves the right to invite non-UKHSA parties to assist in the evaluation of tenders.

Type: Optional  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00



Note

2.05

Bidders must provide full response to the questions in the relevant sections. Attachments can only be used to support and not to replace your response. Therefore, please only upload attachments when invited by the question or in order to provide additional information not suitable in format for a standard text answer, e.g. copy of certifications, drawings, detailed technical data sheet, etc. or when the question requires a response exceeding the word limit permitted by the system. Where information is included as an attachment, please ensure that you refer to it in your response. Please ensure that the ATTACHED FILE NAMES are SHORT and include the QUESTION NUMBER. When more than one attachment is requested in a response to a question, please compress the files and upload as zip folder.

Type: Optional  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00



Note

2.06

Any questions about the procurement MUST be submitted directly to the Authority using the online messaging facility on the Health Family e-Tendering portal - <https://health-family.force.com>

Type: Optional  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00



Note

2.07

If the Authority considers any question or request for clarification to be of significant interest, relevance or importance, both the query and the response will be communicated anonymously, to all Suppliers who have expressed an interest. All responses received and any communication from Suppliers will be treated in confidence and if shared with other Suppliers will be anonymously.

Type: Optional  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00



Note

2.08

If any Bidder wishes to propose more than one solution for the requirements, please contact UKHSA via the Health Family e-tendering messaging function for instructions on how to upload the additional responses. Please note that all responses will be marked using the same evaluation and scoring methodology.

Type: Optional  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00



Mandatory

2.09

Please download the documents in .pdf file titled: UKHSA Terms and Conditions for the Provision of Goods - v1.0 - October 2021.pdf containing the Terms and Conditions of Contract from Document's Library. Do you agree to the terms as set out in the document? If you DO NOT agree to the Authority's terms and conditions, this will result in your bid being rejected. UKHSA reserves the right to reject the bid on basis of non-acceptance of its T&Cs. Scoring: Yes - Pass No - Automatic Rejection

Type: Pass/Fail  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

Yes

Mandatory

2.10

Please confirm that you can supply and install a complete cell sorter that has at least 3 lasers with multiple channels for each laser; 405 nm (Violet) laser, 488 nm (Blue) laser, and 638 nm (Red) laser Scoring: Yes - Pass No - Automatic Rejection

Type: Pass/Fail  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

Yes

Mandatory

2.11

Please provide details of the make and model of cell sorter you can provide UKHSA.

Type:	Required
Score out of:	0.00
Scoring Guidelines:	
Weighting:	0.00

In response to this tender Beckman Coulter are offering the CytoFlex SRT Cell sorter. The proposed system will be provided with 4 lasers and 15 colour detection with the following configuration: violet laser (405nm) 5 detectors; blue laser (488nm) 2 detectors; Yellow/Green laser (561nm) 5 detectors; red laser (638nm) 3 detectors; plus forward scatter and side scatter detectors off the blue laser.

Mandatory

2.12

The machine should be able to sort both mammalian cells and bacteria; at least four defined populations simultaneously >99% purity. Purity should be maintained at higher sorting speeds >20,000 events per second. Please confirm your compliance with the above. Scoring: Yes - Pass No - Automatic Rejection

Type:	Pass/Fail
Score out of:	0.00
Scoring Guidelines:	
Weighting:	0.00

Yes

Mandatory

2.13

The machine should be able to 1-way sort into a variety of devices: 6-, 24-, 48-, 96- and 384-well plates, 96-deep well plate, slides, custom devices can be calibrated. Please confirm your compliance with the above. Scoring: Yes - Pass No - Automatic Rejection

Type: Pass/Fail  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

Yes

Mandatory

2.14

The cell sorter must be suitable to be housed in a flexible film isolator - needs to be contained at CL3. Fluidics cart needs to be able to sit outside a flexible film isolator. Please confirm your compliance with the above. Scoring: Yes - Pass No - Automatic Rejection

Type: Pass/Fail  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

Yes

Mandatory

2.15

The equipment must be suitable for formaldehyde fumigation. Please confirm compliance with this requirement. Scoring: Yes - Pass No - Automatic Rejection

Type: Pass/Fail  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

Yes

Mandatory

2.16

The equipment must have automated QC, sort calibration, and automatic droplet optimisation (drop delay can be set automatically, no manual drop delay settings). Please confirm compliance with this requirement. Scoring: Yes - Pass No - Automatic Rejection

Type: Pass/Fail  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

Yes

Mandatory

2.17

The dimensions of the cell sorter should be no bigger than 75 cm x 50cm x 50 cm (W X D X H). Please confirm your compliance with the above. Scoring: Yes - Pass No - Automatic Rejection

Type: Pass/Fail  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

Yes

Mandatory

2.18

Software is integral to the cell sorter and the computer hardware can be connected outside the CL3 isolator. Must be Windows® 10. Please confirm your compliance with the above. Scoring: Yes - Pass No - Automatic Rejection

Type: Pass/Fail  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

Yes

Mandatory

2.19

The cell sorter and its tubing can be decontaminated with alcohol (IMS &/or ethanol) and the waste bottle can be decontaminated with quaternary ammonium disinfectants. Please confirm your compliance with the above. Scoring: Yes - Pass No - Automatic Rejection

Type: Pass/Fail  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

Yes

Mandatory

2.20

Can removable parts can be autoclaved? Scoring: Yes - Pass No - Automatic Rejection

Type: Pass/Fail  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

Yes

Mandatory

2.21

Functions at an ambient temperature and doesn't get too hot. Approx 15-25°C within small temperature variations. Please confirm your compliance with the above. Scoring: Yes - Pass No - Automatic Rejection

Type: Pass/Fail  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

Yes



Mandatory

2.22

The equipment must be supplied with a compatible computer which has all the required hardware, software display screen and certified UK mains power cable/connectors/plugs/adapters. Please confirm your compliance with this requirement Scoring: Yes - Pass No - Automatic Rejection

Type: Pass/Fail  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

Yes

Information

2.23

Please indicate if the service agreement includes free downloadable software updates.

Type: Required  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

Yes, the service agreement includes free downloadable software updates. If the software updates are not downloaded by the end user then they will be applied by the engineer at the annual preventative maintenance visit.

Information

2.24

Please provide details of the software to be used in the system.

Type:	Required
Score out of:	0.00
Scoring Guidelines:	
Weighting:	0.00

The CytoFlex SRT is provided with CytExpert SRT software. The software is licence free and can be installed on any Windows PC for offline analysis; free of charge and without restriction. Furthermore, it is built on the same software platform as the CytExpert software used on the CytoFlex analyser, this will provide a short learning curve for users of the system that are already familiar with the CytoFlex analyser

Information

2.25

Please confirm if the equipment is able to generate data in Excel or CSV format.

Type:	Required
Score out of:	0.00
Scoring Guidelines:	
Weighting:	0.00

The CytExpert SRT software will export statistical data in Excel / CSV format. The procedure for this is identical to that performed on the CytExpert software on the existing CytoFlex analysers. Within the data analysis module in CytExpert SRT the end user simply needs to right hand click on the statistics table and select the 'export to csv file' option. This can be done for an individual data file or multiple data files within the same sample analysis.

Information

2.26

Please explain the licencing agreement for your software, including the number of additional computers covered and the upgrade mechanisms.

Type: Required  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

The CytExpert SRT software is provided licence free and can be installed on as many additional computers as required, free of charge and without restriction. Upgrades and the software package can be downloaded from the Beckman Coulter web site, alternatively the software package can be requested by contacting the Beckman Coulter applications team.

Mandatory

2.27

The proposed cell sorter must be delivered and installed to a lab on the 1st floor, UKHSA Porton Down. Note that this is on a first floor and there is lift access. Please confirm compliance with this requirement. Scoring: Yes - Pass No - Automatic Rejection

Type: Pass/Fail  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

Yes

Mandatory

2.28

Please confirm that your equipment will be supplied with all relevant documentation including installation, operating and maintenance instructions, and any relevant certification. Scoring: Yes - Pass No - Automatic Rejection

Type: Pass/Fail  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

Yes

Mandatory

2.29

The equipment must come with a minimum of one year comprehensive manufacturer's warranty. Please confirm compliance with this requirement. Scoring: Yes - Pass No - Automatic Rejection

Type: Pass/Fail  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

Yes

Mandatory

2.30

Is Planned Preventative Maintenance included during the mandated 12 months warranty period? Yes - Pass No - Automatic rejection

Type: Pass/Fail  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

Yes

Mandatory

2.31

The proposal must include training for at least 2 people to a standard that allows full familiarity with, and full usability of the instrument, following any software updates, introduction of new protocols, etc. Please confirm compliance with this requirement. Scoring: Yes - Pass No - Automatic Rejection

Type: Pass/Fail  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

Yes

Mandatory

2.32

Should any revised software or hardware be installed on the cell sorter during the lifetime of the equipment, appropriate user training must be carried out by the tenderer free of charge at the time of the new installation. Please confirm compliance with this requirement. Scoring: Yes - Pass No - Automatic Rejection

Type: Pass/Fail  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

Yes

Mandatory

2.33

Please confirm that sub-contractors will not be used to provide a part of any Contract resulting from this tender; Scoring: Yes - Pass No - Automatic Rejection

Type: Pass/Fail  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

Yes

Mandatory

2.34

"What is the lead time for the delivery of the proposal (in working weeks) after receipt of a purchase order and what is the justification for the duration? Please note the maximum acceptable delivery time is 12weeks."

Type: Required  
Score out of: 4.00  
Scoring Guidelines: 0 = Failure to understand and/or failure to substantial failure to provide and/or provides no confidence that the requirements will be delivered. 1 = Some misunderstandings and a generally low level of information and detail provided. Fails to meet the requirements in many ways and/or materially in one or more ways, and provides insufficient confidence of ability to meet and deliver the requirements. 2 = Generally understands and addresses issues appropriately. Some areas of misunderstanding, provide a low level of detail, and/or provide more of a "model answer" than a true commitment, so only provides some confidence they will deliver requirements. 3 = Response provides The Authority with a good level of confidence that the Bidder's proposals will meet The Authority's requirements set out in the specification and the response demonstrates across the whole of the response a good understanding of the issues under the contract and what is being asked for. The proposal sets out a satisfactory level of detail and clarity across most of the response with some relevant reference to the specification. 4 = High degree of confidence that the Potential Provider's proposal will meet the requirements, demonstrated through a very good understanding of the issues and what is being asked for. Proposals set out how and what will be delivered.  
Weighting: 3.00

The current delivery lead time for the CytoFlex SRT from receipt of purchaser order is 6 weeks. The lead time is composed of: 4 weeks manufacturing time; 1 week to ship finished goods and consolidate at our UK warehouse; 1 week to complete pre-installation check before delivery to the point of use.

Mandatory

2.35

Please describe what is included in the warranty stating clearly if the warranty of the equipment includes the warranty of the computer supplied along with it and how many additional months of warranty is included beyond the mandated 12months.

Type:	Required
Score out of:	4.00
Scoring Guidelines:	0 = Failure to understand and/or failure to substantial failure to provide and/or provides no confidence that the requirements will be delivered. 1 = Some misunderstandings and a generally low level of information and detail provided. Fails to meet the requirements in many ways and/or materially in one or more ways, and provides insufficient confidence of ability to meet and deliver the requirements. 2 = Generally understands and addresses issues appropriately. Some areas of misunderstanding, provide a low level of detail, and/or provide more of a "model answer" than a true commitment, so only provides some confidence they will deliver requirements. 3 = Response provides The Authority with a good level of confidence that the Bidder's proposals will meet The Authority's requirements set out in the specification and the response demonstrates across the whole of the response a good understanding of the issues under the contract and what is being asked for. The proposal sets out a satisfactory level of detail and clarity across most of the response with some relevant reference to the specification. 4 = High degree of confidence that the Potential Provider's proposal will meet the requirements, demonstrated through a very good understanding of the issues and what is being asked for. Proposals set out how and what will be delivered.
Weighting:	2.00

The Beckman Coulter instrument warrant includes all components of the CytoFlex SRT system. The Beckman Coulter warranty includes the PC and monitor, if there is a problem with the PC or monitor they will be repaired or replaced by Beckman Coulter and the responsibility will rest with Beckman Coulter. Following the warranty period the preventative maintenance contract will continue to provide the same level of cover and will include the PC and monitor.



Mandatory

2.36

Please describe the proposed training arrangements, including the format of training, available materials and support in order to reach competency.

Type:	Required
Score out of:	4.00
Scoring Guidelines:	0 = Failure to understand and/or failure to substantial failure to provide and/or provides no confidence that the requirements will be delivered. 1 = Some misunderstandings and a generally low level of information and detail provided. Fails to meet the requirements in many ways and/or materially in one or more ways, and provides insufficient confidence of ability to meet and deliver the requirements. 2 = Generally understands and addresses issues appropriately. Some areas of misunderstanding, provide a low level of detail, and/or provide more of a "model answer" than a true commitment, so only provides some confidence they will deliver requirements. 3 = Response provides The Authority with a good level of confidence that the Bidder's proposals will meet The Authority's requirements set out in the specification and the response demonstrates across the whole of the response a good understanding of the issues under the contract and what is being asked for. The proposal sets out a satisfactory level of detail and clarity across most of the response with some relevant reference to the specification. 4 = High degree of confidence that the Potential Provider's proposal will meet the requirements, demonstrated through a very good understanding of the issues and what is being asked for. Proposals set out how and what will be delivered.
Weighting:	6.00

All training will be carried out on-site by [REDACTED], training will be performed using your instrument and will be mainly practically based. The full instructions for use will be provided in pdf format to be used as a reference but the training should provide the users with full competency without the need to extensively read additional instructional material. Full support will be provided until the users reach full competency.



Mandatory

2.37

Provide details of proposed training activities including the number of days, over what period of time and on-going training support.

Type:	Required
Score out of:	4.00
Scoring Guidelines:	0 = Failure to understand and/or failure to substantial failure to provide and/or provides no confidence that the requirements will be delivered. 1 = Some misunderstandings and a generally low level of information and detail provided. Fails to meet the requirements in many ways and/or materially in one or more ways, and provides insufficient confidence of ability to meet and deliver the requirements. 2 = Generally understands and addresses issues appropriately. Some areas of misunderstanding, provide a low level of detail, and/or provide more of a "model answer" than a true commitment, so only provides some confidence they will deliver requirements. 3 = Response provides The Authority with a good level of confidence that the Bidder's proposals will meet The Authority's requirements set out in the specification and the response demonstrates across the whole of the response a good understanding of the issues under the contract and what is being asked for. The proposal sets out a satisfactory level of detail and clarity across most of the response with some relevant reference to the specification. 4 = High degree of confidence that the Potential Provider's proposal will meet the requirements, demonstrated through a very good understanding of the issues and what is being asked for. Proposals set out how and what will be delivered.
Weighting:	6.00

Ian will follow a training course programme; the nature of the training will allow a high level of interaction to ensure that all questions are answered and that you are fully familiar with the equipment. Our goal is for you to achieve operational competence and confidence in the key features of the CytoFlex SRT. The training will teach you how to use the instrument to perform cell analysis and cell sorting and will cover the various features and settings within the software. Ian will also train on QC, routine maintenance and troubleshooting, calibration of collection plates and calibration of collection tubes. Please note this list is not exhaustive. The course length will be 1 day on-site after which time you should be fully competent in the use of the instrument; however a second day will be put aside for follow on training or questions if required.



Information

2.38a

Please provide details of your comprehensive maintenance covering a. Details of preventative maintenance and frequency of visits per annum.

Type:	Required
Score out of:	4.00
Scoring Guidelines:	0 = Failure to understand and/or failure to substantial failure to provide and/or provides no confidence that the requirements will be delivered. 1 = Some misunderstandings and a generally low level of information and detail provided. Fails to meet the requirements in many ways and/or materially in one or more ways, and provides insufficient confidence of ability to meet and deliver the requirements. 2 = Generally understands and addresses issues appropriately. Some areas of misunderstanding, provide a low level of detail, and/or provide more of a "model answer" than a true commitment, so only provides some confidence they will deliver requirements. 3 = Response provides The Authority with a good level of confidence that the Bidder's proposals will meet The Authority's requirements set out in the specification and the response demonstrates across the whole of the response a good understanding of the issues under the contract and what is being asked for. The proposal sets out a satisfactory level of detail and clarity across most of the response with some relevant reference to the specification. 4 = High degree of confidence that the Potential Provider's proposal will meet the requirements, demonstrated through a very good understanding of the issues and what is being asked for. Proposals set out how and what will be delivered.
Weighting:	3.00

The warranty and service contract will provide 1 preventative maintenance visit per year. In brief the PM visit will include the checking of fluidics parts including the waste pump and muffler assembly. Filters will be replaced during the visit and include the waste air filter, the de-bubble filter, the sheath filter, sample air filter, shutdown fluid filter and aseptic clean filters. O-Rings will be checked and replaced or lubricated with silicone grease if necessary. The sample probe will be checked and replaced if required. The cyclone sort collection assembly will be inspected and worm gears will be lubricated with white lithium grease as required. Sheath pressures and flow through the system will be checked. The full QC and drop delay procedure will be performed and lasers re-aligned if required, if any other issues present during the QC process they will also be corrected. Finally, maintenance messages will be re-set within the software, these are time stamped for audit purposes. Please note that this is not a comprehensive list but provided to assure the end users that the system goes through extensive checks during the PM visit to help ensure stable performance during use.

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Information

2.38b

Please provide details of your comprehensive maintenance covering b. Any preparation required on the part of UKHSA prior to the visit or downtime/impact on operations

Type:	Required
Score out of:	4.00
Scoring Guidelines:	0 = Failure to understand and/or failure to substantial failure to provide and/or provides no confidence that the requirements will be delivered. 1 = Some misunderstandings and a generally low level of information and detail provided. Fails to meet the requirements in many ways and/or materially in one or more ways, and provides insufficient confidence of ability to meet and deliver the requirements. 2 = Generally understands and addresses issues appropriately. Some areas of misunderstanding, provide a low level of detail, and/or provide more of a "model answer" than a true commitment, so only provides some confidence they will deliver requirements. 3 = Response provides The Authority with a good level of confidence that the Bidder's proposals will meet The Authority's requirements set out in the specification and the response demonstrates across the whole of the response a good understanding of the issues under the contract and what is being asked for. The proposal sets out a satisfactory level of detail and clarity across most of the response with some relevant reference to the specification. 4 = High degree of confidence that the Potential Provider's proposal will meet the requirements, demonstrated through a very good understanding of the issues and what is being asked for. Proposals set out how and what will be delivered.
Weighting:	3.00

The instrument will need to be decontaminated by UKHSA prior to any service visit and the decontamination status confirmed with the engineer. Typically, the preventative maintenance visit will take half a day, either the morning or afternoon. During this time the instrument will not be available for experimental work.



Information

2.38c

Please provide details of your comprehensive maintenance covering c. Details of certifications and visit reports and the timeframe for their generation.

Type:	Required
Score out of:	4.00
Scoring Guidelines:	0 = Failure to understand and/or failure to substantial failure to provide and/or provides no confidence that the requirements will be delivered. 1 = Some misunderstandings and a generally low level of information and detail provided. Fails to meet the requirements in many ways and/or materially in one or more ways, and provides insufficient confidence of ability to meet and deliver the requirements. 2 = Generally understands and addresses issues appropriately. Some areas of misunderstanding, provide a low level of detail, and/or provide more of a "model answer" than a true commitment, so only provides some confidence they will deliver requirements. 3 = Response provides The Authority with a good level of confidence that the Bidder's proposals will meet The Authority's requirements set out in the specification and the response demonstrates across the whole of the response a good understanding of the issues under the contract and what is being asked for. The proposal sets out a satisfactory level of detail and clarity across most of the response with some relevant reference to the specification. 4 = High degree of confidence that the Potential Provider's proposal will meet the requirements, demonstrated through a very good understanding of the issues and what is being asked for. Proposals set out how and what will be delivered.
Weighting:	3.00

All Beckman Coulter engineers operate under our ISO 9001:2015 accreditation. All procedures and equipment used are traceable back to this certification, if any service engineer tools require calibration then calibration certificates can be provided on request. Following a service visit the end users will receive a pdf service report, this is sent by email on the same day as the service visit.

Information

2.38d

Please provide details of your comprehensive maintenance covering d. Details of call-out timeframes included in the standard comprehensive cover

Type:	Required
Score out of:	4.00
Scoring Guidelines:	0 = Failure to understand and/or failure to substantial failure to provide and/or provides no confidence that the requirements will be delivered. 1 = Some misunderstandings and a generally low level of information and detail provided. Fails to meet the requirements in many ways and/or materially in one or more ways, and provides insufficient confidence of ability to meet and deliver the requirements. 2 = Generally understands and addresses issues appropriately. Some areas of misunderstanding, provide a low level of detail, and/or provide more of a "model answer" than a true commitment, so only provides some confidence they will deliver requirements. 3 = Response provides The Authority with a good level of confidence that the Bidder's proposals will meet The Authority's requirements set out in the specification and the response demonstrates across the whole of the response a good understanding of the issues under the contract and what is being asked for. The proposal sets out a satisfactory level of detail and clarity across most of the response with some relevant reference to the specification. 4 = High degree of confidence that the Potential Provider's proposal will meet the requirements, demonstrated through a very good understanding of the issues and what is being asked for. Proposals set out how and what will be delivered.
Weighting:	3.00

Call out time frames are the same for the warranty period and any follow-on comprehensive service cover purchased. If a site visit is required we always endeavour for same day / next day attendance; our service standard is an on-site response within 48 hours.



Information

2.38e

Please provide details of your comprehensive maintenance covering e. Technical service support e.g. dedicated telephone helpline, opening hours, email address for reporting issues, etc.

Type:	Required
Score out of:	4.00
Scoring Guidelines:	0 = Failure to understand and/or failure to substantial failure to provide and/or provides no confidence that the requirements will be delivered. 1 = Some misunderstandings and a generally low level of information and detail provided. Fails to meet the requirements in many ways and/or materially in one or more ways, and provides insufficient confidence of ability to meet and deliver the requirements. 2 = Generally understands and addresses issues appropriately. Some areas of misunderstanding, provide a low level of detail, and/or provide more of a "model answer" than a true commitment, so only provides some confidence they will deliver requirements. 3 = Response provides The Authority with a good level of confidence that the Bidder's proposals will meet The Authority's requirements set out in the specification and the response demonstrates across the whole of the response a good understanding of the issues under the contract and what is being asked for. The proposal sets out a satisfactory level of detail and clarity across most of the response with some relevant reference to the specification. 4 = High degree of confidence that the Potential Provider's proposal will meet the requirements, demonstrated through a very good understanding of the issues and what is being asked for. Proposals set out how and what will be delivered.
Weighting:	3.00

Beckman Coulter has a dedicated service support hotline and this is our preferred method of customer contact. Phoning the hotline automatically creates a service ticket which is trackable within our system. The hotline operates during normal business hours, 8.00am – 5.30pm. A dedicated email address is available for various administrative tasks and contact with the service coordination team. On first contact our service coordinator will take note of the issue and discuss basic fixes over the phone. If this does not resolve the issue then a dedicated service or applications person will asses to understand if the issue can be resolved remotely. If a remote fix is not possible then a service engineer will be dispatched to visit the site. UKHSA will be assigned a dedicated applications specialist (Dr Ian Brotherick) for the project and will receive his email address and phone number for applications based queries.

Information

2.38f

Please provide details of your comprehensive maintenance covering f. Service level agreement (SLA) for responding to reports of breakdown (the timeframes for call back / response to email messages)

Type:	Required
Score out of:	4.00
Scoring Guidelines:	0 = Failure to understand and/or failure to substantial failure to provide and/or provides no confidence that the requirements will be delivered. 1 = Some misunderstandings and a generally low level of information and detail provided. Fails to meet the requirements in many ways and/or materially in one or more ways, and provides insufficient confidence of ability to meet and deliver the requirements. 2 = Generally understands and addresses issues appropriately. Some areas of misunderstanding, provide a low level of detail, and/or provide more of a "model answer" than a true commitment, so only provides some confidence they will deliver requirements. 3 = Response provides The Authority with a good level of confidence that the Bidder's proposals will meet The Authority's requirements set out in the specification and the response demonstrates across the whole of the response a good understanding of the issues under the contract and what is being asked for. The proposal sets out a satisfactory level of detail and clarity across most of the response with some relevant reference to the specification. 4 = High degree of confidence that the Potential Provider's proposal will meet the requirements, demonstrated through a very good understanding of the issues and what is being asked for. Proposals set out how and what will be delivered.
Weighting:	3.00

During both the warranty period and comprehensive service cover period calls to our hotline will be answered immediately if a hotline agent is available; if an agent isn't available then our SLA commitment is to return the call within 1 hour, however we routinely achieve call backs within 30 minutes.



Information

2.38g

Please provide details of your comprehensive maintenance covering g. Service level agreement (SLA) from the reporting of fault to the engineer on site for attendance to different types of breakdowns, e.g. an error not affecting the main operation of the machine, critical failure.

Type:	Required
Score out of:	4.00
Scoring Guidelines:	0 = Failure to understand and/or failure to substantial failure to provide and/or provides no confidence that the requirements will be delivered. 1 = Some misunderstandings and a generally low level of information and detail provided. Fails to meet the requirements in many ways and/or materially in one or more ways, and provides insufficient confidence of ability to meet and deliver the requirements. 2 = Generally understands and addresses issues appropriately. Some areas of misunderstanding, provide a low level of detail, and/or provide more of a "model answer" than a true commitment, so only provides some confidence they will deliver requirements. 3 = Response provides The Authority with a good level of confidence that the Bidder's proposals will meet The Authority's requirements set out in the specification and the response demonstrates across the whole of the response a good understanding of the issues under the contract and what is being asked for. The proposal sets out a satisfactory level of detail and clarity across most of the response with some relevant reference to the specification. 4 = High degree of confidence that the Potential Provider's proposal will meet the requirements, demonstrated through a very good understanding of the issues and what is being asked for. Proposals set out how and what will be delivered.
Weighting:	3.00

If the reported fault is related to the instrument and needs an engineer to visit and investigate then this type of call is handled in the same way as any other service callout with our service standard for on-site response within 48 hours.



Information

2.38h

Please provide details of your comprehensive maintenance covering h. Replacement of standard consumable parts during servicing, calibration and validation as well as replacement of machine parts as a result of machine failure e.g. lasers

Type:	Required
Score out of:	4.00
Scoring Guidelines:	0 = Failure to understand and/or failure to substantial failure to provide and/or provides no confidence that the requirements will be delivered. 1 = Some misunderstandings and a generally low level of information and detail provided. Fails to meet the requirements in many ways and/or materially in one or more ways, and provides insufficient confidence of ability to meet and deliver the requirements. 2 = Generally understands and addresses issues appropriately. Some areas of misunderstanding, provide a low level of detail, and/or provide more of a "model answer" than a true commitment, so only provides some confidence they will deliver requirements. 3 = Response provides The Authority with a good level of confidence that the Bidder's proposals will meet The Authority's requirements set out in the specification and the response demonstrates across the whole of the response a good understanding of the issues under the contract and what is being asked for. The proposal sets out a satisfactory level of detail and clarity across most of the response with some relevant reference to the specification. 4 = High degree of confidence that the Potential Provider's proposal will meet the requirements, demonstrated through a very good understanding of the issues and what is being asked for. Proposals set out how and what will be delivered.
Weighting:	6.00

During the preventative maintenance visit the engineer will replace standard consumable parts and perform calibration and quality control checks as required. If the engineer finds any parts of the instrument that have failed, such as the laser, then routine parts are carried as engineer car stock and they will be able to replace and repair on the same visit. Should the part not be available as car stock then it can be requested by the engineer and is available next day.

Information

2.38i

Please provide details of your comprehensive maintenance covering i. How many more years you are planning to manufacture the make and model of the cell sorter you are proposing and how long after the end of production you will continue to provide support

Type:	Required
Score out of:	4.00
Scoring Guidelines:	0 = Failure to understand and/or failure to substantial failure to provide and/or provides no confidence that the requirements will be delivered. 1 = Some misunderstandings and a generally low level of information and detail provided. Fails to meet the requirements in many ways and/or materially in one or more ways, and provides insufficient confidence of ability to meet and deliver the requirements. 2 = Generally understands and addresses issues appropriately. Some areas of misunderstanding, provide a low level of detail, and/or provide more of a "model answer" than a true commitment, so only provides some confidence they will deliver requirements. 3 = Response provides The Authority with a good level of confidence that the Bidder's proposals will meet The Authority's requirements set out in the specification and the response demonstrates across the whole of the response a good understanding of the issues under the contract and what is being asked for. The proposal sets out a satisfactory level of detail and clarity across most of the response with some relevant reference to the specification. 4 = High degree of confidence that the Potential Provider's proposal will meet the requirements, demonstrated through a very good understanding of the issues and what is being asked for. Proposals set out how and what will be delivered.
Weighting:	3.00

The CytoFlex SRT will be manufactured for 10 years plus, there are no plans to discontinue or obsolete the system for the foreseeable future. Following the date the last CytoFlex SRT unit is manufactured there will be guaranteed service support for at least 5 years. The CytoFlex SRT is relatively new and right at the start of it's product life cycle.

Mandatory

2.39

Please detail any additional added value that you will be able to add to this contract. This could include any further features, in addition to those covered in the practical evaluation of the proposed equipment that would allow for easier operation and which are included in the standard proposal to this tender, i.e. at no extra cost and or things that will simplify UKHSA processes or provide end users with added knowledge or skill

Type:	Required
Score out of:	4.00
Scoring Guidelines:	0 = Failure to understand and/or failure to substantial failure to provide and/or provides no confidence that the requirements will be delivered. 1 = Some misunderstandings and a generally low level of information and detail provided. Fails to meet the requirements in many ways and/or materially in one or more ways, and provides insufficient confidence of ability to meet and deliver the requirements. 2 = Generally understands and addresses issues appropriately. Some areas of misunderstanding, provide a low level of detail, and/or provide more of a "model answer" than a true commitment, so only provides some confidence they will deliver requirements. 3 = Response provides The Authority with a good level of confidence that the Bidder's proposals will meet The Authority's requirements set out in the specification and the response demonstrates across the whole of the response a good understanding of the issues under the contract and what is being asked for. The proposal sets out a satisfactory level of detail and clarity across most of the response with some relevant reference to the specification. 4 = High degree of confidence that the Potential Provider's proposal will meet the requirements, demonstrated through a very good understanding of the issues and what is being asked for. Proposals set out how and what will be delivered.
Weighting:	3.00

New users of the CytoFlex SRT will have an instant familiarity with the software as the software has been built on the CytExpert software currently used at UKHSA Porton for flow cytometric analysis on the CytoFlex platform. Assays are transferable from the CytoFlex analyser to the SRT as the same band pass filters are used in both instruments. FCS data produced on the SRT and CytoFlex are directly comparable being displayed on the same 7 log decade scale. This will help when comparing data between the CytoFlex analyser and the CytoFlex SRT instruments on-site.

Ease of use has been a key consideration during the development of the CytoFlex SRT, a single QC product (the QC beads) allows for the entire instrument QC and set up of the drop delay and sort functionality of the system. Following set up via the wizard driven software the instrument will maintain stability with stream monitoring and fixing safeguarding against gradual temperature changes throughout the sort.

The CytoFlex SRT is connectable to Beckman Connect to enable remote servicing and functions in the same way as it does on the current CytoFlex analysers. Beckman Connect is optional, however installing it would help with any future trouble shooting especially as the instrument is intended to be used in containment.

The CytoFlex SRT is at the forefront of Beckman Coulter's cell sorting instrumentation. Our development team are already working on a software update that would be implemented on the CytoFlex SRT instrument should the UKHSA procure the system.

Social Value

2.40

Describe the commitment your organisation will make to ensure that opportunities under the contract deliver at least two of the following Social Values themes as applicable 1) COVID-19 recovery 2) Tackling economic inequality 3) Equal opportunity 4) Wellbeing As per the Procurement Policy Note 06/20"

Type: Required

Score out of: 4.00

Scoring Guidelines: 0 = Failure to understand and/or failure to substantial failure to provide and/or provides no confidence that the requirements will be delivered. 1 = Some misunderstandings and a generally low level of information and detail provided. Fails to meet the requirements in many ways and/or materially in one or more ways, and provides insufficient confidence of ability to meet and deliver the requirements. 2 = Generally understands and addresses issues appropriately. Some areas of misunderstanding, provide a low level of detail, and/or provide more of a "model answer" than a true commitment, so only provides some confidence they will deliver requirements. 3 = Response provides The Authority with a good level of confidence that the Bidder's proposals will meet The Authority's requirements set out in the specification and the response demonstrates across the whole of the response a good understanding of the issues under the contract and what is being asked for. The proposal sets out a satisfactory level of detail and clarity across most of the response with some relevant reference to the specification. 4 = High degree of confidence that the Potential Provider's proposal will meet the requirements, demonstrated through a very good understanding of the issues and what is being asked for. Proposals set out how and what will be delivered.

Weighting: 10.00

3 - We build our best teams by seeking out a wide range of unique backgrounds, perspectives, talents and experiences. This allows us to attract talent that is as diverse as the markets and embrace customers we serve. We create an inclusive culture when we respect the talents and abilities of others.

At Danaher, we define diversity as anything unique that makes us who we are, including how we think, our work ethic, where we are from, our experiences, what we look like, and how we identify. We do not discriminate based on legally protected characteristics.

4 -We are committed to providing a healthy and safe workplace for associates and others who visit our facilities. Our commitment to health and safety is everyone's job. Look out for one another, work together to help ensure that our operations are safe and "Stop, Think and Speak Up" when you are concerned or uncertain about potential hazards in your work area.

Help maintain a safe workplace; be proactive to help prevent work place injuries, whether you work in a Danaher facility or in the field.

Know the emergency and security procedures that apply where you work.

Never bypass or work around safety or security devices or procedures.

Understand and adhere to your OpCo's driving and travel policies when driving or traveling on company business.

Ensure that your performance is not impaired by alcohol or any drugs, including prescriptions and over-the-counter medications, while conducting Danaher business. Alcoholic beverages are only allowed for moderate consumption at company-sponsored events.

Help contractors, customers and others we work with understand and follow our safety procedures.

For more information please look at the 2021 sustainability report by clicking on the following link - <http://investors.danaher.com/corporate-governance>

Sustainability

2.41

What steps does your company take to limit/ minimise environmental impacts during the life cycle of your product or service in relation to energy, water use and waste management?

Type:	Required
Score out of:	4.00
Scoring Guidelines:	0 = Failure to understand and/or failure to substantial failure to provide and/or provides no confidence that the requirements will be delivered. 1 = Some misunderstandings and a generally low level of information and detail provided. Fails to meet the requirements in many ways and/or materially in one or more ways, and provides insufficient confidence of ability to meet and deliver the requirements. 2 = Generally understands and addresses issues appropriately. Some areas of misunderstanding, provide a low level of detail, and/or provide more of a "model answer" than a true commitment, so only provides some confidence they will deliver requirements. 3 = Response provides The Authority with a good level of confidence that the Bidder's proposals will meet The Authority's requirements set out in the specification and the response demonstrates across the whole of the response a good understanding of the issues under the contract and what is being asked for. The proposal sets out a satisfactory level of detail and clarity across most of the response with some relevant reference to the specification. 4 = High degree of confidence that the Potential Provider's proposal will meet the requirements, demonstrated through a very good understanding of the issues and what is being asked for. Proposals set out how and what will be delivered.
Weighting:	5.00

Please look at the 2021 sustainability report on the following link <http://investors.danaher.com/corporate-governance>



## Sustainability

**2.42**

Please explain how you would support UKHSA laboratories with reduction and disposal of waste including but not limited to plastic and chemicals in accordance with environmental regulations.

Type:	Required
Score out of:	4.00
Scoring Guidelines:	0 = Failure to understand and/or failure to substantial failure to provide and/or provides no confidence that the requirements will be delivered. 1 = Some misunderstandings and a generally low level of information and detail provided. Fails to meet the requirements in many ways and/or materially in one or more ways, and provides insufficient confidence of ability to meet and deliver the requirements. 2 = Generally understands and addresses issues appropriately. Some areas of misunderstanding, provide a low level of detail, and/or provide more of a "model answer" than a true commitment, so only provides some confidence they will deliver requirements. 3 = Response provides The Authority with a good level of confidence that the Bidder's proposals will meet The Authority's requirements set out in the specification and the response demonstrates across the whole of the response a good understanding of the issues under the contract and what is being asked for. The proposal sets out a satisfactory level of detail and clarity across most of the response with some relevant reference to the specification. 4 = High degree of confidence that the Potential Provider's proposal will meet the requirements, demonstrated through a very good understanding of the issues and what is being asked for. Proposals set out how and what will be delivered.
Weighting:	5.00

Please look at the 2021 sustainability report on the following link <http://investors.danaher.com/corporate-governance>

## Business Continuity Management

**BCM 01**

UKHSA discharges its duties as a Category 1 Responder to emergencies on behalf of the Secretary of State for Health within the scope of the Civil Contingencies Act 2004 (CCA 2004). The definition of an incident for UKHSA includes events or situations which would constitute an emergency under the CCA 2004 is: "An event or a situation which threatens or causes damage to the health of the public and that requires urgent action from UKHSA at whatever level." UKHSA is an organisation that exists to protect the public from threats to their health from infectious diseases and environmental hazards, and as part of the Civil Contingencies Act 2004, the UKHSA is classified as a Category 1 Responder. It is therefore essential that UKHSA continues operating through such incidents. Further details can be found at: <http://www.legislation.gov.uk/ukpga/2004/36/contents>

Type:	Optional
Score out of:	0.00
Scoring Guidelines:	
Weighting:	0.00

Business Continuity Management

BCM 02

Suppliers must have a Business Continuity Management system. Please select from the options the one which reflects your organisations approach to business continuity management standard. Scoring 1 - Aligned to ISO 22301 or equivalent standard - Pass 2 - In house business continuity plan / system - Pass 3 - No business continuity plan / system - Automatic rejection

Type: Required  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

In house business continuity plan / system

Business Continuity Management

BCM 03

If your organisation holds the Business Continuity Management (BS ISO 22301) or relevant standards equivalent, please provide: - name of the standard plus any identifying number - your registration number; - date of registration; - date of expiry of registration. At a later date the Authority may request a copy of your certificate to verify your response. The response will not be scored but will be used to validate the responses provided earlier.

Type: Optional  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

Business Continuity Management

BCM 04

If you have an In House Business Continuity Plan, please attach a copy. This will be used to validate your previous response.

Type: Optional  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

Business Continuity Management

BCM 05

Please describe your emergency out of hours (weekends / public holidays) procedures for the following:  
1- Service/emergency repairs booking. 2- Attendance on site for emergency repairs

Type: Required  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

The equipment being tendered for is a scientific research instrument and as such we do not offer an emergency out of hours service (out of hours defined as weekends / public holidays) for either repair bookings or attendance on-site for emergency repairs. Our service support hotline is open during normal business hours 8am until 17.30 and engineers are available for on-site attendance during these hours as well.

Business Continuity Management

BCM 06

Please add any additional comments to support your responses on Business Continuity Management.

Type: Optional  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00



General Quality Assurance (QA)

GQA 01

Please select the statement that best reflects the Quality Management System (QMS) in your organisation. 1 - ISO9001 certified company - Pass 2 - Not ISO9001 certified company but operates a Quality Management System - Pass 3 - Not ISO9001 certified company and no Quality Management System - Automatic rejection

Type: Pass/Fail  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

ISO9001 certified company

General Quality Assurance (QA)

GQA 02

If you have selected "1 - ISO9001 certified company" or "2 - Not ISO9001 certified company but operates a Quality Management System", please upload a copy of the certificate or uncontrolled copy of your Quality Manual, as appropriate. This information will be used to validate the answer to the previous question

Type: Required  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

Beckman FM 663746 ISO9001-2015 Multisite - Exp 01-Jun-2023.pdf

Health and Safety

## H&S 01

If your organisation has 5 or more employees it must have a Health and Safety policy document. Please select the option that applies to your organisation. Scoring: Fewer than 5 employees - Pass More than 5 employees and have H&S policy document - Pass More than 5 employees and NO H&S policy document - Automatic rejection

Type: Pass/Fail  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

More than 5 employees and have H&S policy document

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Health and Safety

## H&S 02

Please attach a copy of your Health and Safety policy if you have one.

Type: Required  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

BCUK Health and Safety Policy Aug 2020.pdf

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Health and Safety

## H&S 03

Has your organisation or any of its Directors or Executive Officers been in receipt of enforcement/remedial orders in relation to the Health and Safety Executive (or equivalent body) in the last 3 years?

Type: Required  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

No

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Health and Safety

H&S 04

If your answer to the above question was YES, please provide details of any enforcement/remedial orders served and give details of any remedial action or changes to procedures you have made as a result.

Type: Optional  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

N/A

Health and Safety

H&S 05

Does your company have access to competent health and safety advice as required by the Management of Health and Safety at Work Regulations? Scoring: Yes - Pass No - Automatic rejection

Type: Pass/Fail  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

Yes

Health and Safety

H&S 06

If yes, please provide details of your health and safety management system including how it is relevant to your assessment of the health and safety risks of your business.

Type: Required  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

Our Health and Safety Policy references the actions of the Health and safety Committee that meets on a regular basis to discuss incidents and near misses and new issues seen across the company. The committee also communicates guidance to the company, or to appropriate associates to mitigate risks in the future. The Health & Safety policy is reviewed periodically.



Health and Safety

H&S 07

Have you conducted ergonomic assessments of the equipment; if yes, please provide the details.

Type: Required  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

We have not conducted ergonomic assessments of the equipment as this is partly affected by how the end users choose to have the equipment installed. For example, the PC, keyboard and monitor can all be positioned as required and the positioning of the instrument within a containment bubble (including the height of the containment bubble) is also user definable.



Health and Safety

H&S 08

All equipment with automated, movable parts must comply with relevant H&S guidelines to provide protection from the injury during operation due to access. Please confirm compliance with this requirement. Scoring: Yes - pass No - automatic rejection

Type:	Pass/Fail
Score out of:	0.00
Scoring Guidelines:	
Weighting:	0.00

Yes

---

Health and Safety

H&S 09

The propose system must meet the requirements of Provision and Use of Work Equipment Regulations 1998 (PUWER). Therefore please explain how the proposed solution meets following requirements, this should include: • Weight. • Heat. • Noise output. • Provision of UPS. • Are all dangerous parts of the equipment guarded? Where guards are not fitted, are suitable risk reduction measures in place to control danger to personnel? • Are the controls for starting, stopping and controlling the equipment clearly identifiable and safe to use? • Would fault or damage to part of the control system or loss of power result in increased risks to health & safety? If yes, please provide the details. • Effective measures to prevent access to dangerous parts of machinery and other safety features. • Is the equipment inspected for any deterioration that may result in risks to personnel, as a part of comprehensive service cover? • What are the residual health and safety (H&S) risks, including handling of samples and subsequent waste generated? • Is there any reasonable probability of any article or substance being ejected, falling, rupturing, breaking, being thrown out, disintegrating, catching fire, overheating or exploding? If yes, please provide the details. • Are all necessary H&S markings fitted and visible and comply with the necessary standards such as BS 5378 and Health & Safety (Safety Signs and Signals) Regulations 1996? • Please state if there are any restrictions / recommendations relating to location of the equipment e.g. restricted access, warning signs, etc.

Type:	Required
Score out of:	0.00
Scoring Guidelines:	
Weighting:	0.00

The proposed CytoFlex SRT meets the requirements of PUWER, the details are as follows:  
The dimensions of the instrument are W 72.5cm x D 47.5cm x H 45cm with a weight of 62kg.  
The system has a maximum heat output of 682 BTU. Noise output is less than or equal to 65 dBA. A UPS system can be provided with the instrument if required, there will be no additional charge for the UPS.

All dangerous parts of the instrument are guarded for operator safety, and the controls for starting and stopping the instrument are clearly marked and safe to use. Loss of power or a fault to the control system will not result in an increased risk to health and safety, it will simply result in the instrument shutting down. There are safety interlocks within the system to shut down power to various components should the end user access those areas. The comprehensive service cover offered provides an annual preventative maintenance visit which includes an inspection of the instrument for deterioration that may result in risks to personnel.

The residual health and safety risks are dependent upon the samples that the laboratory chooses to run on the instrument. What the UKHSA chooses to run on the instrument is outside of our control, however it's use will be governed by internal UKHSA risk assessments and correct procedures will be put in place by the laboratory personnel.

The instrument is designed to minimise any risk to the operator and samples are acquired and deposited within closed areas of the instrument. Therefore, the risk of ejection, explosion etc are very low.

All necessary H&S markings are applied to the instrument, these include labels to indicate the use of lasers within the system.

There are no specific recommendations for the location of the instrument.

Health and Safety

H&S 10

Based on Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) data, the biggest risk of injury comes from manual handling of consumables and waste. Therefore, please state the following: • size and weight of packs of reagents and consumables; • requirements for offloading, transportation and storage on site; • waste collection and removal; • any other risks; • further recommendations. Please also confirm that you will be willing to work with UKHSA to ameliorate any identified issues.

Type:	Required
Score out of:	0.00
Scoring Guidelines:	
Weighting:	0.00

The CytoFlex SRT uses a running fluid called IsoFlow Sheath, this is supplied in 10 litre containers to meet the H&S recommended limit of 10kg for safe manual handling. We would be happy to work with the UKHSA to mitigate any identified issues.

Health and Safety

H&S 11

The Provider must supply a full and complete description of the utilities required to support the system e.g. power, water, compressed air etc., and to include the individual equipment requirements. Are there any requirements for non-standard electrical supply, e.g. more than 13 amperes? Yes - Pass No - Pass

Type:	Required
Score out of:	0.00
Scoring Guidelines:	
Weighting:	0.00

The CytoFlex SRT is a stand-alone unit, all that is required is access to a standard 13 amp UK power socket.

Health and Safety

H&S 12

Please provide the details supporting the above question. Alternatively please attach a file quoting the question number.

Type: Required  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

The CytoFlex SRT power specifications are: Voltage AC 100-240V, 50/60Hz, Rated Power 200VA

Health and Safety

H&S 13

Systems must be capable of a safe shutdown in the event of a power failure and must be capable of coping with short-term power fluctuations, such as experienced when switching to and from back-up generator supply. All critical equipment and IT hardware must be provided with an uninterrupted power supply (UPS) and must be maintained, tested and replaced as necessary by the Provider. Please confirm compliance with this requirement. Scoring: Yes - pass No - automatic rejection

Type: Pass/Fail  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

Yes



Ordering

Order

"All orders for goods, requests for planned preventative maintenance, reactive maintenance and replacement parts must be subject to a UKHSA Purchase Order (PO). It is assumed that scheduled servicing should be arranged and agreed with UKHSA by the Supplier. Any repair calls should be able to be booked by phone or by email." All invoices must state a UKHSA purchase order number, otherwise the invoice will be returned to the Supplier. A single invoice must only relate to a single UKHSA Purchase Order (PO) as UKHSA cannot process invoices against multiple POs.

Type: Optional  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

Publication of Contract

Publ\_Con

The authority is obliged to publish contracts with a value exceeding £10k under the Government’s transparency policies. Following the completion of this tender exercise, the authority will publish the full contract agreed with the winning bidder. The authority may withhold (in other words, redact) some information from publication in certain limited circumstances under Regulation 108 of the Public Contract Regulations 2015, for example if publication would impede law enforcement or prejudice legitimate commercial interests. The authority will redact information of a personal nature, for example, names, personal addresses, signatures and email addresses, and consider redacting some pricing information (but not the contract value). We will also redact information in accordance with the Freedom of Information Act, for example: • processes, approach, methods and methodology • systems • terminology • intellectual property • trade secrets • commercial data, for example rates and fees Please indicate below what information in your bid you consider to be commercially sensitive. Please be specific about the information you consider commercially sensitive, for example referring to specific sections of your bids response. The authority will take into account your request, but not be bound by it as the authority has an obligation to meets its transparency obligations.

Type: Optional  
Score out of: 0.00  
Scoring Guidelines:  
Weighting: 0.00

## **Danaher Corporation**

### **Sustainability Policy**

**1. Introduction.** Danaher Corporation (including all of its directly and indirectly controlled subsidiaries, “Danaher” or the “Company”) is a global science and technology innovator committed to helping its customers solve complex challenges and improving quality of life around the world. Our Shared Purpose - Helping Realize Life’s Potential - gives direction and meaning to the work our employees (whom we refer to as associates) do every day. Our Shared Purpose is rooted in Danaher’s five Core Values:

- The Best Team Wins. We need exceptional people to achieve our aspirations as a global science and technology leader. We win because we are team-oriented with involvement by all.
- Customers Talk, We Listen. One of our teams’ most important responsibilities is to listen to our customers.
- Kaizen Is Our Way of Life. Through “kaizen,” or continuous improvement, we address customer needs with actions that benefit the greater good.
- Innovation Defines Our Future. One of the most important ways we drive continuous improvement is through innovation that makes a difference.
- We Compete for Shareholders. By living our core values, we deliver the highest possible value to our shareholders.

Our commitment to sustainability flows naturally from Our Shared Purpose and our five Core Values. Our Sustainability Mission Statement (the “Mission Statement”) provides as follows:

- What it is. For us, sustainability means a commitment to considering the long-term interests of our associates, customers, shareholders, business partners, communities and our planet in everything we do.
- Why we do it. We are committed to helping generations of stakeholders realize life’s potential. When we bring together our innovative portfolio, the dedication of our passionate people and our deeply ingrained commitment to continuous improvement, our potential to create a better world is limitless.
- How we do it. We drive sustainability improvements through people, process, technology and above all through the Danaher Business System (DBS).
- Where we do it. We drive and sustain sustainability improvements throughout our areas of impact, including with our customers (through our products, services and solutions) and in our commercial organization, supply chain, operations, workplace, communities and environment.

In this Sustainability Policy (the “Policy”), we articulate our requirements and expectations with respect to key dimensions of sustainability. This is not the only policy that articulates Danaher’s sustainability-related requirements and expectations; the sustainability page of our public website, [www.danaher.com](http://www.danaher.com), links to our Code of Conduct and other, function-specific policies that also address key elements of sustainability.

## **2. Human Rights**

a. Relevance. Our commitment to human rights stems from “The Best Team Wins” Core Value, and from our Mission Statement, which articulates our commitment to considering the long-term interests of, among other stakeholders, the individuals who work at Danaher, at our customers and at our business partners and the individuals who live in our communities. Respect for human rights must be the cornerstone for a sustainable business.

b. Our Commitment. Danaher is committed to respecting human rights in our own operations and complying with the laws of the countries in which we do business. Our commitment to upholding the dignity of every person and respecting and protecting human rights applies to all Danaher locations and businesses worldwide. This commitment is consistent with Our Shared Purpose and our Core Values. Moreover, we believe we have an opportunity to positively impact the protection of human rights within our sphere of influence. To this end, we encourage and support our suppliers in their efforts to act in accordance with internationally recognized human rights standards. Our commitment is guided by the principles set forth in laws of the United States governing human rights, as well as in the following international documents:

- Universal Declaration of Human Rights
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- International Labor Organization’s (ILO’s) Declaration on Fundamental Principles and Rights at Work
- Danaher is also a signatory of the [UN Global Compact](http://www.un.org/en/globalcompact/), and supports the 10 principles set out in this framework on human rights, labor, environment and anti-corruption.

We recognize that human rights due diligence is a continuous process, and we seek to utilize policies, training, processes and monitoring systems to advance this commitment.

c. In Our Operations. We expect each Danaher associate to act lawfully toward other associates, colleagues, business partners and those in local communities. We do not tolerate the abuse of human rights in our operations. Each year, all associates in administrative, business, technical, professional, management and executive career categories are required to certify their understanding of the Code of Conduct and all its requirements (including the Code requirements relating to human rights). Associates classified as “Procurement” receive regular awareness trainings on human rights topics.

d. In Our Supply Chain. We expect our suppliers to share our commitment to respect human rights. All suppliers are expected to comply with our Supplier Code of Conduct, which sets forth our expectations around supplier business practices (including with respect to respect for human rights). We are committed to implementing and improving upon due diligence processes to assess risks relating to human rights. Please see the Danaher Sustainable Supply Chain Policy for additional details.

e. In the Community. As an employer and a corporate citizen, we are aware of our role in the communities in which we operate. We respect the rights of local communities and those who live and work there consistent with international human rights standards. We strive to monitor and address the environmental impacts of our business operations on our neighbors, and strive to create positive impacts on adjacent communities through local engagement and charitable programs.

f. General Rights and Obligations.

- *Fair Labor Practices.* All Danaher employment practices are required to comply with all applicable laws and regulations, including those concerning hours, compensation, opportunity and working conditions. Our businesses are required to respect each associate’s legal rights to make an informed decision, free of coercion, about membership in associations and/or labor unions. Our businesses are required to bargain in good faith with these associations and labor unions.
- *Child Labor.* Danaher’s policy is to support and comply with child labor laws across our operations and supply chain. Our approach is consistent with the ILO labor standards outlined in ILO Conventions No. 138 and 182.
- *Forced Labor and Human Trafficking.* We do not accept or condone any aspect of forced or compulsory labor. We strictly prohibit our associates and suppliers from engaging in human trafficking-related activities.
- *Safe and Healthy Work Environment.* It is Danaher policy that all associates work in a clean and safe environment. In the interest of maintaining a safe and healthy workplace, the Company requires full compliance with applicable workplace safety and industrial hygiene standards as mandated by law.
- *Non-Discrimination and Anti-Harassment.* Danaher is committed to equal employment opportunity and equity, and it is our policy that we base employment decisions on merit, considering qualifications, skills and achievements. Regardless of geographic location, all employment-related decisions must be based on job-related qualifications, without regard to legally protected characteristics such as race, color, national origin, religion, sex, gender, age, marital status, disability, veteran status, citizenship status, sexual orientation, gender identity, gender expression or any other characteristic protected by law. We do not tolerate unlawful discrimination or harassment, and our Code of Conduct further expands upon these expectations.
- *Privacy.* We are committed to protecting the privacy of those who entrust us with their personal information, including our customers, website visitors, associates, clinical research participants and all those who do business with us. We are committed to explaining how personal information can be corrected, updated or deleted, and are committed to taking steps to keep personal information secure.

g. Sector-Specific Opportunities.

- *Access to Healthcare; Product Quality; Pricing.* Access to healthcare, including access to innovative medical devices and other technologies, is a critically important focus for the global health community and our Company. At Danaher, we believe one of the most significant opportunities we have is to improve access to healthcare. We believe that as a manufacturer of life sciences and diagnostics products, our critical contribution lies in continuing to invest in products and solutions that support the discovery and development of lifesaving treatments to address the world’s most intractable health challenges. In addition, Danaher in certain circumstances employs innovative, targeted approaches to address the needs of developing countries, including collaborative partnerships with global organizations. We are committed to reporting on our access to healthcare initiatives in our annual Sustainability Report. We also recognize our responsibilities to ensure the quality and safety of our products from the discovery phase to post-commercialization, and to price our products and solutions responsibly to ensure that they reflect their value.

h. Remediation. We are committed to providing effective resolution to the extent we have caused or contributed to adverse human rights impacts. The Danaher Integrity and Compliance Helpline (“Helpline”) located at [www.danaherintegrity.com](http://www.danaherintegrity.com) (together with the other reporting channels identified in our Code of Conduct) are the grievance mechanisms available to associates, business partners and other persons. In particular, the Danaher Helpline offers a secure channel for anonymous reporting of suspected or potential violations of our policies or the law, including without limitation the policies and laws referenced in this Policy. We support individuals who, in good faith, provide information relating to reports of suspected or potential misconduct and will not tolerate threats or acts of retaliation.

i. Application, Governance and Communication. Please see Section 8 of this Policy for a discussion of the applicable scope of this Policy (including this Human Rights section), executive management approval of this Policy (including this Human Rights section) and our commitments relating to communication of this Policy (including this Human Rights section).

### 3. EHS

a. Background. Environment, health and safety (EHS) management refers to the practices that protect the environment and the health and safety of the people in and around our workplaces—key elements of being a responsible corporate citizen and a resilient business. Effective EHS management requires clear policies and processes that enable risk-based assessment, minimization of environmental impacts and control of health and safety hazards.

b. Relevance. Our commitment to associate health and safety and the protection of the environment is grounded in our Core Value “The Best Team Wins,” and in our Mission Statement, which provides: “For us, sustainability means a commitment to considering the long-term interests of our associates, customers, shareholders, business partners, communities and our planet in everything we do. We are committed to helping generations of stakeholders realize life’s potential.” We know that we cannot attract and retain the talented individuals we need to achieve our aspirations of global science and technology leadership without providing a safe, healthy working environment. And we recognize that helping generations of stakeholders realize life’s potential starts with caring for our planet.

c. Our Position.

- Legal compliance is the foundation of our license to operate. Each of our operating companies is required to determine and comply with all EHS regulatory requirements applicable to its operations.
- We actively promote an EHS culture of accountability, education and transparency and are committed to creating EHS awareness throughout our organization. We foster an EHS culture where every associate is responsible for their safety and the safety of others. We require in-scope associates in our EHS, facilities manufacturing & operations and specified other functions to participate in annual training focused on environmental, health and safety awareness and on Danaher’s EHS program.
- We use our DBS 4E-Hazard Control Toolkit to assess and mitigate health and safety risks. Specifically, our objective is to use the Toolkit to eliminate serious injury and fatality (SIF) exposures while also reducing all types of incidents. For risks that could lead to serious injuries or fatalities, we seek to follow the hierarchy of controls, favoring elimination of the risk, substitution or engineering controls over administrative controls.
- We use a global EHS data management system to collect and maintain key EHS data from our operating companies. We are committed to using this data to gain insights that help us anticipate and proactively mitigate risks that could lead to incidents or non-compliance, and assess our progress in reducing our environmental impact.
- EHS assessments are an integral part of our property and business acquisition due diligence processes, and we have processes to integrate newly acquired businesses into our EHS program. We also seek to integrate EHS principles into our other business practices where feasible.
- We strive to continually improve our EHS performance by setting EHS improvement goals, including goals to reduce Danaher’s impact on the environment and reduce health and safety incidents. We review our progress against these goals on a regular basis at multiple levels of the organization, including site, operating company, platform and Danaher-wide.
- We seek to leverage DBS to support our EHS program and goals, including by developing EHS-specific DBS tools (such as the 4E Hazard Control Toolkit, the DBS Energy Management Toolkit and the DBS Waste Minimization Toolkit) and by leveraging the full suite of DBS tools as applicable.
- To help drive business sustainability, we require our operating companies to have business continuity and disaster preparedness plans.
- We are committed to reporting regularly on environmental issues and on the progress and performance of our EHS program (1) to our internal and external stakeholders through our annual Sustainability Report, and (2) to our internal stakeholders through other regular communications.

- Danaher Corporation's Senior Vice President-General Counsel has overall executive-level oversight responsibility for Danaher's EHS program.

d. Application, Governance and Communication. Please see Section 8 of this Policy for a discussion of the applicable scope of this Policy (including this EHS section), executive management approval of this Policy (including this EHS section) and our commitments relating to communication of this Policy (including this EHS section).

#### 4. Climate, Waste and Water

a. Background. In the field of climate science, there is consensus that human activity is increasing the concentration of greenhouse gases (GHGs) in the earth's atmosphere, which is forcing the climate to change. In addition, poor environmental health is a significant threat to human health. Climate change is adversely impacting health both directly and indirectly, such as by increasing extreme weather events and chronic impacts such as drought. Air, water, and soil pollution; improper waste management; and degradation of ecosystems also negatively impact human health.

Risks resulting from a changing climate also have the potential to negatively impact economies around the world. The environmental risks of acute and chronic weather events, accelerating biodiversity loss and failures of climate-change mitigation and adaptation could result in disruption of critical infrastructure and global supply chains. The potential financial impact of these risks is significant to the global economy and is a compelling driver for businesses to act.

b. Relevance. Our Mission Statement provides a clear and compelling articulation of our responsibility to the environment: "For us, sustainability means a commitment to considering the long-term interests of our associates, customers, shareholders, business partners, communities and our planet in everything we do. We are committed to helping generations of stakeholders realize life's potential." We believe that the health of people is inextricably linked to the health of the planet. As a global science and technology company, we remain committed to improving the environment where we live, work and sell our products today—and for generations to come.

c. Our Position. We have a responsibility to help abate climate change and environmental degradation. Businesses have an important role to play in responding to climate change by implementing voluntary reductions of GHGs within their control and encouraging mitigation and adaptation activities outside of their immediate control where they may have influence. Companies should continually strive to improve the efficiency and sustainability of their operations, products, and services—not only to avoid the consequences of a changing climate but also to improve the cost effectiveness and resilience of their business.

d. Our Commitments. Danaher is committed to:

- monitoring and measuring our energy consumption, GHG emissions, waste generation (with respect to both hazardous/regulated waste and non-hazardous/non-regulated waste) and water consumption;
- reducing our carbon footprint and waste generation and establishing management programs to facilitate such reductions;
- setting goals and deadlines for reducing normalized GHG emissions, energy consumption and the percentage of non-hazardous/non-regulated waste sent to landfills or incinerators;
- ensuring the availability of information and resources to meet our goals, and reporting regularly and transparently on our progress toward those goals;
- engaging our suppliers to improve transparency and collaboration, and encourage the minimization of the environmental impact—including the carbon footprint—of our purchased goods;
- improving our assessment of the business risks associated with a changing climate and integrating them into our risk assessment and mitigation programs and business continuity planning programs to help ensure that we can continue to meet our customer needs;
- complying with all relevant laws and regulations; and
- providing products and services that help our customers positively impact, an/or reduce negative impacts on, the environment.

e. Management Programs. We have developed two DBS toolkits specific to the goals of reducing energy consumption, GHG emissions and waste generation in our operations:

- The *DBS Energy Management Toolkit* guides our facility-level teams in identifying, prioritizing and implementing measures that improve energy efficiency and reduce GHG emissions. The toolkit is used to establish a thorough understanding of energy consumption and identify areas for improvement in the form of an Opportunity Assessment. Energy management action plans are then developed and implemented using the suite of DBS tools as

- applicable.
- The *DBS Waste Minimization Toolkit* guides our facility-level teams in evaluating current-state waste generation, identifying opportunities for improvement and implementing comprehensive waste elimination and minimization strategies. The toolkit follows the waste management hierarchy of controls—avoid, reduce, reuse, recycle, recover energy, treat and dispose. Waste management action plans are developed and implemented based on this framework.

We are committed to continually improving upon and utilizing these toolkits and continually improving how we leverage DBS to minimize our impact on the environment. We expect Danaher associates to use these toolkits and other DBS tools as appropriate to help achieve our established goals and objectives relating to environmental impact.

f. Application, Governance and Communication. Please see Section 8 of this Policy for a discussion of the applicable scope of this Policy (including this Climate, Waste and Water section), executive management approval of this Policy (including this Climate, Waste and Water section) and our commitments relating to communication of this Policy (including this Climate, Waste and Water section). Danaher Corporation's Senior Vice President-General Counsel has overall executive-level oversight responsibility for Danaher's programs to reduce our environmental impact.

## 5. Political Involvement and Political Contributions

a. Political Involvement. We believe in the right of our associates to participate in the political process. We encourage our associates to be active in charitable and political activities on their own time and at their own expense. In particular, our Code of Conduct provides that:

- In all communications, associates must make clear that political views and actions are their own and not those of Danaher.
- Associates may never use Danaher resources to contribute to, support or oppose any political party or candidate unless approved by Danaher Corporation's Board of Directors or a committee of the Board.
- Supervisors should not solicit direct or indirect reports to contribute to, support or oppose any political party or candidate.
- Associates may never make a charitable or political contribution with the intent to improperly influence someone.

b. Political Contributions. Since 2012, no funds or assets of Danaher have been contributed to or for (1) any political party or candidate, whether federal, state or local, (2) any entity operating under 26 U.S.C. Sec. 527 of the Internal Revenue Code, (3) any entity organized under 26 U.S.C. Sec. 501(c)(4) of the Internal Revenue Code, (4) any ballot measure or (5) any public communication that expressly advocates the election or defeat of a political candidate ("Political Purposes"). Danaher has no intention of contributing any company funds or assets for political purposes; any contribution of company funds or assets for political purposes would require approval by Danaher's President and CEO.

c. Trade/Industry Associations. Danaher belongs to and pays dues to certain U.S. trade and industry associations. Company policy is that each such association may use no more than \$25,000 of Danaher's dues in any calendar year for political purposes, and the company communicates this policy to the associations of which it is a member.

d. Application, Governance and Communication. Please see Section 8 of this Policy for a discussion of the applicable scope of this Policy (including this Political Involvement and Political Contributions section), executive management approval of this Policy (including this Political Involvement and Political Contributions section) and our commitments relating to communication of this Policy (including this Political Involvement and Political Contributions section).

## 6. Transparency

a. Background. We believe all companies, especially publicly-traded companies, should be accountable to their stakeholders for their business activities. Transparency in financial and other dealings demonstrates accountability, fosters trust and enables stockholders and other stakeholders to make informed decisions about their interactions with a company.

b. Relevance. Danaher believes in conducting our business with integrity and earning the trust of the people we serve. For us, this includes a commitment to complying with applicable legal and regulatory requirements, and upholding the highest ethical standards in every aspect of our business and in every market where we operate. Part of doing so is being transparent about the way we do business and the way we comply with laws and regulations.

c. **Our Position.** Danaher values transparency as the foundation of trust-building with all those engaged in any way with our business. We strive to hold ourselves accountable by providing information about how we function across our businesses and markets. Our policy is to comply with all of the reporting requirements of the regulatory bodies governing our businesses, and in addition we publish a wide range of voluntary disclosures. Key disclosures include:

- *Financial Disclosures:* We report on our financial results and other material disclosures as required by the applicable rules of the Securities Exchange Commission (“SEC”) and the listing standards of the New York Stock Exchange. Our SEC filings are available on Danaher’s public website.
- *Sustainability Disclosures:* We publish our annual Sustainability Report and strive to include content in line with leading global standards (e.g., Global Reporting Initiative, SASB, TCFD, UN SDGs) covering a broad range of non-financial updates and performance, including associate demographic data. We also annually complete the CDP Climate Change and Water Security questionnaires.
- *Payments to Healthcare Providers:* In the United States, each of our healthcare companies publishes aggregated financial data under the Physician Payments Sunshine Act, a national disclosure program within the Centers for Medicare & Medicaid Services (CMS) that promotes transparency around the financial relationships between healthcare providers and manufacturers of drugs, medical devices and biologics. Disclosures are also made based on specific state requirements (including Connecticut, Massachusetts and Vermont). In Europe, we comply with the Disclosure Guidelines of the MedTech Europe Code of Ethical Business Practice as well as other country specific disclosure laws such as the French Sunshine Act (Loi Bertrand), Italian Sunshine Act (based on the Assobiomedica Code), and Decree Law 5-2017 of the Portuguese Ministry of Health. Other countries or regions in Asia Pacific, Latin America, the Middle East and Africa have similar legal or industry code requirements that we make disclosures pursuant to.
- *Clinical Data Transparency:* We support the overall principles of greater clinical trial data transparency, including registration and disclosure of clinical trial results in external registries; publication of results in peer-reviewed journals; and sharing of clinical study reports and participant-level data from clinical trials. Clinical trials conducted around the world by our businesses are listed on the U.S. National Institutes of Health’s website, [www.clinicaltrials.gov](http://www.clinicaltrials.gov), the European Clinical Trials Register, and country-specific and regional registries across the globe.
- *Political Engagement:* Danaher contributes no funds or assets to or for (1) any political party or candidate, whether federal, state or local, (2) any entity operating under 26 U.S.C. Sec. 527 of the Internal Revenue Code, (3) any entity organized under 26 U.S.C. Sec. 501(c)(4) of the Internal Revenue Code, (4) any ballot measure or (5) any public communication that expressly advocates the election or defeat of a political candidate. Please see our Political Expenditures Policy for more detail.
- *Tax Transparency:* We take our responsibility as a good corporate citizen very seriously, including paying our fair share of taxes, among them corporate income taxes, employment tax, social contributions, import and customs duties, and indirect taxes. We value and strive for cooperative and transparent relationships with taxing authorities. Please refer to the Danaher Global Tax Strategy for more detail.
- *Policies and Positions:* We publish our annual Sustainability Policy and sustainability-related policies on our public website. These policies address a wide range of sustainability and environmental, social and governance topics so that our stakeholders can know where we stand on important sustainability issues.

d. **Application, Governance and Communication.** Please see Section 8 of this Policy for a discussion of the applicable scope of this Policy (including this Transparency section), executive management approval of this Policy (including this Transparency section) and our commitments relating to communication of this Policy (including this Transparency section).

## 7. **Stakeholder Engagement**

a. **Background.** Stakeholder engagement refers to the way a company interacts with those who influence and are influenced by its business activities. Such targeted interaction is necessary for a business to be fully informed of the way its activities are making a difference on individuals, communities and the planet, so that it may address needs and concerns arising from stakeholder feedback. By being attentive and responsive to stakeholders, a business can gain new insight that may inform business planning, shape its strategies to incorporate stakeholder needs where possible, and build trust with stakeholders through positive and interactive relationships.

b. **Relevance.** Our Mission Statement provides: “For us, sustainability means a commitment to considering the long-term interests of our associates, customers, shareholders, business partners, communities and our planet in everything we do.” Stakeholder engagement is critical to understand stakeholders’ long-term interests. Danaher is committed to engaging with a variety of stakeholders, including associates, investors, communities, customers and other business partners, to understand their expectations of Danaher and the different ways our activities impact them (including with respect to environmental issues). Engagement with stakeholders makes our Company stronger and better informed. It helps us gain valuable insight into our stakeholders’ perspectives and the topics that matter to them, and better enables us to develop products and solutions that are



responsive to their needs. This engagement also allows us to share information about our Company's strategy, practices and performance.

c. Our Position. The relationships we cultivate with our stakeholders are vital to both our business strategies and our sustainability approach. Our practice of stakeholder engagement is essential to building successful business plans and creating long-term value for our stakeholders and society in general. Our approach includes:

- *Engaging with a broad range of stakeholder groups:* In a global business such as Danaher's, with sales, operations and customers in dozens of countries, our business contribution and impact has a broad reach. We therefore engage with a range of different stakeholders, including associates, customers, shareholders, suppliers, local communities and government entities.
- *Utilizing stakeholder engagement feedback:* We highly value the information and insights we gain from stakeholder engagement and communicate engagement outcomes, as appropriate, to the Danaher Sustainability Committee and to the Nominating & Governance Committee of Danaher's Board of Directors, to help identify potential risks and opportunities and inform business decisions. We provide updates, where relevant, relating to stakeholder engagement in our annual Proxy Statement and our annual Sustainability Report.
- *Ongoing engagement with industry groups and associations:* As part of our inclusive approach, Danaher participates in industry groups and associations that help drive sustainability practices within our Company and across our industries.
- *Targeted engagement to define our sustainability priority topics:* Periodically, in addition to our stakeholder interactions in the regular course of the business, we specifically request stakeholder input to identify and prioritize the sustainability topics that they consider to be most important for Danaher. The aggregation of stakeholder feedback feeds into our sustainability strategy development.
- *Engagement on sustainability reporting:* In order to support the most effective disclosure to meet stakeholder needs, we periodically engage with external consultants and sustainability reporting specialists and invite suggestions for improving our disclosure. At the start of each reporting cycle, we review feedback received and adjust our disclosure where appropriate.

d. Application, Governance and Communication. Please see Section 8 of this Policy for a discussion of the applicable scope of this Policy (including this Stakeholder Engagement section), executive management approval of this Policy (including this Stakeholder Engagement section) and our commitments relating to communication of this Policy (including this Stakeholder Engagement section).

## **8. Application, Governance and Communication**

a. Application. This Policy (including each individual section thereof) applies to Danaher Corporation and all of its directly and indirectly controlled subsidiaries worldwide, and each of their respective associates.

b. Governance. This Policy (including each individual section thereof) has been approved by Danaher Corporation's President and Chief Executive Officer and Senior Vice President-General Counsel.

c. Communication. Danaher commits to communicating this Policy (including each individual section thereof) to its associates and external stakeholder through Danaher's intranet, external website, annual Sustainability Report and other channels. We also commit to reporting on Danaher's progress and impact with respect to the elements reflected in this Policy in our annual Sustainability Reports.

*Policy adopted July 7, 2021*







